

Volume 92 Number 878 June 2010

INTERNATIONAL
REVIEW
of the Red Cross

Humanitarian debate: Law, policy, action

Urban violence

CONTENTS

309 Editorial

Urban violence

- 313 Interview with Dennis Rodgers**
Senior Research Fellow in the Brooks World Poverty Institute

Articles

- 329 Violence and humanitarian action in urban areas: new challenges, new approaches**
Marion Harroff-Tavel
- 351 Humanitarian challenges of urbanization**
Raimond Duijsens
- 369 Understanding gangs as armed groups**
Jennifer M. Hazen
- 387 Territorial gangs and their consequences for humanitarian players**
Olivier Bangertter
- 407 Organized crime and gang violence in national and international law**
Pierre Hauck and Sven Peterke
- 437 Military operations in urban areas**
Alexandre Vautravers
- 453 Military involvement in law enforcement**
Dale Stephens
- 469 Regulating the conduct of urban warfare: lessons from contemporary asymmetric armed conflicts**
Michael John-Hopkins

Articles published by the Review reflect the views of the author alone and not necessarily those of the ICRC or of the Review. Only texts bearing an ICRC signature may be ascribed to the institution.

- 495 A synopsis of urban violence in South Africa**
David Abrahams

Books and articles

- 521 Recent acquisitions of the Library and Research Service, ICRC**

EDITORIAL

In 1950, less than 30 per cent of the world's population lived in cities and towns. Today, more than half are city dwellers. In absolute terms, while some 730 million people lived in urban areas in 1950, the figure stands 60 years later at over 3.3 billion. In the UN Population Fund's 'State of World Population 2007' report, this explosive growth of urbanization is referred to as the arrival of the 'urban millennium'.

Cities are the crossroads of political power, economic innovations and cultural affairs. They attract people because they so frequently offer better opportunities for jobs, education, housing, health services and entertainment. They are engines of prosperity and diversity, but they are also increasingly plagued by pollution, overcrowding, poor hygiene conditions, poverty, social exclusion, violence and crime.

Rapid urbanization has put resources and services under great pressure. Most of the urban poor in developing countries who are able to find work are likely to spend their lives in insecure, poorly paid jobs. And rural migrants often have no other choice than to settle in shanty towns and experience extreme poverty. Today's mass urbanization is accompanied by a growing sense of vulnerability among city dwellers faced with unsafe streets, exposure to hazards and insufficient access to basic items such as water, food and healthcare. According to the United Nations Human Settlements Programme, about a billion people live in poor-quality, overcrowded housing, in slums, or in informal settlements.

Moreover, the plight of the earthquake victims in Haiti shows how vulnerable densely populated urban areas can be to the tragic consequences of disasters and how difficult it can be for humanitarian organizations to help. In addition to natural disasters, urban violence poses a further serious challenge for vulnerable people. All problems are exacerbated when there are poverty, economic inequality, unemployment, social exclusion and marginalization. As the world grows increasingly urban, violence in many cities is reaching unprecedented levels, and is making daily life in some places almost like living in a war zone.

Urban violence and other crime – ranging from muggings to gang shootings and organized crime – are a source of growing concern and fear. Risk factors differ considerably. Violence often coincides with high levels of poverty, discrimination,

economic disparity, social inequality and drug abuse or trafficking. Other contributing factors include political or economic instability, proliferation of small arms and the presence of gangs or other organized groups. Risk factors often exist in clusters. They are not necessarily root causes, but they help to predict the occurrence of violence, its development and its escalation.

One of the best known manifestations of urban violence is the gang. Gangs are an old phenomenon. In the 18th century, many poor children and orphans in London survived by joining pick-pocket gangs controlled by adult criminals. In the early 19th century, child criminals in Britain were punished in the same way as adults. They were sent to adult prisons, “transported” to Australian penal colonies, whipped or even sentenced to death for petty theft. However, reports of gang-related killing, inside and outside of prisons, were concentrated mostly in the largest cities in the United States.

The term “gang violence” mostly refers to illegal and non-political acts of violence perpetrated against property, ordinary people or members of other gangs. The gangs generally use coercion, corruption and complicity to achieve their ends. They are usually composed of people ranging from 9 to 25 years. Tens of thousands of gangs exist worldwide, some of them huge – often criminal – organizations. The National Youth Gang Center in the United States reports that in 2006 there were approximately 785,000 active street-gang members. There are estimated to be between 25,000 and 50,000 gang members in El Salvador. The Mexican drug cartels may have as many as 100,000 foot soldiers. In Japan, there are some 90,000 known members of the Yakuza, a large criminal organization, and Hong Kong’s triads number up to 160,000 members. The different Mafia units in Italy have tens of thousands affiliates worldwide as have the “Bratvas” – organized crime groups run by Russians, Chechens, Ukrainians, Georgians and people from other former Soviet republics. The Nigerian and South African gangs are growing as well.

Drug-trafficking and institutionalized crime have profoundly changed street gangs, which traditionally were mostly turf-oriented. Today gangs are generating ever more crime and violence, often transnational, which at times even require military action. There are cases around the world where gangs have challenged the monopoly of State power. The duty to protect citizens that results from that monopoly is no longer being met in certain neighbourhoods, and even in large swathes of State territory. Instead, the criminal organizations concerned have infiltrated the social and economic life and sometimes even carry out the essential State functions.

The scale of organized armed violence and the resulting death toll are especially serious in large cities. Such violence can be more devastating than that of a conventional armed conflict. The wars that occurred in Central America in the 1980s, for instance, caused fewer casualties than the crimes today perpetrated by gangs.

Life in urban areas may be disrupted by lack of public and social services (water and sanitation, healthcare, schooling, etc.) and as a result of tight territorial control by organized groups or by State forces trying to suppress them. Certain

areas may be off-limits, even for social and humanitarian agencies, and providing the help needed is often difficult, if not impossible.

The violence of gangs and other criminal organizations and the resulting destabilization of the State may presently constitute the greatest security threat to Latin American countries. The consequences in humanitarian terms are obvious: people injured, people killed, people who disappear, people who flee their homes, sexual assault and human trafficking, and the lack of essential services. In some cases there seem to be the conditions that must exist to constitute an armed conflict under international humanitarian law, namely an organized force with a hierarchical structure and a certain intensity of fighting. The motivation for the violence is not what determines the applicability of international humanitarian law.

Gangs and other criminal entities are often highly organized, with an armed branch and military capacity equal or even superior to the armed forces of the State. They are frequently in control of defined territories and are often capable of launching sustained military, or military-like, operations. Even if they do not necessarily try to take over the government, they nevertheless aim to exercise some control over a certain population and/or territory in order to conduct their activities unhindered and to ensure impunity for their criminal acts.

Despite the possibility that international humanitarian law may be applicable to certain forms of gang activity, many doubt that this law provides an appropriate response to the phenomenon in most situations. While some aspects of international humanitarian law concern problems that arise from urban violence including gang violence, they argue that this branch of international law has little applicability to gang or purely criminal situations, which basically require a law enforcement response. In particular the distinction between civilians and combatants – or those directly participating in hostilities or not – would be difficult to apply and criminal and constitutional guarantees of the right to life might be undermined if the threshold of applicability were set too low.

The January 2010 earthquake in Haiti provided a demonstration of the vulnerability to natural disaster of densely populated urban areas. Similarly, Gaza City endured a classic armed conflict in early 2009. Many other cities such as Kabul, Baghdad and Mogadishu have been the scene of armed conflict over the years. A heavy toll has been taken in particular on civilians, who have far too often been killed or injured – the survivors often permanently disabled – as well as suffering indirectly on account of destroyed or damaged homes and the wrecking of infrastructure on which they depend. Especially in cases of aerial bombardment and shelling, people living in cities are affected more seriously by fighting than those living in rural areas. The rules on distinction and proportionality inevitably receive the most attention in these cases, and are even more put to the test in situations of asymmetric warfare. The very wording of the proportionality rule tends to suggest that military necessity will always prevail, this despite the fact that the distinction between combatants and civilians, and the concept of collateral damage, grew to paramount importance in urban settings and that humanitarian concern has

increasingly caused more attention to be paid to the interests of the civilian population when a proportionality judgment must be made.

Rapid urbanization is posing new challenges for organizations that give aid and strive to prevent conflict. The Red Cross and Red Crescent Movement advocates greater action by governments and local authorities to address the challenges posed by urban violence. In their role of auxiliary to the public power for humanitarian work, National Societies – provided they are strongly anchored in the communities they serve – can help governments prevent and mitigate violence by providing education and employment opportunities, thus offering alternatives to armed violence. Promoting social inclusion and a culture of non-violence and peace is one of the Movement's priorities. Towns and cities are particularly important in this respect.

While the ICRC mainly operates in connection with armed conflicts, it also has a mandate to act in what are termed 'other situations of violence', situations that also arise in cities. Often working closely with National Societies, it can respond when and where its international profile, experience, independence and neutrality are of special value to people made vulnerable by urban violence, for it is not the causes of the violence but rather its impact from a humanitarian viewpoint that justifies ICRC involvement.

*Toni Pfanner
Editor-in-Chief*

Interview with Dennis Rodgers*

Dennis Rodgers is a social anthropologist by training, with a BA and a PhD from the University of Cambridge, as well as a postgraduate degree from the Graduate Institute of International Studies in Geneva, Switzerland. He is a Senior Research Fellow in the Brooks World Poverty Institute (BWPI), at the University of Manchester, UK, where he leads their research programme on 'Urban Poverty and Conflict',¹ and a Visiting Senior Fellow with the London School of Economics Crisis States Research Centre, where he is involved in their research on 'Cities and Fragile States'.² He was also a member of a Nicaraguan youth gang for a year.



Is there an inevitable relationship between cities and violence?

It certainly sometimes seems to be the case. We have records concerning urban violence that go back a long way, to the Sumerians and the Romans, and they often specifically associate the phenomenon with city living; the historian Livy for example wrote about the gangs associated with the urban political machine in ancient Rome. In fact, from the 19th century onwards, social science research explicitly began to argue that there was something about cities which led to violence. The idea was that cities were made up of a lot of people concentrated in a very small space, forced to interact with each other, and this caused frictions and led to violence, particularly evident in the form of urban crime. Cities were also widely seen as places where people could come together and overthrow regimes. The French Revolution, for example, started off as an urban revolution.

To a certain extent, this makes a lot of sense. If, for example, you take a paradigmatic form of urban violence, namely youth gangs, there are very few rural gangs, partly because a gang is a collective form and, obviously, if you have youth in different villages kilometres apart, it's quite difficult to get together. At the same time, however, when you look at different cities around the world, you find that

* The interview was conducted in Geneva on 16 July 2010 by Toni Pfanner, Editor-in-Chief of the *International Review of the Red Cross*, and Michael Siegrist, Assistant Editor.

some of them are violent and some of them are not. Ultimately, the key factor is less the fact that they're cities and concentrate people in a set space, but rather the way that they're organised. Although cities are definitely spaces that bring people together and force them to interact, the outcomes of this interaction are by no means necessarily given. It is the overarching political economy of cities that is important to consider in this respect: whether certain groups dominate, whether others are excluded, and whether there are mechanisms of inclusion.

So the motivation behind the violence is the decisive criterion?

Yes and no. On the one hand, there's been a lot of work in the recent years trying to define different types of violence according to their motivation – for example, distinguishing between political violence, economic violence, and social violence – in order to justify different types of policy approaches. I don't really agree with this kind of distinction. Although it can be useful to think about the existence of different categories of violence, these can rarely be clearly separated from each other when one faces the reality on the ground. Take crime, for example, which is frequently portrayed as a paradigmatic form of economic violence. Even if criminal practices can definitely be analyzed in purely economic terms, they are also clearly epiphenomena of wider social forces. Many studies have shown that crime is linked to inequality, for instance, with more inequality leading to higher crime rates. Seen from this perspective, crime, although not necessarily an active political act, can be said to have a political dimension: it is a reaction against unequal social structures. This makes pinpointing the motivation criterion obviously very difficult.

So the motivation criterion is not important?

Once again, yes and no. Focusing on it in a narrow manner arguably diverts attention from certain fundamental issues. The dominant discourse on contemporary gangs in Central America, for example, contends that they are a form of economic or social violence. This ignores the huge levels of social exclusion, territorial exclusion, the lack of any employment opportunities, and perhaps most importantly of any significant policy efforts to actually try and generate employment, which are all fundamental to understanding the contemporary proliferation of gangs in the region. Indeed, in many ways you could say that this dominant discourse is very much something of a smokescreen, because labelling gangs as 'economic' or 'social' violence diverts attention away from the political issues that underlie their emergence. At the same time, you could also argue that at one level everything is political – not necessarily in the sense of big 'P' politics, that is to say of big men and women politicians and statecraft, but rather in the sense of small 'p'

1 See <http://www.bwpi.manchester.ac.uk/research/ResearchProgrammes/urban-poverty-and-conflict.html> (last visited 8 August 2010).

2 See <http://www.crisisstates.com/Research/cafs.htm> (last visited 8 August 2010).

politics, the way things and society ‘fit’ together. The nature of the order of things the key question, in other words.

In this respect, armed conflicts, civil wars and major fighting were often taking place outside the cities and villagers were most affected. Even recently the conflict in Uganda merely affected the northern part and Kampala was hardly directly affected. How do you explain the shift of armed conflicts to urban areas?

As the anthropologist Eric Wolf famously pointed out, most of the great wars and revolutions of the 20th century were what he called ‘peasant wars’. During the past 50 years or so, a transition has clearly occurred, whereby these ‘peasant wars’ have become much more urban, partly as a result of demographic transition, but also because the global economy is much less agrarian, but increasingly urban production and manufacturing in bigger agglomerations. This has shifted the locus of conflict from the countryside to cities, to what my colleague Jo Beall at the University of Cape Town has termed ‘urban wars of the 21st century’.

So you are saying that a new pattern of urban warfare is developing? That there are less international armed conflicts and less clearly structured internal wars?

Definitely, yes. And it’s not necessarily a pattern that is less violent than in the past. If you take Central America, for example, the levels of violent deaths afflicting the region are actually higher now than they were during the years of rather classical civil wars in the 70s and 80s. At the same time, urban violence is clearly much more complex than past forms of rural warfare. Old-style wars tended to involve clearly identifiable parties – those controlling the state and a belligerent group, for example – and generally revolved around taking over the state apparatus, this was the prize, so to speak. These days, it’s much more complicated. The new urban wars of the 21st century involve a variety of actors who don’t necessarily want to take over the state, but who might be defending some kind of resource, local territory, or may even just be trying to create spaces of order for themselves. Whether you want to call this warfare is another matter. In some of the work that I’ve been doing with colleagues at the London School of Economics, we often prefer to call it conflict, and we see such forms of violence as part of a continuum which goes from warfare to more prosaic forms of violence such as crime and delinquency.

Can we generally describe this new urban violence as collective or structured violence, i.e. a form of organized violence that at a certain level comes close to situations of armed conflict?

Yes and no. There are two ways of looking at this issue. On the one hand, yes, you can definitely have actively organized collective armed groups, say, an urban guerrilla group. On the other hand, you can also have groups, such as gangs in Central America, for example, which are not organized collectively as such, but can be said to represent something of a collective movement. It’s estimated that there are anything between 100,000 and 500,000 gang members in that part of the world,

which clearly constitutes a collective trend. When we see a small number of individuals behaving in particular ways, we can perhaps think that it's a coincidence. When dozens do it, then we might think that it's possibly a fad. But when, hundreds and thousands of people are doing it, there is definitely, at some level, some kind of collective movement going on. I realize that I'm probably departing from definitions of collective violence contained in international humanitarian law, human rights instruments or other branches of international law, but as an anthropologist, I'm very much bottom-up in my approach to things.

Let's take a concrete example: in your opinion, is the situation in Northern Mexico a war? The powerful drug mafia uses very violent means and the State reacts with military interventions? Thousand of people die every year.

I'm not an expert on the situation in Mexico, but my sense of what's happening is that it's not so much a conflict between drug mafias and the Mexican state *per se*. Certainly, the drug traffickers are not trying to take over the Mexican state. When you look at the very high number of deaths, a lot of them, the majority result from drug dealers killing drug dealers – it is in other words largely an inter-drug dealer conflict. Obviously, bystanders and the local population are majorly affected, but the situation seems to me to be similar to the one that developed in Colombia during the 1980s, when drug cartels constituted a threat to the state by virtue of controlling certain areas and of having considerable fire power, but weren't necessarily trying to take over the state. That's very different to the conflict between the Colombian government and the FARC, where – at least originally, the situation having become more complicated over time with the latter's involvement in drug trafficking – you have a conflict between two societal models.

So how would you frame this different type of violent confrontation?

With my colleagues at the London School of Economics Crisis States Research Centre, we call these new forms of confrontations 'civic' conflicts, and distinguish them from 'sovereign' and 'civil' conflicts. Sovereign conflicts are conflicts between states, while civil conflicts are conflicts over the state between the state and one or more groups within a society. These can be seen as the 'classic' forms of armed violence. Civic conflicts, on the other hand, do not necessarily involve the state. They will involve different groups, some more organized than others. Historically, the trend is clearly for increasing civic conflict worldwide.

Communal riots in India, for example in Ahmadabad in 2002, would qualify as a form a civic conflict. The rioters didn't try to take over the state, although it could be argued that the riots were something of a response to particular state policies that fostered social exclusion. Certainly, research has shown that the triggers for these riots were state policies which led to deeper segregation within the city, a city which historically had been quite mixed. At the same time, the violence itself was quite spontaneous, very much mob-based rather than organized, even if certain groups actively sought to fan the flames of violence.

Crime can also be a form of civic conflict, especially when it can be linked to increasing forms of social exclusion, gated communities, the containment of

certain populations, particularly the poor, into ghettos and peripheral areas of cities. The inhabitants of such areas can have difficulty getting out – sometimes even physically – or they become stigmatized and can't get jobs and so on, as the anthropologist Philippe Bourgois has described very powerfully in his work on East Harlem in New York, characterizing this kind of situation as a form of 'urban apartheid'. This can lead to various forms of criminal and delinquent violence, including, as I have tried to show in my own work, gang violence in Central America.

Do you think that these civic conflicts often develop in post-war societies such as Nicaragua, for example?

Post-war circumstances are certainly a major factor to take into account, but they're not necessarily directly causal, often being more contextual in nature. In the case of the gang phenomenon in post-conflict Nicaragua, for example, it's often pointed out that the end of the war saw the demobilization of a lot of youth who had received military training – the age of conscription in Nicaragua was 16 – which at one level clearly contributed to the explosion of gangs, but not all of these youth joined gangs, of course, and other factors were much more important. In particular, regime change led to a breakdown of many state services, including policing, and crime levels spiralled, partly because the country was suffering a massive economic crisis. Gangs initially emerged as informal forms of local vigilante protection for neighbourhoods in a wider context of chronic insecurity.

Did this have anything to do with ideology, for example with the solidarity associated with Sandinismo?

It had less to do with ideology per se than with ideology as a symbolic reference point. In the Managua neighbourhood where I have been carrying out research since 1996, the youth who congregated in a gang around 1990 shared a very pro-Sandinista discourse. But this had less to do with the content of Sandinismo, but more their experiences coming from a traditionally Sandinista neighbourhood, as well as the fact that they had been demobilized from the Sandinista Popular Army. There are other neighbourhoods in Managua which were settled by Contra returnees post-1990, where the gang mystique is founded on the history of being Contra. To this extent, it's less the intrinsic nature of the ideology that is important, and more the fact that ideologies can become federating reference points.

How does the gang phenomenon relate to the youth phenomenon?

A lot of work has been done recently, particularly by the World Bank, about the risks associated with youth bulges. The basic argument is that if there's a large youthful – and male – population, then there's more risk of violence since most crime is perpetrated by young men. I'm not completely persuaded about this. Although gangs can definitely be associated with youth, insofar as there is an aspect associated with them that can be linked to adolescent development, it's critical to understand that not all youth joins a gang. Most studies seem to suggest that it's generally between 1 to 15% of a given local population that do so, although it's

clear that you need a critical demographic mass of youth in order to have enough youth joining a gang.

You mentioned that gangs are often linked to adolescent development, and it's true that all of us have probably at one stage or another in our youth been part of a group that could be labelled a 'gang'. How are we to differentiate this kind of experience from the Central American gangs of which you are talking? Is there an accepted definition of what is a 'gang'?

Over 100 years of sociological, anthropological, and criminological research has been trying to answer this question and hasn't really come up with a satisfactory answer. Part of the problem is that the word 'gang' is used to describe all sorts of phenomena: from groups of adolescent youth who get together on street corners, and who fight each other irregularly, engage in petty vandalism, or even just hang out, to groups of youth who participate regularly in delinquent activities, to organized crime syndicates, to prison-based gangs, and even to political parties... A lot of research tries to create typologies, and categorize different types of 'gangs', but I actually think that this is not terribly useful, and can even lead to problems, insofar as too strict a definition can become quite limiting.

In my work I tend to adopt a rather loose definition, whereby a 'gang' involves a group of youth that is more or less recognized as an institutionalized collective unit by wider society, and where the core membership of the group is regularly involved in violence – the core of the group has to be relatively constant over a certain lapse of time, although the broader membership of the group will fluctuate over time – and most gang members tends to be under the age of 25, although this can vary tremendously considering that the notion of youth is a highly flexible socio-cultural category, and in certain societies you can be a 'youth' right into your 40s. At the same time, gangs are very volatile social forms, as the US gang researcher John Hagedorn has pointed out, today's youth gang can become tomorrow's drug cartels, which can become the day after tomorrow's ethnic militia. To this extent, what's important about gangs is less what they are, and more the broader social, political, and economic trends they fundamentally reflect.

Are gangs a social phenomenon related to the level of societal development?

This is a difficult question. Gangs are obviously more associated with impoverished than wealthy contexts, for example. However, one must be very careful with this kind of association, which is much more contextual than causal. Not everybody living in poverty joins a gang; in fact, the majority don't. In the neighbourhood in which I work in Nicaragua, gang members did not necessarily come from the poorest families within the neighbourhood; they came from a whole cross-section. Ultimately, individuals will encounter structural circumstances differently, depending on their individual life trajectories and possibilities. Sometimes individual agency and social structure will articulate in a way that leads individuals to make certain choices, but sometimes individuals in similar situations will take different directions.

Concretely, why do youth join gangs?

The reasons why youth join a gang vary tremendously, and there are few factors that emerge systematically. Some individuals join gangs searching for a sense of comradeship, looking for some alternative to family structures that might be dysfunctional. But this does not mean that youths from families that are not 'broken' don't join gangs, they clearly do. Some studies have shown that youth can join gangs because friends or siblings joined them, but others have highlighted much more individual factors – because they're attracted to various aspects of the gang life, for example the adrenaline of violence or taking drugs. Everybody has different reasons, so it's difficult to identify one factor which would explain things.

During the course of my research in Nicaragua, there's only one factor which emerged as systematically affecting gang membership: members of evangelical churches or evangelical families never joined gangs. One could speculate that this is because these churches provided totalizing ways of thinking and ways of living in a manner that is institutionally analogous to the gangs. Certainly, joining an evangelical church is an important way in which gang members actually end up leaving the gang.

Why do members leave gangs?

Most gang members realize that the gang life is not necessarily a long-term viable life choice. Beyond the obvious dangers associated with being a gang member, the intimate association of gangs with youth means that aging makes leaving the gang inevitable. Indeed, 'maturing out' is something that has been observed by gang researchers all over the world. Part of this is linked to the fact that although there are elements of the gang life that can be construed as constituting a 'subculture', it's one that is embedded within a broader societal culture to which gang members are not immune. For example, the two major reasons Nicaraguan gang members left the gang was either because their girlfriends became pregnant or because they got a job. The first was widely perceived as signalling a need to become 'responsible', and the second was of course an economic opportunity that could not be passed over in the wider context of a Nicaraguan economy affected by high levels of chronic unemployment. Both of these sentiments clearly responded to broader societal values rather than gang values. Other important ways in which gang members leave the gang is by migrating, or else – more rarely – by 'graduating' to more organized crime, such as drug dealing. And of course, many gang members die.

You mentioned that the element of violence is decisive regarding gangs. But violence can encompass many acts, for example from stealing to drug trafficking, from sexual violence to kidnapping, from assault to murder. What kinds of violence are Central American gangs involved in, and who does it affect?

Central American gangs are involved in a whole range of different forms of violence, although most studies suggest that the majority of gang violence in the region is actually quite low-level violence – muggings, petty delinquency, theft, etc.

Serious forms of violence such as rape or murder are more occasional, although they are definitely committed by Central American gangs. The key question here, though, is less the kind of violence they are involved in but whether we should define them purely through this more episodic form of exceptional violence, or whether we should be looking at their more normative patterns of violent behaviour. It's also important to note that most gang-related injuries and fatalities are suffered by gang members themselves. Obviously, non-gang members are frequently affected too, but more incidentally, one could say, since a majority of gang violence is actually gang on gang violence.

The question of Central American gang violence that is further confused by the fact that there are two different types of gangs in the region, on the one hand the *pandillas*, and on the other the *maras*. The former are home-grown, local gangs, the origins of which can be traced back to the 1940s and 1950s, while the latter are at more recently transnational transplantation of US gang culture that has resulted from the mass deportation of illegal migrants since the beginning of the 1990s. *Pandillas* used to be widespread throughout Central America, but now only really exist in Nicaragua, as well as, to a much lesser extent, Costa Rica and Panama, as they have been supplanted by *maras* in El Salvador, Honduras, and Guatemala (for reasons related to their different migratory patterns, there are no *maras* in Nicaragua, Costa Rica, and Panama). The *maras* are overall clearly much more violent than the *pandillas*, partly because they are less well embedded in local social fabric, being transnational transpositions (even if they involve fewer and fewer deportees, with local youth now forming a majority of membership, albeit having adopted US gang customs). *Pandilla* violence, on the other hand, corresponded – at least initially – to a form of local vigilantism, geared around protecting local communities. This obviously makes a big difference, particularly for the inhabitants of these local communities.

Would you say that pandillas controlling and protecting their neighbourhoods is a good thing, in the sense that they are providing a service to local inhabitants?

To a certain extent, yes, you could argue this, although I think it's important not to romanticize this too much. For example, during the 1990s, Nicaraguan *pandillas* were underpinned by what could be termed a social logic. The gang that I studied engaged in semi-ritualized forms of gang warfare against other local gangs that through its ritualized nature provided a sense of predictability for local inhabitants within a wider context of chronic insecurity. The first battle of a gang war typically involved fighting with fists and stones, but each new battle involved an escalation of weaponry, first to sticks, then to knives and broken bottles, and eventually to mortars, guns, and AK-47s. Although the rate of escalation varied, its sequence never did – i.e. gangs did not begin their wars immediately with firearms. The fixed nature of gang warfare therefore constituted something of a mechanism for restraining violence, and provided local neighbourhood inhabitants with an 'early warning system'. In addition, gang members always sought to protect local inhabitants in the context of gang conflicts, often at their own expense.

Although not the most efficient means of providing security services, since bystanders were often killed or injured, local inhabitants recognized that it was better than nothing, and there was generally support for the local gang in the neighbourhood at the time. Certainly, neighbourhood inhabitants never denounced gang members to the Police, and they'd regularly engage in joking banter with gang members on the street, as well as offering them water or buying them a Coke on hot days. This however changed completely when the whole logic of the gang transformed in the early 2000s as they became very much organized around drug dealing. Their logic now revolved around protecting the drugs trade rather than the local neighbourhood, and their violence turned against local inhabitants in order to create a climate of terror to make sure that nobody denounced them and that they could operate their drug dealing without impediments. This violence was also no longer ritualized, and was highly unpredictable, and local inhabitants clearly feared gang members, who would not hesitate to maim and sometimes even kill local inhabitants who had altercations with drugs consumers. There's very much a growing alienation in local communities *vis-à-vis* the gangs. In some ways, you could say that the logic of the *pandillas* in Nicaragua has been growing closer to that of the less locally embedded *maras* in El Salvador, Honduras, or Guatemala.

Would you say that the gangs in Central America have become more professional, then?

The gangs of Central America – both *maras* and *pandillas* – have clearly been professionalizing over the past decade or so. Perhaps the most obvious reflection of this professionalization is their increasing involvement in drug trafficking, which has meant that the gangs have been becoming smaller, meaner, and leaner. I've already mentioned how gang violence has become more brutal, and less protective of local neighbourhood inhabitants, for example, but this was also accompanied by a reduction in gang membership. In the case of the Managua neighbourhood where I carry out my research, the gang reduced from about 100 members in the 1990s to just under 20 in the 2000s because of the new focus on drugs trafficking, which is can only be profitable as an exclusive enterprise. The average age of gang members also increased. During the 1990s, gang members had ranged from 7 to 23 years old. In the 2000s, they ranged between 17 and 25 years old.

How have such changes affected the make-up of gangs, for example, have they developed more visible command structures?

The issue of command structure is complicated. In the 1990s, there wasn't really a command structure, as such. The gang was quite democratic, although you had some more influential individuals in the gang. You certainly didn't have a *jefe*, except in the context of gang conflicts, where what I suppose you could call a 'war commander' was appointed, because it's obviously impossible to engage in conflict in a democratic manner. The new drug-dealing gangs seem to have much more defined hierarchies, and there is often a *narco* at the apex of the pyramid, although his power tends to rest on being able to mobilize individuals to carry out acts of

violence for him, and he is generally highly dependent on a small group of 'lieutenants'. At the same time, drug dealing is quite decentralized, in some ways it is quite feudal in its logic, with a king at the top, and then local barons who pay tribute to the king, but otherwise conduct their affairs autonomously.

Is there some kind of code of conduct within the gangs?

Yes, definitely. Gangs aren't just anarchic social phenomena, they do have rules and prescribed patterns of behaviour, such as engaging in certain forms of violence or dressing in particular ways, for example. At the same time, these rules often derive from wider local culture. Take machismo, for example, which is very strong in Central America. Some aspects of the gang are clearly a heightened expression of machismo. Being a gang member can very be much about 'being a man' in the way that its understood locally, strutting around, exposing oneself to danger, showing that one is really strong. Partly for this reasons, there are very few female gang members in Central America. These kinds of codes of conduct have persisted over time, highlighting the way that these gangs are very much linked to wider culture.

Other codes of conduct have changed, however. For example, in the past the gang was often characterized by a strong sense of camaraderie and solidarity, whereby a member was part of a group, and could always count on other members to help and protect him. This has declined quite a bit, with relations much more ambiguous and also increasingly 'professional', in the sense of being linked to common participation in an economic enterprise (drug-dealing), but nothing else. One striking change over time has for instance been the transformation of what is called the *traido*, which is a kind of vendetta. Although this always occurred between individuals, normally between members of rival gangs, in the past conflicts related to a *traido* would end up involving all the gang members, while now it's seen just as an individual issue. It used to be 'all for one, and one for all', but now it's very much 'each to their own'.

In warfare, especially in international armed conflict, codes of conduct are important to reduce the scope of violence. Do you think that something similar could be achieved with regards to gangs?

The idea of exploring the parallels between gang codes of honours and codes of conduct is definitely an interesting one. It's definitely one of the great achievements of international humanitarian law to have transformed modern warfare by modifying the perception that warfare is a zero sum game, to something that is seen as an activity where the two parties didn't necessarily have to lose everything in order for the other one to win. I'm not sure that that would work with regards to gangs at this point in time. It might have worked with Nicaraguan gangs in the 1990s, when they had a social logic, but I doubt that this would have much traction with contemporary drug dealing gangs. Although one scenario under which it might become possible with drug dealing gangs is if drugs were legalized. Illegality would no longer be the primary organizing issue, making a profit would be, and rules regulating competition could be introduced just as they have been for any other commercial activity. On the other hand, codes of conducts could possibly be

developed in the context of gang versus state conflict, partly because of the generally asymmetric nature of this, in which case gangs might actually accept some basic rules. Whether the state would engage in this is another question, however, since in some ways, this would arguably be some form of legitimization of the gangs.

But aren't deals often struck between gangs and the authorities and/or politicians?

It depends where. In Indonesia, for example, under Suharto, gangs were for a long time the foot soldiers of the regime, and carried out a lot of the terrorizing and violent operations that sustained it on the ground. The Martin Scorsese film *Gangs of New York* also highlights the potential links between gangs and politicians, while the US anthropologist Desmond Enrique Arias has shown how there are numerous links between politicians and local gangs and drug traffickers in Rio de Janeiro, with the latter being mobilized to serve the financial and voting interests of the former. In other places, however, the complete opposite occurs, and non-cooperation with gangs is used as an excuse to carry out stringent repression that often spills over beyond the gangs and permits governments to repress or contain other groups, such as the poor, for example. This is something that is arguably the case in El Salvador, Honduras, and Guatemala, for example, where the introduction of the infamous *Mano Dura* approach seems to have very much been a means of trying to push the violence away from the city centre, away from the elite, and contain it in poor neighbourhoods – although not very successfully, one might add. At the same time, governments and politicians generally play a very tight game, sometimes they will cooperate with gangs, and sometimes they won't, depending on their interests at the time.

We've been discussing gangs as a paradigmatic form of Latin American violence, but you've just referred to Indonesian gangs, and one often reads about gangs in other parts of the world, for example in South Africa – could you perhaps tell us a little bit about gang dynamics in those parts of the world?

Let me begin by saying that although gangs are certainly one of the most visible forms of violence in much of Latin America, most prominently in Central America, they are by no means the only form of violence in contemporary Latin America, and this is very important to keep in mind. Domestic violence, for example, is a huge issue that can be related to the pervasive machismo in the region, and of course, as Gandhi famously put it, 'the deadliest form of violence is poverty'. Having said that, I think that gangs can be considered 'paradigmatic' in the sense that they very clearly reflect some of the basic underlying processes associable with the new kinds of urban conflicts that have emerged in the region over the past few decades. Or to put it another way, quoting an early gang researcher, Frederick Thrasher, who studied gangs in 1920s Chicago, gangs are 'life, often rough and untamed, yet rich in elemental social processes significant to the student of society and human nature'.

Perhaps not surprisingly in view of this, gangs are a global phenomenon, and can be found in most societies around the world. Although there exist quite a lot of in-depth studies in many different countries – including beyond Latin America, the USA, South Africa, Russia, France, Timor Leste, Nigeria, China, among others – we clearly need more research comparing their dynamics across contexts. Last year, I co-organized with Jennifer Hazen of the University of Texas-Austin a workshop which brought together researchers working on gangs in twelve different countries, and one of the cross-cutting issues that came out as important across the board was the relationship that gangs have to the state, for example. I've already mentioned the cooperation that existed in Indonesia, while in India gangs tend to be co-opted into the militant youth structures of political parties. Research presented on China suggested that the presence of the state right down to the family level plays a big role in cutting off spaces for gangs.

At the same time, one striking feature of comparative research is the similarities that exist between gangs across contexts. For example, I've done some comparative work with the Danish anthropologist Steffen Jensen, who works on gangs in South Africa. We looked at the dynamics of the gangs there and in Nicaragua, and although there were obviously major differences between the two, partly due to the different contexts and histories, there were also some surprising similarities. In both cases, gangs were undergoing processes of professionalization, and the role played by ideology – whether Sandinista or ANC – as reference point for mobilization and the construction of foundational myths and codes of conduct was very similar. Most importantly of all, the notion of exclusion was essential in both cases: South African cities were characterized by major spatial exclusion under Apartheid, and this has persisted and mirrors some of the new spatially excluding territorial re-organization of Managua, whereby poor neighbourhoods and shanty towns are increasingly disconnected from the rest of the city.

Do you think that a parallel can be drawn with 'les émeutes des banlieues' – the riots in the suburbs – in France?

You can certainly see a lot of common elements. The Parisian *banlieues* are very much isolated from the rest of the city. This was very well represented in the film *La Haine*, for example, both in the scene where the three young protagonists are in the centre of Paris and don't know what to do because they don't know the centre of Paris, as well as the fact that they get stuck in Paris due to the lack of trains going back out to the *banlieues*. If you look at Paris' urban development from a historical perspective, it's clear that there has been a gradual disconnection of the *banlieues* from the city centre over the past 50 years, with local train stations being closed down, and less and less bus routes operating. This is a 'soft' form of spatial exclusion, you could say, certainly by comparison to the walling of *favelas*, as has occurred recently in Rio de Janeiro, for example, but the basic dynamic is the same, and considering that gangs are fundamentally epiphenomena of broader structural circumstances, it's not surprising that we can see parallels between different contexts.

When there is spatial exclusion, high levels of unemployment, and very few opportunities for bettering one's situation, as is the case in both the *banlieues*

in Paris and the shanty towns in Rio de Janeiro, it's not surprising that similar social forms will emerge. Now, the exact way in which they emerge, and the kinds of things they do, are dependent on other factors; situations are rarely identical. For example, Rio de Janeiro is a logical transit point for drugs, which Paris isn't – it is an endpoint. So that will also make a big difference, and partly explains why the gangs of the Parisian *banlieues* are not as dangerous and violent as those in the *favelas* of Rio de Janeiro. The availability of weapons is also very different in a place like Rio de Janeiro compared to Paris, as is the degree of state presence and control.

Is it that the state is no longer in control of the shanty towns in places such as Rio de Janeiro?

There's been a lot of talk about weak, fragile, failed, or crisis states over the past few years, and certainly one could argue that under such conditions, it would not be surprising that the reach of states in areas such as shantytowns has been considerably reduced. At the same time, I also think that in many cases states have also actively chosen to withdraw from such areas. The new global economy doesn't really need shanty towns anymore; it is less labour-intensive than in the past, and therefore doesn't need their populations as reserve armies of labour. This scenario has been very well outlined in a recent book called *Planet of Slums* by the US social commentator Mike Davis, where he basically suggests that slums now house a surplus population, and asks the question of what is to be done with it. The answer in most cases has been to exclude them, to keep them out of the lives of the urban elites, those living in gated communities, who are benefiting from the advantages of globalization and the new economy. The poor are contained in their shanty towns and left to fight amongst themselves for whatever informal scraps they can put together.

What's worrying is that this kind of process is clearly leading to levels of inequality increasing globally, and at some point or another, something is going to explode. I don't see how you can have the vast majority of the population living in poverty and not actually do anything about it without stirring social unrest. Certainly, when you consider contemporary Central America in terms of its social, economic and political conditions, it's striking that in many respects it's quite close to being where it was in the early 1970s, when the revolutionary struggles that led to over 20 years of armed conflict really took off. Few things epitomize this better than the current tax structure of Central America. Inequality in Nicaragua, for example, actually rises after taxation; since there are only about 9,000 individual taxpayers, this means that most taxes are indirect, and therefore being disproportionately born by the poor.

What is to be done in the face of such structural circumstances? Do you know of any policies that have been successfully implemented to reduce gang violence?

Let me begin with what we know doesn't work: repression. We definitely know that repressive measures are generally doomed to fail. Indeed, in Central America,

they've actually increased violence. There are two main ways in which repression occurs. One is by specifically targeting individuals, such as gang members, which is what has happened in Central America. The other one is to target communities associated with violence, namely the poor, which is what has happened in Brazil in the past, for example, as well as Jamaica more recently, where numerous poor communities in Kingston literally came under siege. The problem with the first strategy, at least in Central America, is that it has led to gang members being increasingly treated as if they were 'unlawful combatants' – to use that particularly oxymoronic pseudo-legal expression – and has justified hugely disproportionate responses that often contravene international human rights law. The second strategy is almost a return to classical warfare – in a highly asymmetrical form, insofar as these local communities generally have nothing in the way of the state's firepower – except that it is directed internally, and as Abraham Lincoln once famously put it, 'a house divided against itself cannot stand'.

The problem, however, is that repression clearly serves other purposes than simply trying to reduce violence. For example, although *Mano Dura* in Central America has been shown over and over again not to work, it persists, even if there is increasingly an alternative, more preventative discourse emerging, mainly because it serves the different purpose of demonizing gangs and diverting attention from societies which are very unequal and getting ever more unequal, largely due to a lack of will to change the situation by those in power. There is an absence of economic growth and job creation in Central America that is not just linked to global crisis but very much a function of the particular economic models that have been put in place during the past two decades, which are fundamentally exclusive.

So if we were to boil things down to one factor, would you say that inclusion is the solution?

Yes, I think that if you had to boil it down to one thing, inclusion is the solution. There's a variety of ways in which to try to include and integrate. It's not even just about creating jobs. There was a consciousness among gang members that I worked with in Managua of their exclusion, indeed of their spatial exclusion in particular, and that there were certain areas where they couldn't and wouldn't go. If they turned up, say in a posh mall, they wouldn't even be asked who they are and what are they are doing, they would just be kicked out. This obviously doesn't breed any kind of notion of collective living. On the other hand, take a city such as Buenos Aires, which is marked by significant socio-economic differentiation, and also significant socio-economic interaction. There are richer neighbourhoods and poorer neighbourhoods within the city, but you get a sense that people don't feel there are no-go areas, and people from rich areas do go to poor areas and vice-versa, although if one considers the whole metropolitan area of Buenos Aires, it can perhaps be said to resemble Paris, with its socially heterogenous centre, and excluded *banlieues* (known in Buenos Aires as *partidos*).

Concretely, though, what kind of integrative projects could be put in place to reduce gang violence?

There are very few projects that I know which have actually had any major success in diminishing gang violence. When you look at things historically, the most effective process has actually been economic boom; certainly, the history of US gangs suggest that they wax and wane with economic cycles. Not surprisingly, perhaps, in view of this, the most effective gang violence reduction programmes have been those which have created alternative opportunities for youth. But these have to be sustainable, which is not always an easy proposition.

One project that I have come across in Nicaragua, for example, would move gang members into the countryside, teach them how to be masons or carpenters over the course of three months, and then send them back to their neighbourhoods with a large loan in order to set up a business. The problem was that this was actually quite expensive, the skills being taught to gang members were very common ones, and few of the programme graduates managed to set up viable businesses. The programme had clearly not been thought out very well in terms of local conditions, and therefore had a huge failure rate overall.

Another project, this time in El Salvador, adopted a very different approach. Its starting point was that it was necessary to engage with the primary motivation for becoming a gang member – which was identified as the power and authority associated with being a gang member – and also to build on existing gang member skills. At that point in the project's inception, a lot of gang members in El Salvador were deportees from the US and spoke English, and so what the project did was train gang members to become English teachers, since as a teacher, you are of course placed in a relationship of power and authority *vis-à-vis* students. Unfortunately, there's obviously a limit to how many English teachers you can have, but this was probably one of the most original projects I've come across.

Finally, not all interventions need to be concerned with economic integration. One of the few forms of state intervention that occurred in the Managua neighbourhood where I have carried out most of my research during the past decade or so was the building by the municipal authorities of a basketball court. This occurred just before elections, and was clearly principally an instance of political demagoguery more than anything else, but it – unintentionally – had a significant effect on gang membership in the neighbourhood. It provided an alternative focus for a number of youths who would normally have hung out in the street, and otherwise gravitated organically towards the gang. Instead, they could now go and play basketball, thereby highlighting the benefits of institutionalized alternatives to hanging out in the street.

Finally, what role do you see humanitarian organizations potentially playing? Do you have any examples of a local or an international humanitarian organization really making a difference with regard to gang violence?

Gang violence, as I've said, is fundamentally an epiphenomenon; it is linked to wider structural problems, which are developmental rather than humanitarian

problems. To this extent dealing with them might be construed as falling outside the mandate of an organization such as the Red Cross. Having said that, there are many local humanitarian organizations that do try to implement a range of initiatives to counter gang violence, including for example mediating and brokering truce agreements between gangs and getting gangs to lay down arms. None of these work for very long, however.

One area where I think humanitarian organizations such as the Red Cross may have a comparative advantage, however, is in bridging the lack of trust that often exists between the Police and gangs. This is critical, as the experience of one of the best known gang violence reduction NGOs in Central America, *Homies Unidos*, highlights well. This is an organization made up mainly of ex-gang members, who have given up the gang life, but still maintain links with active gang members, and run projects for them. *Homies Unidos* has huge problems obtaining any credibility from the El Salvadorean government, whom they furthermore distrust, partly due to a sustained campaign of harassment against them which culminated in the arrest of the *Homies Unidos* leader as a murder accomplice.

Irrespective of whether the latter accusation is true or not, both the Salvadorian authorities and *Homies Unidos* have displayed a complete unwillingness to actually sit down and talk to each other, or even accept that the ground rules for their interaction have to be determined together rather than unilaterally imposed. The Red Cross is obviously better positioned than most organizations to actually try and mediate here because of its neutrality, reputation, and because it will likely be listened to by both parties. Whether it has the political possibility to do so though is a different issue, and is arguably ultimately the fundamental one concerning gangs in a world which unfortunately sees them very much misguidedly as an inherently evil form of modern-day barbarism.

Violence and humanitarian action in urban areas: new challenges, new approaches

Marion Harroff-Tavel*

Marion Harroff-Tavel is Political Adviser to the International Committee of the Red Cross, in charge of analysis of future trends in armed violence.

Abstract

A number of states are faced with the challenge of ensuring the harmonious development of rapidly expanding cities and of offering a growing population public services worthy of the name in the fields of security, health, and education. That challenge is even more difficult and more pressing because violence may erupt (hunger riots, clashes between territorial gangs or ethnic communities, acts of xenophobic violence directed against migrants, and so on) – violence that does not generally escalate to the point of becoming an armed conflict but that is murderous nevertheless.

On the basis of the experience of the International Committee of the Red Cross and of its partners, as well as reports by academic specialists, this article describes the vulnerability of the poorest and of migrants in urban areas. It presents the difficulties with which humanitarian organizations, which are often accustomed to working in rural areas, have to contend. Lastly, it describes innovative responses, from which much can be learned: income-generating micro-projects, aid in the form of cash or vouchers, urban agriculture, and the establishment of violence-prevention or health-promotion programmes to protect those affected by armed violence in disadvantaged areas.



* The opinions expressed in this article are the author's own, and do not necessarily reflect the views of the International Committee of the Red Cross (ICRC). Original in French.

Rio de Janeiro, 2010: armed violence rages between drug gangs in the *favelas* and, sporadically, between young dealers and the police. Every year, the toll of this violence is thousands of deaths, summary executions, and ill-treatment, as well as psychological trauma for children in the *favelas* and the ‘asphalt’ alike.¹

France, 2005: A wave of violent disturbances shakes the Paris suburbs and spreads to two hundred cities throughout the country. Cars are set alight and there are frequent clashes between protesters and the police. The demonstrators in the capital are young boys fired up against the representatives of a centralized state: police, firefighters, teachers. Their marginal situation, the precarious nature of their livelihoods, a sense of being discriminated against, and their difficulties at school have fuelled their revolt. Relegated to suburbs on the periphery of cities, and segregated as a result, they feel deeply resentful.²

Cape Town, December 2008: The South African Red Cross Society acquaints us with the armed violence that rages in the Cape Flats slum and its terrible impact on the people living there. Gangs fight against each other in the streets of Cape Flats, and the so-called ‘numbers gangs’ operate in the prisons. A new drug, mandrax, is wreaking havoc, and sexual violence and prostitution thrive against a backdrop of poverty and despair.³

These three situations are very different, and all of them call out to humanitarian entities.⁴ They have been chosen among so many others (Kabul, Baghdad, Gaza, Port-au-Prince, Grozny, Mogadishu, etc.) for two reasons. First, they are familiar to the author,⁵ and second, they illustrate the great diversity of the violence that plagues countries at peace. Armed conflicts proper, in which the ICRC’s urban-based operations are well known, are excluded from the scope of this article.

This article is inspired by problems that cry out for a humanitarian response. But lest the reader draw overly gloomy conclusions, it should be pointed out that not all cities are in crisis and that most of them still have considerable powers of attraction, particularly for young people. Poverty is not necessarily synonymous with violence. Cities are fragmented and full of contrasts, and, while some districts thrive and attract sustainable development, others are neglected by public services. Yet growth is not always unbalanced and solidarity can be found, for instance in the rich fabric of voluntary groups and associations in our inner cities.

1 See Luke Dowdney, *Children of the Drug Trade: A Case Study of Children in Organised Armed Violence in Rio de Janeiro*, 7Letras, Rio de Janeiro, 2003, pp. 90–91 and 257. ‘Asphalt’ (*asfalto*) is a term used to refer to ‘areas of the city that are not considered to be in the *favela*’. It alludes to the fact that these districts are asphalted, in contrast to the anarchic urban excrescences known as *favelas*.

2 Hugues Lagrange et Marco Oberti (eds), *Émeutes urbaines et protestations: une singularité française*, Nouveaux Débats, Paris, 2006.

3 Steffen Jensen, *Gangs, Politics and Dignity in Cape Town*, James Currey Ltd, Oxford/University of Chicago Press, Chicago/Wits University Press, Johannesburg, 2008.

4 In this article, the term ‘humanitarian entities’ is used in the broad sense to include all bodies (whether international, national, or local) that perform acts of humanity in response to the needs of vulnerable individuals or communities, whatever the situation prevailing in the country.

5 The author visited Paris, Rio de Janeiro, and Cape Town to discuss the phenomenon of violence in urban settings with academic and other specialists in the subject.

But the humanitarian's vocation is to tend to those in distress, and that is what this article is about. Its aims are threefold:

- first, to alert the reader to the humanitarian consequences of uncontrolled urban expansion when public authorities do not have the capacity to ensure that all inhabitants of a city can live safely, or to provide them with the minimum services they are entitled to expect (water, electricity, housing, health care, education, etc.);
- second, to share our concern in the face of new and mutating forms of violence in urban areas. This violence has been engendered in part by globalization, which, by intensifying exchanges, has fostered the expansion of trans-national crime. Although cities have been hard hit by armed conflicts throughout their history, nowadays they are often the scenes of a worrisome tangle of violent phenomena that is not generally termed armed conflict in the legal sense but that is murderous nevertheless. These violent phenomena are the focus of this article;
- third, drawing on the experiences, observations, and analysis of the ICRC's delegates in the field, to share some thoughts on the hardship of life in cities for the poorest and the newest arrivals, on the challenges of humanitarian operations in this environment, and on the lessons learned from some innovative projects launched by the ICRC and a number of Red Cross and Red Crescent Societies.

The city and its relationship with the countryside

Let us begin by exploring the meaning of the word 'urban' and the concept of the city. The two concepts 'city' and 'urban' are often used interchangeably, and there does not appear to be any universal definition of either. Governments use different definitions, which makes it difficult to draw up comparative statistics.⁶ Even within a country, geographers, economists, and politicians are not always of the same opinion.

However, there are a number of indicators that serve to define what constitutes a city, among them administrative criteria defining its geographical boundaries; the size or density of the population; the percentage of inhabitants pursuing non-agricultural activities; the way housing is organized; the infrastructure (paved streets, water and cleaning systems, electricity, and so on).⁷ A distinction is often made between the city *stricto sensu* and the greater city, which includes suburbs and peripheral areas of continuous habitation, and between what

6 United Nations, Department of Economics and Social Affairs, *World Urbanization Prospects: The 2007 Revision Population Database*, New York, 2008, available at: <http://esa.un.org/unup/index.asp?panel=6> (last visited 30 June 2010).

7 *Human Security for an Urban Century: Local Challenges, Global Perspectives*, Humansecurity-cities.org, 2007, p. 10, available at: [http://www.interpeace.org/pdfs/Publications_\(Pdf\)/Current_Reports/Human_Security_for_an_Urban_Century.pdf](http://www.interpeace.org/pdfs/Publications_(Pdf)/Current_Reports/Human_Security_for_an_Urban_Century.pdf) (last visited 29 July 2010).

is ‘urban’ and what is ‘peri-urban’, a term used to refer to the urban fringes. Finally, the term ‘urban’ may also refer to a way of life, different from that of the countryside, that is characteristic of inhabited areas stretching over tens or even hundreds of kilometres, in veritable ‘urban archipelagos’.

Furthermore, the urban environment and the countryside are not two distinct environments. There are many forms of exchanges between them. These include migratory, economic, and financial flows, as well as flows of information and natural resources, as illustrated by the examples below:

- there are movements of people into the cities but also outside cities and between them. People move back and forth either seasonally or daily (commuting);
- families spread themselves between the city and the country in order to make the most of both environments. Agricultural produce from the country is brought into the cities to be sold on the markets there;
- city dwellers exchange news on security conditions in the city with the inhabitants of their home villages, and vice versa;
- cities use the adjacent rural areas as repositories for urban waste.

Often, as we have observed in Africa, the countryside changes as a result of urban expansion. Farmers adapt to new opportunities, and peri-urban areas become ruralized as a result of displacement and migration. Incoming groups bring their animals, their farming practices (which they have to adapt to confined spaces), and their way of life into their new homes. As the sociologist Victor Sakagne Tine put it,

We need to free ourselves of any form of ruralist bias or ‘urbano-centric’ vision and rethink the relationship between the city and the country on the basis of an integrated approach that will provide a response to a complex mesh of challenges.⁸

This should reassure humanitarian organizations who may fear that focusing too much attention on the vulnerable and people affected by violence in cities could be prejudicial to humanitarian action in the countryside, where needs might be overlooked.

Uncontrolled urbanization that calls out to humanitarians

The UN-HABITAT statistics speak for themselves.⁹ Since 2008, over half the world’s population has lived in cities. In two decades, city dwellers will account for

8 Victor Sakagne Tine, ‘Urbain et rural autour de la re-création des “écocités”: les expériences de Mboro et de Darou Khoudoss (Sénégal)’, in *ECHOS du COTA*, No. 116, Brussels, September 2007, p. 4, our translation. The example of Mboro in Senegal, in a horticultural area but also close to phosphate mines, is a good example of this type of interconnection.

9 UN-HABITAT, *State of the World’s Cities 2008/2009: Harmonious Cities*, Earthscan, London, 2008, p. 11.

almost 60% of the world's population. This growth is particularly rapid in developing countries: if the projections are correct, more than half the population of Africa (where country dwellers currently make up the majority) will be living in cities by 2050. In Asia, the shift to the city will be even faster, as 70% of the population of China will be living in cities by 2050.

A particularly worrying trend is the growth of shanty towns and slums.¹⁰ In the developing world, one inhabitant in three lives in this type of area. In 2005, 998 million people were living in shanty towns worldwide; this number is expected to rise to 1.4 billion by 2020. Sub-Saharan Africa is the region with the largest proportion of its population living in shanty towns and slums in urban areas.¹¹

The growth of shanty towns is being fuelled by the spectacular population growth in a number of developing countries. Another factor is urban drift brought about by armed conflict, deterioration of the rural environment,¹² or simply the hope of a better life. According to the UN Office of the High Commissioner for Refugees (UNHCR), of the 10.5 million or so people who fall under its mandate, around 50% live in urban environments and one-third in camps.¹³ People on the move arrive in cities with few possessions, in search of safety, a job, or assistance from the government or humanitarian organizations. Or, in some cases, they prefer simply to merge into the crowd. In many shanty towns, there is little or no access to drinking water and sanitary facilities. Moreover, shanty-town dwellers often live in very confined spaces, in makeshift accommodation, and without any kind of secure rent contract or title.¹⁴ People are left to fend for themselves in wretched and insalubrious conditions.

Geographical and social disparities within and between cities are potentially explosive. Anyone travelling in South Africa, Brazil, Colombia, Mexico, or the Philippines cannot fail to be struck by the contrast between the smart villas, with their swimming pools and tennis courts, and the dilapidated shacks and shelters made of plastic sheeting and corrugated iron with which they stand cheek by jowl. As UN-HABITAT points out, these inequalities are socially discriminating and, in the long term, economically unsustainable – but they are not ineluctable.¹⁵

Stratification of society foments insecurity, which in turn leads to greater stratification, creating a vicious spiral. In poor districts, some residents seek a form of protection by joining gangs, who fight with one another and come into conflict with the police from time to time; in rich districts, residents surround their houses

10 Mike Davis, *Le pire des mondes possibles: de l'explosion urbaine au bidonville global*, La Découverte, Paris, 2006.

11 UN-HABITAT, *State of the World's Cities 2006/2007: The Millennium Development Goals and Urban Sustainability: 30 Years of Shaping the Habitat Agenda*, Earthscan, London, 2006, p. 18.

12 Erosion or impoverishment of the soil, deforestation, drying up of water sources, damage caused by communication lines designed to bring produce to the market, etc.

13 UNHCR, *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, 16 June 2009, p. 2.

14 UN-HABITAT, *State of the World's Cities 2008/2009*, above note 9, p. 92.

15 *Ibid.*, p. xiii. Asian cities on the whole (there are exceptions such as Hong Kong) appear to be characterized by less stark inequalities.

with high walls and even hire guards or private militias. Relatively little pressure is brought to bear on the authorities to provide security throughout the city because the moneyed classes have found other ways to protect themselves from banditry. What is more, there is virtually no interaction between the poor and rich districts and, when there is, it generally takes the form of violence.

Finally, in some cities, there are ‘no-go areas’ into which the police no longer dare to venture to enforce law and order. The people living there are subjected to the iron rule of armed groups who exercise control on their ‘turf’. The residents are stigmatized as a result and very few of them find jobs and social status outside their home districts.

There is therefore much to indicate that, sooner or later, critical situations will arise that will call for responses from humanitarian organizations as well as development-based ones.

Cities: theatres of tangled and mutating armed violence

In ancient times, the city was often viewed as a refuge. Encircled by walls and surrounded by moats, accessible only by means of a drawbridge, many ancient or medieval cities gave the people a sense of security, albeit sometimes a false one.¹⁶ Although today’s cities still seem like havens in a troubled world for people on the move, the reality is much harsher. Cities are exerting an ever greater attraction for armed groups and are the scenes of various manifestations of violence. Often, there are links between the different perpetrators of that violence. Even in countries considered to be at peace, turf and drug gangs may clash with such intensity that the situations they create could almost be categorized as armed conflicts in the legal sense of the word.

Organized armed groups in cities and their peripheries

Cities attract all kinds of armed groups, who generally operate under cover. The concentration of wealth and business opportunities to be found there are a major draw in a globalized economy. Cities offer more consumer goods and better services (health and education) than country areas. They are hubs for information and transport networks. Moreover, acts of armed violence committed in a large city in order to strike terror into the population attract maximum coverage and international attention, particularly if the city is a capital where international media and embassies are located. Finally, the city provides individuals with the possibility of hiding among a dense population¹⁷ – or, alternatively, of getting publicity for themselves as *de facto* participants in a dialogue with the international community.

16 For example, the walls of the old cities of Jerusalem, Dubrovnik, and Carcassonne.

17 *Conflict and Emergencies in Urban Areas*, Conference at Webster University, Geneva, on 30 January 2009.

But let us not jump to the conclusion that the theatre of armed conflicts is shifting massively towards the cities. Armed groups know full well that the government, and the security services in particular, can exercise tighter surveillance in cities, forcing them to operate in small units or even as single individuals. In the countryside or in mountainous regions, they run less risk of detection as the state has to physically control a territory where the population is scattered among villages in order to know what is really going on there.¹⁸

Should we conclude then that most of tomorrow's armed conflicts will continue to take place mainly in the countryside, between more or less organized entities, and that asymmetric violence will sporadically flare up in cities?¹⁹ The question is worth asking. At all events, we may be sure that frictions in confined and overpopulated spaces can easily give rise to disturbances exacerbated by arms carriers present in the cities.

A tangled skein of violent acts

Violence takes an impressive range of forms. The list below, which excludes classic armed conflict, presents a number of examples in no particular order.²⁰ It is not meant to be exhaustive.

- Social and/or political uprisings;
- hunger riots;
- 'turf wars' between gangs;
- xenophobic violence directed against migrants;
- 'identity-based' violence among ethnic or religious communities;
- violence linked to crime: drug trafficking, arms smuggling, human trafficking, etc.;
- terrorism.

The police do not always have the training and equipment needed to enforce law and order. Sometimes law-enforcement officers make excessive use of force. The same goes for armed militias and community-defence organizations formed to pacify demonstrators in situations where public security measures are inadequate.

Sometimes – not always – there are links between these different forms of violence. First of all, the various armed individuals who commit acts of violence

18 Stathis N. Kalyvas, *The Logic of Violence in Civil War*, Cambridge University Press, Cambridge, 2006, pp. 133–136.

19 See *ibid.*, p. 38, observing that 'most civil conflicts are fought primarily in rural areas by predominantly peasant armies'. The author points out that, notwithstanding this observation, most studies on violence in civil wars have been carried out by urban intellectuals and therefore show an urban bias.

20 For a representation of the different strata of violence in society, see the World Health Organization (WHO)'s ecological model of violence, which distinguishes violence against the self, interpersonal violence (in the family or community), and collective violence of a social, political, or economic nature. WHO, *World Report on Violence and Health*, Geneva, 2002, p. 7.

may work together to enhance their effectiveness. Some supply weapons, others false papers, and still others information, hiding places, undeclared jobs, or even hit men.

Second, one form of violence may feed another. When immigrants are attacked, the general chaos engendered by the disturbances and their attempts to flee to safety can provide criminal groups with an opportunity to pillage, rape, and even kill. When an armed conflict comes to an end, the fighters' weapons are recycled in neighbouring countries and crime tends to rise. Finally, at a more individual level, group violence may sometimes lead to an increase in domestic violence.

Third, violence is in a constant state of mutation. So-called political violence may merge with common crime: for example, drug trafficking or pillage of natural resources can finance the purchase of weapons or corruption aimed at influencing political events, but it may also buy the fighter a lifestyle that will eclipse his original motivations and fuel a taste for high living. This is not necessarily a typically urban problem. However, the city is the showcase for globalization, whose flows (money, trade, transport, communication, etc.) foster a degree of progress for humankind but also trans-border crime.²¹

Needless to say, the challenging distinction between political violence and violence that is purely criminal in origin plainly complicates the task of humanitarian organizations when it comes to deciding, on the basis of their particular mandates, who should benefit from the resources at their disposal, even though all victims should receive help.

Peacetime violence approaching the intensity of armed conflict

The intensity of the violence perpetrated by organized armed groups in some countries considered at 'peace' is truly alarming. Clashes between organized armed groups (gangs, drug traffickers, and the like) for the control of economic resources such as the drug and arms trades, can sometimes have a higher death toll than an actual armed conflict. In his work on the 'children of the drug trade', Luke Dowdney asks whether violence in the *favelas* of Rio cannot be compared to an armed conflict: 'On the surface, the similarities are startling: armed factions, with military weapons, controlling territory, people and/or resources within the *favelas* and operating within a command structure.'²² He also raises the question of the applicability of international humanitarian law to this type of situation in an urban environment. His observations pinpoint a legal dilemma that will be addressed later in this article.

21 United Nations Office on Drugs and Crime (UNODC), *Crime and Instability: Case Studies of Transnational Threats*, February 2010.

22 L. Dowdney, above note 1, p. 10.

The vulnerability of the poorest and the new arrivals in urban environments

Before looking at the challenges faced by humanitarians in urban environments, let us focus on a simple fact: the poverty of some individuals and communities in these environments and the distress of people uprooted from the countryside and having to survive in unknown territory. The various manifestations of violence described above – gun battles, murders, abductions, sexual abuse, child recruitment, extortion, theft, and so forth – hit these people particularly hard.

As the ICRC agronomist Fabien Pouille²³ has pointed out, it is a fallacy to think that rural areas contain the poorest households. It is true that households in the countryside have lower incomes on average than urban households, but they do not have the same levels of expenditure.²⁴ Not only is the cost of living higher in the city, but people living in shanty towns sometimes pay more for shelter and services than those living in more prosperous districts. For instance, the rental cost per square metre may be higher in a shanty town than in a residential area. The price of water fluctuates and is subject to the law of supply and demand. According to an article published by the Paris-based *Fondation pour la Recherche Stratégique*,

in 2002 in Nairobi, the water supply ran dry and travelling vendors put up the price of a canister of water fivefold, forcing the poorest to turn to other sources, such as rivers or reservoirs, for water that was often not fit to drink.²⁵

On average, according to the ICRC's specialists, poor city dwellers have to spend 60% of their income on food and they depend on cash income to pay for all or most of it. They are therefore particularly vulnerable to events such as a sudden rise in the price of foodstuffs (for example cereals), which are largely imported into countries that produce little themselves. At the same time, however, city dwellers can engage in all sorts of informal activities to make ends meet. In this respect, they have more options than people living in villages.

New arrivals in the cities – asylum seekers, refugees, displaced people, and migrants – do not always have the skills to survive decently in a strange environment. Some may have relatives or members of their respective communities in the city whom they head for, but they rarely have a real support network, even if, in some cases, they do receive aid from voluntary associations. They may have

23 The author would like to thank Fabien Pouille and all the ICRC's agronomists who met in Nairobi, and Nicolas Fleury (who is in charge of the ICRC's micro-finance initiatives), for all their help towards understanding the vulnerability of urban populations, income-generating micro-projects, and urban agriculture.

24 Rural environments differ greatly and the idea that they are always poor is a stereotype. Poverty and opulence can co-exist in the countryside, depending on resources and on how wealth is – or is not – redistributed. Some rural areas generate large incomes, for example where they support large-scale cattle ranching, banana plantations, or industrial coffee, palm-oil, or rubber-processing plants. At the same time, within the same region, different types of community – farmers and herdsman, for example – may live side by side with differing levels of income depending on circumstances.

25 Mathieu Merino, *L'insécurité alimentaire en Afrique subsaharienne*, Fondation pour la Recherche Stratégique, Note 02/09, June 2009, p. 5, our translation.

difficulties getting to the right offices to apply for aid, especially where those offices are in districts far from their homes, and they do not always have the documents they need to access benefits to which they are entitled.

Immigrants in an irregular situation are particularly vulnerable. Excluded from the formal job market, they live in fear of being arrested. In many countries, they have no access to food aid or medical care. They are also very anxious not to disclose their identities and sometimes exclude themselves from aid networks. The children may have to work rather than go to school, or they are kept out of school because of their irregular status. Those who are lucky enough to get access to education are often the butt of jibes and suffer real psychological pain.

Local residents are also affected by this situation. Social services are overburdened and the quality of support they provide suffers accordingly. When city authorities, often lacking adequate resources (and sometimes undermined by corruption), are faced with consistent and repeated population increases year after year, how can one expect them to adapt the supply of schools, health structures, energy, drinking water, garbage collection, and transport? The environment deteriorates, in part because the cities are unable to recycle the excess waste they generate. The water supply becomes a major challenge.²⁶ The employment market is saturated with jobseekers ready to accept any conditions to get some income, and the economy is distorted in the long term as a result. Hence local residents may react with xenophobia and try to turn the new arrivals away or take advantage of their plight. In some cases they may even resort to violence. The poorest of the poor are most vulnerable to these types of abuse.

Challenges for humanitarians in the urban environment

Three challenges are examined in this section: identifying beneficiaries and their needs; the size and complexity of the problems; and co-ordinating with other entities.

Identification of beneficiaries and their needs

Needs are assessed in the same way in cities as in rural areas, but on the basis of different indicators. In the countryside, the humanitarian worker will assess livestock and harvests, for example, whereas in a city he or she will try to assess the cost

26 'Difficulties in supplying drinking water will become a major challenge for some mega-cities such as Johannesburg, whose municipal council is currently obliged to take water from over 500 km away. In Bangkok, salt water is starting to seep into the groundwater. Mexico City's foundations are subsiding because the city has drawn too heavily on its reserves of underground water' (our translation). French Government, Ministry of Defence, Strategic Affairs Delegation, *Prospective géostratégique à l'horizon des trente prochaines années*, 2008, p. 164, available at: <http://www.defense.gouv.fr/base-de-medias/documents-telechargeables/das/documents-prospective-de-defense/gt2030-synthese> (last visited 30 June 2010).

of accommodation, food, and services. The cost of services is the least tangible of these indicators and the least objectively verifiable. There is therefore a large margin of error when it comes to assessing the degree of poverty and distress of a household or an individual.

A combination of factors makes identifying beneficiaries a complex matter. The first difficulty is the very mass of people in need. In chronically poor city communities, where distress is widely shared, how is the aid worker to identify those households or individuals he or she should assist (on the basis of the organization's mandate)? How can he or she identify the most vulnerable people, whose plight is so acute that it reaches a tipping point beyond which it turns into a crisis situation?

Individual mobility is the second challenge. People may be forced to move to another part of the city in search of security. They may also move because of better economic prospects in another district or city, or simply because they work two or more jobs in different parts of the city. Aid workers therefore have to be very careful, as they may overlook people in difficulty or register the same person more than once.

Some potential beneficiaries – for example, illegal migrants who fear forced expulsion or arrest – may choose to hide. Drawing attention to them by registering them for aid programmes may place them in danger. In contrast, in a village, everyone generally knows everyone else's business. Finally, people in cities know one another less well than in the country, where a local community leader (the mayor, the vet, a religious leader) can point out to humanitarian workers the households in difficulty and draw up a list that they can then verify.

It is always a delicate matter to make a choice between beneficiaries in emergencies. A humanitarian entity cannot normally assist the entire population of a large city, and if it organizes distributions of aid using trucks, great care must be taken to keep control of the situation.

The size and complexity of the problems needing a response

The notion that aid operations are always more complex in cities than in rural areas is a myth. First of all, the population density is an advantage. Precisely because people live close together, one operation can have an impact on a large number of beneficiaries. One ICRC delegate told me that feeding thousands of people every day in Sarajevo seemed to him less of a challenge than doing the same in isolated villages in conflict zones in Africa. Second, in cities services are generally available and often of a good standard. Caring for the wounded and sick is easier in cities because there are normally hospitals (provided that they are accessible). Finally, there are more voluntary associations in cities than in the country and these can provide support and useful information – although the grass-roots communities often have only a partial overview of vulnerable people in their midst. They may know the residents of their district but not those of the neighbouring districts, or they may know only their groups of concern, such as orphans or the elderly people who attend their places of worship.

The real challenges are at another level:

- It is often necessary to work on systems (the water supply, for example). The bigger the beneficiary population, the greater the risks, so one mistake can have fatal consequences for thousands of people.
- The infrastructure, processes, and systems are complex and interlinked, and mastering them requires expertise that is not always available.
- More concretely still, the built-up nature of the urban environment and the scale of the programmes poses logistical problems. After a major natural disaster such as an earthquake, removing rubble and debris is a huge challenge. The scale of the work involved may necessitate logistical support from other sources, for example local haulage companies. This is something humanitarian entities are not always used to.

Co-ordination with other entities

In an interesting article summing up the proceedings of a task force within an Inter-Agency Standing Committee (IASC) working group, Roger Zetter and George Deikun note that there may be ‘governance gaps’ in urban environments: ‘Urban government staff may have been affected by natural disasters or fled armed conflict or been implicated in urban violence. Vital administrative resources such as land registers, maps and office equipment may have been destroyed’.²⁷ In some circumstances it may be difficult to find local partners. They may simply not exist or they may have too few resources.

Nevertheless, barring exceptional circumstances, partnerships will be necessary if only because of the scale of the needs involved. An organization must be open to entering into partnerships in a participative spirit with local and municipal authorities, other humanitarian, development, and human rights organizations, the private sector, academic circles, and religious and other associations. The 30th International Conference of the Red Cross and the Red Crescent²⁸ recommended this approach and encouraged all the components of the Movement (ICRC, National Red Cross and Red Crescent Societies, and their International Federation), as well as the states, to think and act in a mutually supportive way. The important role of grass-roots organizations – which are very familiar with their environments, can quickly identify signs of crisis, and cope on a day-to-day basis

27 Roger Zetter and George Deikun, ‘Meeting humanitarian challenges in urban areas’, in *Forced Migration Review*, No. 34, February 2010, p. 6. This task force, entitled ‘Meeting Humanitarian Challenges in Urban Areas’ (MHCUA), in whose work the author participated, works under the direction of UN-HABITAT.

28 ICRC and the International Federation of Red Cross and Red Crescent Societies, *The Need for Collaborative Action and Partnerships Between States, the Components of the International Red Cross and Red Crescent Movement and Other Stakeholders in Addressing Humanitarian Challenges of Common Concern (Objective 1)*, background document available at: [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/30-international-conference-working-documents-121007/\\$File/30IC_5-1_Obj1_Challenges_Background_ENG_FINAL.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/30-international-conference-working-documents-121007/$File/30IC_5-1_Obj1_Challenges_Background_ENG_FINAL.pdf) (last visited 30 June 2010).

with problems calling for humanitarian responses in urban environments – is now fully recognized.

Once the need for partnerships has been established, the next step is to identify the challenges. I shall examine two here. The first concerns co-ordination, which necessarily includes the exchange of information and experiences, strategies for handing over programmes to partners, and sharing training practices in technical fields (livestock breeding, agriculture, nutrition, water, shelter, etc.). This may be difficult because different organizations have different mandates, sources of financing, policies, cultures, and time horizons. The second is the dividing line between emergency and development aid that is still clearly present in people's minds, including those of the donors, even though it was demonstrated long ago that these forms of aid are not always sequential and need to be better linked.

Aid in urban environments: respecting the dignity of the very poor

The ICRC's experience, often drawn from countries in transition from armed conflict to peace,²⁹ brings to light the potential of three original modes of action in urban areas. These are income-generating micro-projects, aid in the form of cash or vouchers, and urban agriculture, all designed to treat beneficiaries with exemplary respect.

Income-generating micro-projects

Classic response mechanisms geared to rural areas are not always ideal for use in cities. In the country, 80% of the population depend on farming for their livelihood and their standard of living can be improved by means of an agronomy project (for example, construction of greenhouses for cultivating vegetables) or work on the water supply (rehabilitation of irrigation channels or wells). In cities, however, in view of the diversity of the residents' occupations, an approach based on a single economic sector is not sufficient.

Provided that the local economy is not too hard hit, there is therefore a growing interest in micro-economic initiatives limited in time and aimed at boosting the income-generating power of households and whole communities. The ICRC has launched programmes of this type in Belgrade, in towns in Chechnya, and in northern Iraq (Erbil, Sulaymaniyah).³⁰ These are specifically crafted production initiatives that focus on the needs of the beneficiary household.

29 Marion Harroff-Tavel, 'Do wars ever end? The work of the International Committee of the Red Cross when the guns fall silent', in *International Review of the Red Cross*, Vol. 85, No. 851, September 2003.

30 ICRC, *Micro-economic Initiatives Handbook*, Geneva, July 2009, available at: [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0968/\\$File/ICRC_002_0968.PDF](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0968/$File/ICRC_002_0968.PDF) (last visited 30 June 2010).

For example, two carpenters might have different expectations: one would like technical assistance and tools while the other would like training. ICRC delegates talk to each beneficiary about his or her needs and the type of support that would enable him or her to take up a commercial activity again. They assess existing resources and tailor the support to the beneficiary's needs. That support may be in kind or in cash, and payments may be made through financial institutions (bank or post office). The ICRC monitors the individual project for six months and, where necessary, provides the expertise or technical help needed for its success (for example book-keeping). In other words, a plumber, carpenter, or mason should be able to take up an income-generating trade once more.

One stumbling block is the reluctance of some humanitarian workers to implement programmes of this kind. It is true that micro-economic initiatives reach only a limited number of households and require monitoring. Also, they are not highly visible. Nevertheless, their great advantage is that they enable households to meet their needs by their own efforts in a long-term perspective and to overcome the feeling of being 'assisted'. Moreover, with such specifically designed initiatives, aid workers can be very precise in selecting beneficiaries. In Erbil, the ICRC has been helping disabled people, while in central and southern Iraq it has provided this type of support for women living alone. Such made-to-measure support can also be provided by National Red Cross and Red Crescent Societies.

Aid in cash or vouchers

Humanitarian organizations generally provide aid in kind to replace what people have lost or to meet their needs. However, cash transfers have several advantages.³¹ Beneficiaries can obtain the goods and services of their choice directly on local markets. Humanitarian responses along these lines can often be organized more quickly than distributions of aid – with which they can be combined. Finally, in cities, given the population density, distributing humanitarian aid in the form of goods can trigger acts of violence or even riots when people reach a critical state of distress.³²

One form of cash transfer is the voucher system. In the West Bank and Bogotá, the ICRC has distributed 'urban vouchers' to beneficiaries who could then obtain the products they needed in selected stores. This system is more cumbersome to manage than cash donations, because the shops have to agree to keep separate accounts and are subsequently reimbursed by the ICRC.

31 ICRC and International Federation of Red Cross and Red Crescent Societies, *Guidelines for Cash Transfer Programming*, 2007, available at: <http://www.ifrc.org/docs/pubs/disasters/cash-guidelines-en.pdf> (last visited 30 June 2010).

32 It is easier to make the choice of assisting only some villages in rural areas, where those villages are scattered over a wide area, than to restrict oneself to helping one district or a group of streets in a city, where the population is dense and dividing lines are hard to draw.

Urban agriculture

The extreme poverty described above, which affects a large portion of the urban population, has already encouraged some city dwellers to become involved in urban agriculture. Aid workers coming in from outside have much to learn from them.

The space available for cultivating crops in urban areas is quite small, so only certain types of farming are viable – for example, vegetable patches, mushroom production, animal husbandry, and fish farming. As we were able to observe in Nairobi, families who farm in cities and their outskirts are extremely ingenious. They exploit every bit of land between the houses, build small gardens or chicken coops on several levels, and fill plastic bags with earth and make holes in them so that the plants can grow in a vertical plane. Some people sort waste to recover plastic for industrial use, paper and cardboard to make heating bricks, and organic waste for use as fertilizer. ICRC agronomists estimate that between 15% and 20% of the food produced in the world comes from urban areas.³³

Developing urban agriculture is worthwhile for several reasons. It can be practised by all socio-economic strata dwelling in cities, each with the level of financial investment it can afford. Growing crops enables the most disadvantaged city dwellers and newly arrived migrants to improve both the quantity and quality of their diet. Agriculture provides jobs for women and young people (who sell fresh animal fodder, for example). Several women interviewed expressed their pleasure and pride in cultivating the soil. Even though it is hard work, it reminds them of life in their native villages and allows them to keep young children with them and safer from the dangers of the street. Finally, it is worth pointing out that urban agriculture protects the environment: it helps towards recycling of waste and has a positive impact on a city's microclimate.

So what are the challenges of urban agriculture? Some concern the political sphere, and others the city dwellers who take to farming. Politicians and government technical departments are often sceptical and need to be convinced, by observation and research, that urban agriculture is worthwhile and should be authorized. To convince them, it is necessary to gather more information and provide answers to some fundamental questions. For example, does urban agriculture involve any health risks? If so, what are they and how can they be prevented? And what standards must be met in terms of animal husbandry and waste management? Some have observed that those who practise agriculture on the urban fringes often lack resources to cultivate the soil and resort to growing things in marshy or insalubrious zones. Moreover, the presence of animals in densely populated areas could be a factor in propagating diseases. If problems of that nature were to arise, it would not be long before the population began looking for scapegoats, and migrants are often treated as the 'usual suspects'. To meet these

33 2009 Agro workshop: food production in urban and peri-urban areas, Nairobi, 28 September–2 October 2009. Seminar organized by Fabien Pouille and Bruno Mesureur, agronomists, in Geneva and Nairobi.

challenges, humanitarian organizations can help to raise awareness of the need for legislation and guidelines from the government's technical departments to ensure that agriculture and animal husbandry as practised by city dwellers comply with the law and take place within a pre-established framework. These organizations may also remind the authorities that there are already technical solutions to some of the problems that they perceive.

The other main challenge is to help those practising urban agriculture to overcome the hurdles they encounter. These include uncertainty over land title and access to markets. Within the city, land is at a premium. Disputes are likely to break out when several people claim title to the same land on the basis of differing legal regimes. City dwellers are also afraid to farm on land they are in danger of being evicted from. Cultivated land that has become profitable may be coveted and even appropriated by members of the elite, or by soldiers as a reward for having 'fought for' its occupants. At the same time, in cities affected by conflict or in post-conflict situations, if the various stages of the food system – production, transport, and access to markets – have been affected, bringing produce to market will be a hit-and-miss affair. With the prudence and circumspection necessitated by the political nature of some of these questions, a humanitarian organization can draw the attention of the parties to the conflict or of the relevant authorities to the impact of some of these problems and the need for a humanitarian response.

Respecting the individual's rights: the challenge of protection³⁴

As we have seen, urban violence poses specific problems. So what of the humanitarian response? According to ICRC delegates, in terms of methodology, the challenges of working to ensure that the individual's rights are respected in cities are not fundamentally different from those encountered in the countryside. Humanitarian workers go about the task in the same way: they collect information about depredations committed; they determine whether the acts concerned were violations of the relevant international law; then they make confidential representations to the *de jure* or *de facto* authorities, urging that the violations identified be stopped; finally, they continue to monitor the situation of the people to be protected. The guidelines issued to delegates make no distinction between rural and urban areas. When it comes to applying these guidelines, it might be said at most that it is easier to obtain good quality information and verify it in urban areas – because the people affected live in close proximity to one another and local associations can help out – than in remote villages where rumours sometimes circulate and need to be corroborated. Perhaps specific tools for urban areas would be

34 Protection covers all activities whose purpose is to ensure that an individual's rights are fully respected, in keeping with the spirit and the letter of the relevant bodies of law, particularly human rights law, international humanitarian law, and refugee law.

useful. This question is currently being explored by the IASC Task force on 'Meeting humanitarian challenges in urban areas' referred to above.³⁵

A pilot project

One ICRC experience in a country at peace, namely Brazil, is worth mentioning here. The ICRC has launched a pilot project in Rio de Janeiro. The aim of the project, which has been planned over five years, is to protect the most vulnerable people affected by violence, namely the communities who live in seven *favelas* containing over 600,000 inhabitants, with a particular focus on youth and the prison population – which is an essential component of the armed violence dynamic. The ICRC operates in the poorest sectors of these *favelas*, which are not easily accessed by state services and where the inhabitants are in precarious and sometimes illegal situations. By means of a participative approach in which residents are encouraged to play a role in some programmes (for example, promoting health), the ICRC hopes to develop capacities within these communities to protect themselves from the humanitarian consequences of violence. The aim is that they should be able to run their own affairs and gain access to public services and non-governmental organizations who can help them in the longer term.

The first question that comes to mind is why the ICRC is operating in a country at peace. Perhaps the answer is that, precisely because the ICRC's mandate and primary interest in armed conflict are so clear, it can afford to explore situations on the periphery of its mandate where it can offer its services on the basis of its right of humanitarian initiative, recognized by all.³⁶ While remaining within the framework drawn for it by the international community, the ICRC would be failing to live up to its responsibilities if it were not to attempt to understand how better to prepare for the challenges of tomorrow. In doing so, it has to establish criteria by which to gauge whether or not it should try to work in these situations. First to come to mind are the existence of organised armed groups who regularly clash with other armed groups or forces, the number of people affected, the seriousness of the situation in terms of humanitarian need, and the specific skills and operational advantages of an impartial, independent and neutral organization like the ICRC. Forecasts based on the emergence of chronic, sustained and asymmetrical armed violence in urban areas should encourage the organization to consider to what extent its experience in armed conflicts, its identity and *modus operandi* could be useful in situations that are sometimes analogous to such conflicts.

35 See above note 27.

36 According to the Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1951 and 2006, Art. 5, paras. 3 and 2(d), adopted by an International Conference in which the states took part, 'The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution'. It must also endeavour to ensure protection of and assistance to victims of what the Statutes call 'internal strife' and its 'direct results'.

The first crop of lessons learned

On the basis of the ICRC's experiences and observations in cities with high levels of armed violence connected to drug and territorial gangs in countries at peace, particularly in Latin and Central America, we can identify seven main lessons so far:

- It is probably presumptuous to try to tackle protection of the inhabitants directly and immediately. In order to work in dangerous environments, an organization needs to gain acceptance gradually, by meeting people's needs through visible assistance operations (health, first aid, water, hygiene, wastewater treatment, education, etc.) that they can appreciate, and that make the organization better known in the community. The armed factions, too, have to be well disposed towards structural programmes of this type. In reality, they fear outside observers and will not necessarily see the point of operations conducted by outside humanitarian organizations when they themselves have the means to make humanitarian gestures that will win them sympathy. Assistance programmes should also make it possible, on the basis of a pre-defined legal framework, to lessen people's exposure to the risk of abuse and violence within a community.
- As the ICRC expert Pierre Gentile explains,³⁷ protection concerns and assistance programmes cannot be introduced abruptly. Sometimes it is necessary to begin by working to protect medical facilities and staff before going on to address more sensitive questions such as the sources of youth radicalization, summary executions, and disappearances. Humanitarian workers have to build trust and are then able to make gradual connections between assistance and protection activities that will be measured by the yardstick of that trust. The ICRC also has to be transparent about the type of activities it wants to develop.
- The sort of dialogue that humanitarian workers will engage in with armed factions in urban areas will depend on their estimation of who those factions are. The dividing line between political and criminal groups is not always clear, as we have seen. Delinquents may put forward political demands in order to gain political leverage and access to power; political parties may engage in criminal activities; and armed factions may use criminal means to finance their so-called political activities. Collusion between terrorism and organized crime is often described as a many-faceted phenomenon.³⁸

However, there is a difference between groups that challenge the authority of a state and those whose aim is to conduct their money-making activities without interference. With the former, a dialogue based on rules aimed at reducing armed violence within communities can be envisaged. With the latter,

37 Pierre Gentile is head of the Civilian Population Unit at the ICRC. The source of these ideas is an ICRC internal document.

38 Dipak K. Gupta, *Understanding Terrorism and Political Violence: The Life Cycle of Birth, Growth, Transformation, and Demise*, Routledge, London and New York, 2008, p. 149.

- for whom armed violence is a means of intimidation to protect money-making activities, this type of dialogue has its limits. It will therefore be necessary to find a basis for exchanges on questions the group can identify as relevant to its needs or sees as worth considering as a means of strengthening its ties with the community – for example, protection of medical facilities and staff or infrastructure vital to that community. The aim of contact with such groups, be it direct or through an intermediary, may be limited to an attempt to bolster the security of humanitarian operations themselves.
- Understanding the link between the situation in places of detention and the violence perpetrated outside them could help to clarify the role that inmates may be playing in what is happening in the streets. The ICRC's humanitarian work in prisons could help the organization to make itself known to the imprisoned leaders of armed groups who are often in contact with their networks outside. Such contacts could help to improve security for humanitarian operations.
 - It is advisable to abstain from making public judgements that may jeopardize the humanitarian operation in view. Two factors to be borne in mind are fears on the part of the authorities that contacts between humanitarian organizations and armed factions that they consider criminal may give those factions some legitimacy, and the susceptibility of arms bearers themselves who intend to be respected. Whenever possible, reference should be made to the purely humanitarian purpose of any impartial and apolitical operation designed to help victims of armed violence.
 - It is necessary to work in networks with the affected communities and civil society. In rural areas, the ICRC works mainly with community representatives (such as elders), but in urban areas it encounters a less familiar, but large, associative landscape. When Red Cross or Red Crescent Societies have roots in these communities, they can be very valuable partners.
 - Finally, security remains the touchstone of any humanitarian operation. Dialogue with official security forces on operational matters is familiar territory to the ICRC, but approaching territorial gangs calls for great caution. The ICRC is still in the learning phase when it comes to contacts with these groups, whom it generally approaches through an intermediary. In the *favelas* of Rio de Janeiro, security measures include notification of movements, use of community radio stations, direct and indirect contact with armed factions, and dialogue with political circles.

A legal dilemma

Armed urban violence between groups that are generally considered as criminal (drug dealers, territorial gangs, mafia-type groups, etc.), or between those groups and government forces or private militias, raises some complex legal (and political) problems. This is particularly the case when that fighting is between groups engaged in a collective confrontation of major intensity, which testifies to a high

degree of organization. Such organization may be measured in terms of the groups' ability to train and equip armed men, carry out military operations, give orders, or even to occupy and defend territories from which they engage in illegal activities. From a legal perspective, what are the key issues involved in such situations?

First, assuming that the situation may be defined as an armed conflict, is international humanitarian law, which governs the conduct of hostilities, appropriate to deal with that type of confrontation? Let us not forget that, in the contexts concerned, the weapons bearers are often adolescents involved in all kinds of criminal dealings, and the police force (which is in charge of maintaining law and order) is more frequently involved than the armed forces. The drafters of the Geneva Conventions at the end of World War II and of the Additional Protocols after the period of decolonization did not have conflicts of this kind in mind.

Second, if it is doubtful whether the fighting can be defined as an armed conflict, is it wise to insist on the implementation of international humanitarian law, which would mean a lower level of legal protection for the civilian populations affected by the situation? The provisions of human rights law governing the use of force apply in any case to a situation of urban violence in countries at peace.³⁹

Integration of entire communities in efforts to prevent violence

As Mawanda Shaban, a member of the Youth Commission of the Uganda Red Cross Society, put it,

of course, it is a fact that when you talk about violence, even when you talk about migration, you cannot separate it from the youth. But I would like to look, in thirty seconds, at what causes this violence. And the major challenge is definitely lack of integration within the society.⁴⁰

Not only is violence not the preserve of the young – they are often perpetrators but they are also often the victims – but integration of young people, women, and different ethnic, religious, and cultural groups into the community is a very effective way of preventing violence.

So how do we get there? Two innovative projects in urban environments are worthy of mention.⁴¹ A number of National Societies in Central America and the Caribbean,⁴² together with the Spanish Red Cross, have set up a project to prevent youth violence in eleven urban and suburban municipalities (classified as 'red zones') in that region of the Americas. It is aimed at young people between the

39 Under human rights law, the use of lethal force must meet the criterion of strict necessity. International humanitarian law, by contrast, allows such force in a far broader range of circumstances.

40 *Report of the 30th International Conference of the Red Cross and Red Crescent*, prepared by the ICRC and the International Federation of the Red Cross and Red Crescent Societies, Geneva, 2007, p. 212.

41 See also Michele Poretti, 'Preventing children from joining armed groups', in *Refugee Survey Quarterly*, Vol. 27, No. 4, 2009, pp. 121–141, an article written by an ICRC adviser in his personal capacity.

42 Guatemala, Honduras, Salvador, Nicaragua, Costa Rica, Panama, Dominican Republic, and Haiti.

ages of 14 and 21 who do not take an active part in violence but who are on the point of joining violent structures (such as territorial gangs or *maras*). Although the project uses recreational activities (sports and urban pop art – hip hop, graffiti, street theatre) to attract their attention, the aim is not so much to occupy them as to create spaces where they can escape segregation, develop a feeling of belonging to a community, and exert their capacity for leadership in positive projects involving other young people from that community. The South African Red Cross has also launched a violence-prevention programme based on sport – in this case football – in the townships of Gauteng province.⁴³ Football is a sport that fosters integration because it is played by all social classes. Moreover, it does not require a financial investment on the part of the players and it generates enormous enthusiasm.

What lessons do the National Societies draw from these initiatives?⁴⁴ In Central America and the Caribbean, violence is a dynamic and changing reality so it is necessary to adapt the selection criteria for beneficiaries. Because the idea is not rehabilitation but prevention, none of the young people involved should be associated with a particular *mara* or territorial gang. Once the target groups have been chosen, the fund-raising process has to be shared with them to avoid disappointment linked to unrealistic expectations. When the project gets under way, it is helpful to start working with small groups in which everyone starts by speaking as an individual, then gradually begins to feel like a part of a whole. Programmes like this have to be designed in partnership so as to improve the perception that the media and public institutions have of young people.⁴⁵ The South African Red Cross stressed the importance of regular meetings with community representatives so that they take ownership of the project, and of regular exchanges with the volunteers in order to keep up their motivation. Finally, in the Americas and Africa alike, the fundamental principles of the International Movement of the Red Cross and the Red Crescent,⁴⁶ through the confidence they inspire, help to integrate volunteers from all sorts of backgrounds.

Conclusion

The rapid and anarchic urbanization of our planet, the widening chasm between rich areas and slums, widespread violence and lawlessness in areas neglected by

43 Launched in 2007 with financial support from the ICRC delegation in Pretoria, this project promotes a culture of tolerance, self-discipline, and personal development through sport. In 2009, 140 schools and 48 youth clubs took part in this initiative.

44 The descriptions of these projects and the lessons learned are based on replies from National Societies to a questionnaire sent to them by the ICRC and the International Federation of Red Cross and Red Crescent Societies as part of the preparation for a workshop on promotion of respect for diversity and non-discrimination, held in Nairobi in 2009.

45 These groups tend to stigmatize the behaviour of young people and call for stronger measures ('a firm hand'), sometimes for political ends (for example, to attract votes before an election).

46 I.e. humanity, impartiality, neutrality, independence, voluntary service, unity, and universality.

public services, inflows of refugees, displaced people, and migrants into the cities, and the pull of cities for armed groups all warrant attention from humanitarian organizations and development agencies alike. These problems need not only long-term responses but also preventive initiatives involving a cross-section of professionals. Psychologists, sociologists, anthropologists, lawyers, politicians, urban planners, geographers, and historians need to pool their resources to meet these new challenges.

States cannot hope to master violence in cities purely by means of security measures (especially when the security forces are ill-equipped, underpaid, and, in some cases, threatened by corruption). It is time to move the focus of the debate away from law-enforcement strategies⁴⁷ and give more thought to the underlying causes of the problems we observe: poverty, unemployment, the inability of the poorest members of society to move in search of better fortunes, lack of access to education and failure at school, and the breakdown of family life and the erosion of parental authority. Marginalized young people in troubled urban communities have a need for belonging and respect that society does not meet but that territorial gangs or other armed factions may appear to provide. In a book reflecting the debate in France around violence, the sociologist and historian Laurent Mucchielli makes practical suggestions: focus on the fight against racism; design local neighbourhood structures to bring all city dwellers back into the public sphere; and, as regards delinquency, ‘talk about it differently and try to learn more about it’,⁴⁸ because what we know is still rudimentary. We must listen to what those concerned have to say, wherever they are in the picture.

I shall leave the last word to Mucchielli, who expresses the need to go beyond statistical forecasts and the fear of tomorrow and focus once more on the human condition: ‘The changing nature of delinquent behaviour is a distress signal that should prompt us to wonder, not about the signal itself, but about the distress of which it is an expression’,⁴⁹ a distress that, when it is expressed through violence, leaves behind it broken bodies and broken lives.

47 Yves Pedrazzini, *La violence des villes*, Enjeux Planète, Paris, 2005.

48 Laurent Mucchielli, *Violences et insécurité: fantasmes et réalités dans le débat français*, Éditions La Découverte et Syros, Paris, 2002, p. 139, our translation.

49 *Ibid.*, p. 140, our translation.

Humanitarian challenges of urbanization

Raimond Duijsens

Raimond Duijsens works as senior policy officer with the Netherlands Red Cross. In the past he has also, in various positions, worked on strategic and policy issues with the International Federation in Geneva and New York. He is currently a PhD candidate, focusing on vulnerability in informal settlements in the global south and the opportunities for and limitations of National Red Cross Societies to address these. The PhD research is sponsored by the Netherlands Red Cross and carried out with Disaster Studies, Wageningen University.

Abstract

More than one billion people nowadays live as slum-dwellers in informal settlements characterized by vulnerability and poverty. The 'normal' situation in slums can, in several ways, be classified as a 'crisis', and violence levels often contribute to situations akin to 'armed conflict'. The plight of these people should be the concern of humanitarian organizations, which should consequently widen their spectrum and address vulnerability to disasters and to violence as mutually reinforcing. Applying the 'human security' framework and 'livelihoods' approach can enable them to take a proactive role. However, particularly for the International Red Cross and Red Crescent Movement, a greater involvement also poses several challenges.

.....

An urban world

About three years ago, sometime during 2007, the world passed a largely unnoticed yet significant tipping point: since that time, and for the first time in history, more than half of the world's population has been living in urban areas.¹ Rural-to-urban migration, together with the natural population growth of cities, constitutes an

urbanization trend that has since accelerated its pace. City growth is mainly driven by economic development and is characterized by a shift away from a predominantly agrarian-oriented economy to one that is dominated by the industrial and service sector in terms of the country's GDP and workforce.

Cities are sites of great progress and prosperity in many areas, bringing wealth and opportunities to many of their citizens. However, they are also home to less advantaged groups, whose lives are characterized by poverty and a near absence of opportunities for improvement. Their vulnerability is generally greater, as they are more exposed to and affected by (the risk of) natural disasters and forms of urban violence than the more affluent sections of the cities. Moreover, these vulnerabilities are chronic and increasingly severe. As such, they are a concern for humanitarian organizations as well as for development organizations.

The dual face of cities

According to the United Nations, it is expected that in two decades from now the percentage of the world urban population will have reached 60%, representing almost five billion people.² This huge rise in the level of urbanization is most visible in the growth of the biggest cities. In 1950, only one city – New York – could be classified as a 'mega-city', with more than ten million inhabitants. The scene has now changed dramatically. In 1975, the world had three mega-cities, in 2000 the number had risen to seventeen, and in 2025 there are expected to be twenty-six, some of them attaining the status of 'meta-city' with more than twenty million inhabitants. The geographical distribution of this increase has been uneven: a closer look reveals that the growth in number and size is concentrated almost entirely in the 'global south'. At present (2010), there are nineteen mega-cities, of which thirteen are situated in the global south, in countries in Africa, Asia, and Latin America.³ Staggering though the figures may be, these large cities are home to only 4% of the world's population.⁴ Small and intermediate cities, with up to five million inhabitants, will continue to absorb most of the global urban population over the coming decades.⁵

The opportunities and progress that cities provide act as a magnet for many who aspire to reap the benefits. Millions of people are drawn by the prospect of a better life, in which they can share in the opportunities that the city offers. Economic prospects are the most important factor underlying urban

1 UN-HABITAT, *State of the World's Cities 2006/2007 – The Millennium Development Goals and Urban Sustainability: 30 Years of Shaping the Habitat Agenda*, UN-HABITAT/Earthscan, Nairobi, 2006, p. iv.

2 UN-HABITAT, *Global Report on Human Settlements 2007: Enhancing Urban Safety and Security*, UN-HABITAT/Earthscan, Nairobi, 2007, Table B2, p. 348.

3 These thirteen include cities in China (Beijing and Shanghai). See UN-HABITAT, *State of the World's Cities 2010/2011: Cities for All: Bridging the Urban Divide*, UN-HABITAT/Earthscan, Nairobi, 2010, pp. 166–176.

4 UN-HABITAT, *State of the World's Cities 2006/2007*, above note 1, p. 6.

5 *Ibid.*, p. 5.

influx.⁶ In many cases the rural-to-urban flow is stimulated by the dire situation in rural areas, where poverty and lack of progress drive people out of their habitat. As it is often the younger people who look for new opportunities, these push-and-pull trends in many cases create a vicious circle that leads to even greater rural deprivation. At the same time many city dwellers, in their struggle to seize urban opportunities, become and remain trapped in a vicious circle of poverty and vulnerability, and their deprivation can in fact be worse than in rural areas.⁷ The contrast between wealth and poverty in cities is generally considerable, and, as such, an indication of the fact that cities are sites of progress as well as destitution.

Cities as sites of progress

What all cities have in common is the fact that they concentrate power. First, economic power: in comparison to their share of the country's total population and the built-up area, the contribution of cities to the national GDP is usually disproportionately large. In Thailand, for example, the city of Bangkok contributes more than one-third (36.3%) to the country's GDP while containing only 10% of the country's population.⁸ Fifteen of the nineteen current mega-cities in the world are situated in coastal areas or along rivers that facilitate trade and transportation.⁹ The great number of people in cities also provides a large and concentrated consumer market to cater for, with considerable opportunities of scale. Secondly, cities provide financial power, holding banks, insurance companies, and stock exchanges. Supported by communication networks, these cities are indispensable nodes in international financial flows. Thirdly, cities hold political power: capital cities are the residence of the state's central government in practically every country, while other major cities often serve as the location for sub-state governments. Large-scale protests and revolutionary uprisings therefore often originate and culminate in major cities. Finally, cities are the locus of social and cultural change. Within the social domain, the opportunity for relative anonymity and the presence of people with similar attitudes and opinions outside people's kinship groups and traditional social networks give rise to dynamics that stimulate new and modern thinking and expression. Artists and intellectuals, and also gay communities, usually emerge and flourish in cities. For social and economical development, the presence of strong, vibrant cities is crucial.

6 David Satterthwaite, *The Transition to a Predominantly Urban World and its Underpinnings*, International Institute for Environment and Development (IIED), London, 2007, p. 28.

7 James Rice and Julie Steinkopf Rice, 'The concentration of disadvantage and the rise of urban penalty: urban slum prevalence and the social production of health inequalities in the developing countries', in *International Journal of Health Services*, Vol. 39, No. 4, 2009, pp. 749–770.

8 Shahid Yusuf, Kaoru Nabeshima, *Post-industrial East Asian Cities: Innovation for Growth*, Stanford University Press, Stanford, 2006, p. 75.

9 UN-HABITAT, *State of the World's Cities 2010/2011*, above note 3, pp. 166–176.

Cities as sites of destitution

Within most cities, the image of progression is offset by the presence and growth of areas with a high concentration of poverty and destitution. The rural-to-urban migration is largely made up of people with low education and limited financial means. They therefore usually have no other option than to live in informal settlements, characterized by a lack of basic infrastructure and absence of services. These urban areas are conspicuous in many cities around the world, as the various references to them indicate – the Brazilian *favelas*, the American ‘ghetto’, the Indian *shawls*, the Turkish *gacekondü*. What all these areas have in common is that they are the locus for concentrated poverty and corresponding vulnerability, and that their inhabitants are exposed to multiple hazards and violence. A generally applied label is ‘slum’, particularly when referring to the destitute face of these areas.

As a manifestation of the spectacular growth of slums, it is important to notice that, around the same time as the world turned urban, another milestone was reached: in 2007, it was estimated by the United Nations that the number of people living in slums had passed the one billion mark. More than 90% of slums are located in the global south, where urbanization has become virtually synonymous with slum growth. This is also expected to accelerate: in ten years from now, cities will be home to 1.4 billion slum-dwellers.¹⁰ The presence and rapid growth of slums underlines that they cannot be considered an unfortunate by-product of urbanization that will disappear as cities develop and the incomes of their inhabitants improve. Instead, it needs to be addressed as a development issue. This view is echoed by the Millennium Development Goals, of which Goal 7, Target 4, is stated as being: ‘by 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers’.¹¹

The growth figures should, however, be regarded with some caution. The United Nations defines a slum household as a group of individuals living under the same roof in an urban area who lack one or more of the following conditions: durable housing, sufficient living area, access to improved water and to sanitation, and secure tenure.¹² Although these conditions provide general indications, culturally and normatively they may be interpreted differently across countries and populations. The classification of an urban flood can vary widely: a few inches of water may be considered a nuisance in a developing country (even though it may have an impact on socio-economic activities) but a disaster in a developed country – hence the notion of ‘hazardous area’ has multiple interpretations.

Yet it is clear that slum-dwellers make up the poorer parts of cities, where their vulnerabilities and capacities are exposed to disaster risk both more frequently and to a greater degree of intensity, and where they experience more violence and insecurity than in the cities’ more affluent parts. As sites of increased

10 UN-HABITAT, *State of the World’s Cities 2006/2007*, above note 1, p. 13.

11 Millennium Development Goals, Goal 7, Target 4, available at: <http://www.un.org/millenniumgoals/environ.shtml> (last visited 30 June 2010).

12 UN-HABITAT, *State of the World’s Cities 2006/2007*, above note 1, p. 21.

destitution, the slums of large cities of the global south deserve to be the focus of increased attention from both humanitarian and development organizations, for the line between them is blurring and allowing new insight into what constitutes a crisis. In view of the large concentration of people and the vicious circles of poverty, marginalization, and vulnerability, the fast-growing cities in the global south must be the focus if many of the Millennium Development Goals are to be achieved.

The functions of slums

Despite the above-listed vulnerabilities, correlating and interlinked with poverty, the slum areas also perform important functions for cities and, moreover, for the economic progress and social stability of countries. They provide accommodation for low-cost labour – economic development and slum growth are mutually reinforcing. Furthermore, the make-up of slums, often reflecting the ethnic, religious, and/or cultural background of their inhabitants, provides a network that can in normal circumstances, as well as in times of crisis, absorb migrant influx¹³ and mass movements of displaced people, for whom the city functions as a safe haven.¹⁴ According to UNHCR, as many as 50% of the world's 10.5 million refugees under its mandate are now living in cities, and at least twice that number of internally displaced persons (IDPs) and returnees are believed to be in urban settings.¹⁵

Both the absence of power and the opportunities for mobilizing it can benefit (local or national) governments or political movements, either by allowing them to neglect protests in cases of evictions, or by rallying electoral support: for example, through slum-upgrading projects.¹⁶ Finally, since the need of the rapidly increasing urban population for income outpaces the capacity of most urban economies in developing countries to meet more than a fraction of these needs, the informal sector is providing most of the new employment.¹⁷ It contributes to productivity and income, and thereby also serves the formal sector.

13 Vedia Dökmeci, Gulsun Saglamer, Attila Dikbas, and Nevnihal Erdogan, 'Socioenvironmental determinants of social interactions in a squatter settlement in Istanbul', in *Journal of Architectural and Planning Research*, Vol. 13, No. 4, 1996, pp. 329–336.

14 Examples from Somalia (see UN-HABITAT, 'Emergency assistance for resettlement of returnees and IDPs', available at: <http://www.unhabitat.org/content.asp?cid=7156&catid=334&typeid=13&subMenuId=0> (last visited 30 June 2010)) and Pakistan (see Adeel Pathan, 'Complete shutter down against IDPs influx into Sindh', in *The News International*, 24 May 2009, available at: http://www.thenews.com.pk/daily_detail.asp?id=179180 (last visited 30 June 2010)) indicate that an influx of IDPs can be so great that it even overwhelms a city's capacity to absorb and provide services, and consequently contributes to social tensions with traditional urban residents.

15 See Office of the United Nations High Commissioner for Refugees (UNHCR), 'Media advisory: half of the world's refugees now live in cities', 7 December 2009, available at: <http://www.unhcr.org/4b1cda0e9.html> (last visited 30 June 2010).

16 Ann Varley, 'The political uses of illegality: evidence from urban Mexico', in Edésio Fernandes and Ann Varley (eds), *Illegal Cities: Law and Urban Change in Developing Countries*, Zed Books, London, 1998, pp. 172–190.

17 While industrialization in Latin America during the era of import substitution (1940s–1970s) has led to a decrease in informal employment (from 29% in 1940 to 21% in 1970) (see Mike Davis, *Planet of Slums*,

Characterizing urban areas in the global south: human security

Disasters, violence, and development in a Red Cross/Red Crescent approach to urbanization

When assessing needs, opportunities, and threats in urban centres, different agencies choose different aspects to focus on according to their own special interests, such as poverty reduction, political empowerment, or health promotion. The course adopted by the International Red Cross and Red Crescent Movement, particularly in times of emergencies or armed conflict, is based on protecting life and health and strengthening the resilience of people.¹⁸ In addition, National Societies seek to promote human dignity and peace by helping to reduce violence and bring about a peaceful reconciliation of social differences.¹⁹ A Red Cross/Red Crescent approach to urbanization should therefore take these considerations into account.

The two central elements – exposure to disaster risk and to violence – are treated as separate threats: *disasters* are generally regarded as extraneous events which are to be dealt with largely by means of pre-determined and pre-described actions based on standard approaches and mainly of a technocratic nature. Trained staff and volunteers, pre-positioned stocks and equipment, standardized vulnerability checklists and response manuals underpin this approach. *Violence*, on the other hand, is assessed in terms of sociological processes impacting on individual behaviour and group dynamics, which require flexible, tailor-made interventions largely of a sociological nature. However, a closer look at the underlying factors and the particular dynamics that constitute and shape vulnerability to disasters and to violence reveals that both areas are more closely (inter)related than is often assumed, particularly in an urban context. As will be explained in the section

Verso, London, 2006, p. 176), the informal economy currently employs 57% of the workforce and supplies four out of five new jobs (see UN-HABITAT, *Global Report on Human Settlements 2009: Planning Sustainable Cities*, UN-HABITAT/Earthscan, Nairobi, 2009, p. 6). In most sub-Saharan cities, formal job creation has virtually ceased to exist: informal employment will have to absorb 90% of urban Africa's new workers over the next decade (UN-HABITAT, *Global Report on Human Settlements 2003: The Challenge of Slums*, UN-HABITAT/Earthscan, Nairobi, 2003, p. 104).

- 18 Mission as stated in the *Statutes of the International Red Cross and Red Crescent Movement*, adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995 and 2006, Preamble, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/statutes-movement-220506?opendocument> (last visited 30 June 2010): '... to prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies, to work for the prevention of disease and for the promotion of health and social welfare, to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of its protection and assistance'.
- 19 See International Federation of Red Cross and Red Crescent Societies (IFRC), *Strategy 2020: ... saving lives, changing minds*, adopted by the 17th session of the General Assembly, Nairobi, 18–21 November 2009, pp. 7–8, vision statement, based on Article 4 of its Constitution: 'To inspire, encourage, facilitate and promote at all times all forms of humanitarian activities by National Societies, with a view to preventing and alleviating human suffering and thereby contributing to the maintenance and promotion of human dignity and peace in the world'.

‘Enhancing human security to reduce disaster risk and decrease violence’ below, the concept of human security, while complementary to state security, places greater emphasis on the security of people. As such it provides a useful framework by linking disasters, violence and development.

Disaster risk and development

Hazard events like drought, excessive rain or earthquakes do not discriminate: apart from the fact that their occurrence may depend on geographical location, rich and poor communities are equally exposed. However, the spatial divide between the richer and poorer parts of a city usually correlates with their resilience. The poor inhabitants often live in areas that are more disaster-prone, and they usually have fewer means to protect themselves. Hence, slum areas are particularly vulnerable to disasters.

Unregulated urbanization creates and increases vulnerability. As migrants from outside move in to the already overcrowded city, this results in land pressures. Consequently, vast numbers of new arrivals have little alternative but to occupy unsafe land and construct unsafe houses. The inability to own property obstructs access to capital and thus the ability to generate income that can be applied to strengthen (physical and economic) resilience.²⁰ Slum-dwellers often engage in dangerous, dirty, and demanding work, particularly in the unregulated informal economy. Many factors further erode their resilience: lack of waste-disposal facilities contributes to unhealthy living conditions, while insufficient employment opportunities contribute to low income levels, malnutrition, and low education enrolment.²¹ The density of the built environment makes slums often virtually inaccessible for disaster response equipment. The areas generally also lack the institutional and legal framework that guarantees co-ordination of speedy and efficient disaster response. In this respect, the Hyogo Framework for Action, which aims to build and strengthen national and local disaster resilience, addresses the need for appropriate land-use planning and technical measures in quickly urbanizing settlements, particularly in relation to informal or non-permanent

20 See Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books, New York, 2000, pp. 5–6, advocating land titling as a solution to create assets for the poor. The desire of the poor to upgrade their houses contributes to the property’s economic value, making it more attractive for renting or selling, and consequently strengthens people’s economic resilience (besides the fact that more robust houses also decrease vulnerability to disaster risk). Homeowners become eligible for small-scale loans, and capital is supplied to micro-entrepreneurs, who create jobs and contribute to economic growth. For researchers questioning the economic benefit of land titling, see, for instance, M. Davis, above note 17, pp. 79–81, who points out that titling is also a way for governments to incorporate slum-dwellers into the tax base, which counterbalances the benefits of ownership. As most slum-dwellers are tenants, they will be confronted with rising rents so that the landowners can pay these taxes. It thus effectively contributes to vertical social differentiation and undermines solidarity.

21 Ben Wisner, Piers Blaikie, Terry Cannon, and Ian Davis, *At Risk: Natural Hazards, People’s Vulnerability and Disasters*, 2nd edn, Routledge, London, 2004, p. 70.

housing.²² Furthermore, the International Federation's initiative to promote a new branch of law, International Disaster Response Law (IDRL), aims to increase awareness among governments and other stakeholders to improve, where necessary, the underdeveloped legal framework and institutional basis for disaster response. Although it primarily focuses on provisions for international assistance, it also provides guidelines for governments to develop an appropriate legal framework for disaster situations, which is inclusive of domestic civil society and empowers communities to enhance their own safety and resilience.²³

Although poverty is not synonymous with vulnerability to disasters, it is clear that the two are closely related: vulnerability is greatest in places where people lack the means to protect themselves against the impacts of disasters that in turn affect people's ability to sustain their livelihoods and consequently keep them poor. Therefore, in terms of disaster risk, vulnerability sustains poverty and poverty breeds vulnerability. At the same time, poverty is also the outcome of failing development: people are poor because they suffer from specific relationships of exploitation, unequal bargaining, and discrimination within their society, and there may also be historical reasons why their homes and sources of livelihood are located in resource-poor areas. In addition, irresponsible economic development creates hazards such as pollution, land degradation, and dangerous living and working conditions. It thus accentuates vulnerability to disasters and contributes to poverty. Finally, the increase in frequency and intensity of extreme weather as a result of climate change, as well as its negative impacts on ecosystems, further contributes to increased exposure of people's livelihoods to disaster risk.

Violence and development

The spatial divide of many large cities is characterized not only by exposure to disaster risk but also by exposure to violence. In this regard, too, the poorer sections are the most vulnerable. It is argued, however, that rather than poverty breeding violence, violence promotes poverty by driving out capital and hampering investment and economic growth. Inequality, as perceived in the poorer

22 United Nations International Strategy for Disaster Reduction (UNISDR), *Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters*, UNISDR, Geneva, 2005, p. 12, available at: <http://www.unisdr.org/eng/hfa/docs/Hyogo-framework-for-action-english.pdf> (last visited 30 June 2010). The Framework was adopted by the states at the UN World Conference on Disaster Reduction, held in Kobe, Hyogo, Japan in 2005. Under the priorities for action, section 4(iii)(n) (on p. 12) states: 'Incorporate disaster risk assessments into the urban planning and management of disaster-prone human settlements, in particular highly populated areas and quickly urbanizing settlements. The issues of informal and non-permanent housing and the location of housing in high-risk areas should be addressed as priorities, including in the framework of urban poverty reduction and slum-upgrading programmes'.

23 IFRC, *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, IFRC, Geneva, 2008, p. 13. Guideline 8 addresses the legal policy and institutional frameworks: '1. As an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery ...'.

communities, is cited as a more important underlying cause than poverty for the crime and violence that people experience.²⁴ This inequality is manifest in unequal access to education, health care, and employment opportunities and in the limited or absent infrastructure compared to other, more affluent, parts of the city. Financial constraints and political choices by governments, as well as economic rationality on the part of the private sector, inexorably generate and sustain inequality, with poverty being both its cause and (indirect) effect. This situation provides the circumstances in which people resort to violence and crime. Subsequently, the proneness to disaster risk, which likewise contributes to poverty and inequality, also comes in to play.

Violence can take place within and across various domains – political, institutional, economic, and social. Usually it not only inflicts physical harm but also generates fear and a feeling of insecurity in the society.²⁵ It can erode social networks within communities and undermine trust in formal institutions if they do not succeed in curbing it. Specific socio-economic, ethnic, and historical elements play a role in the incidence and prevalence of violence,²⁶ and generalizations should therefore be made with caution. However, although violence is not an exclusive feature of (large) cities, the scale and severity are usually greater in urban areas.²⁷ Much violence (be it, for example, intra-family, street robbery, or territorial-based gang wars) results in homicide, and data suggest that this correlates among other things with rapid rates of urbanization.²⁸ In many cities, urban crime is predominantly committed by young men – if not poverty-driven, their involvement in crime is certainly a means of obtaining status

24 See, for instance, Pablo Fajnzylber, Daniel Lederman, and Norman Loayza, 'Inequality and violent crime', in *Journal of Law and Economics*, Vol. 45, 2002, pp. 1–40; Ching-Chi Hsieh and M. D. Pugh, 'Poverty, income inequality, and violent crime: a meta-analysis of recent aggregate data studies', in *Criminal Justice Review*, 1993, Vol. 18, No. 2, pp. 182–202, referred to in UN-HABITAT, *Global Report on Human Settlements 2007*, above note 2, p. 67.

25 According to Johan Galtung, 'Violence, peace, and peace research', in *Journal of Peace Research*, Vol. 6, No. 3, 1969, pp. 167–191, violence, either manifest or latent, can target individuals or be of a more structural nature and can be of a physical or psychological nature (which are often closely related).

26 See Christiana Steenkamp, 'Xenophobia in South Africa: what does it say about trust?', in *The Round Table, Commonwealth Journal for International Affairs*, Vol. 98, 2009, pp. 439–447, discussing the pogroms of May 2008 in South Africa as a clear example of how socio-economic, ethnic, and historical elements are at play. The violence was remarkable since it was directed by black South Africans against black Africans on the basis of their nationality and is in stark contrast to their good relationship during apartheid. A constellation of various factors, including foreign policy, competition for scarce resources, official and media discourses, and the perpetuation of stereotypes provided fertile ground for the increasing mistrust vis-à-vis African migrants, while the political context offered an important explanation for the timing of the violence. The violence is explained as an erosion of social capital, i.e. low levels of trust in foreign migrants (the 'bonding' function of social capital) and in the state (the 'linking' social capital) to either stand up against the migrants or provide (overall) for better living conditions in the post-apartheid era, and even within the black South African community (the 'bonding' capital, manifested as the polarization within the ANC between Mbeki and Zuma supporters).

27 Caroline Moser, 'Urban violence and insecurity: an introductory roadmap', in *Environment and Urbanization*, 2004, Vol. 16, pp. 4–6.

28 Geneva Declaration Secretariat, *The Global Burden of Armed Violence*, Geneva Declaration Secretariat, Geneva, 2008, pp. 71–72, available at: <http://www.unhcr.org/refworld/pdfid/494a455d2.pdf> (last visited 30 June 2010).

and prestige.²⁹ Since the age brackets for young people (0–19 years) are disproportionately large in slum areas compared to non-slum areas,³⁰ the many young slum-dwellers make ideal recruits for street gangs.³¹ In this respect, media coverage of crime, particularly by the ‘tabloids’ and sensational press, reinforces distrust and contributes to increased fear and a feeling of insecurity among the general public.³²

Cultural and social values also play a role in the prevalence of violence: social networks can be powerful informal control mechanisms, with their normative structures tempering the perception of inequality. The social coherence of communities, however, is challenged by rapid urbanization, particularly in areas where marginalized groups tend to congregate³³ – a process that generally hampers the work of community-based organizations. Furthermore, the density of the built environment in cities also acts as an enabling factor in urban crime such as burglary, robbery, and theft.

Institutional crime becomes manifest, for instance, as corruption, extra-judicial killings, or social cleansing. Corruption in particular not only hampers equal treatment and the creation of a level playing field for economic investments but also undermines economic stability and confidence in the fairness of government and the rule of law.³⁴ The interwovenness of poverty, marginalization, and violence in the poor and neglected sections of the city fosters urban segregation (‘fractured cities’) and contributes to the emergence of ‘no-go’ areas, characterized by an ‘unrule of law’. In the absence of legal authorities and representation of law and order, these areas in fact constitute a ‘governance void’, opening the way for a variety of armed contenders and violence-brokers, who exercise power

29 John Hagedorn, ‘The global impact of gangs’, in *Journal of Contemporary Justice*, Vol. 21, No. 2, 2005, pp. 153–169.

30 UN-HABITAT, *State of the World’s Cities 2006/2007*, above note 1, p. 31.

31 See UN-HABITAT, *Global Report on Human Settlements 2007*, above note 2, pp. 64–65, which states that: ‘In sub-Saharan Africa, where the impacts of rapid urbanization and poverty have been particularly severe, many young men from marginalized communities join gangs who help to replace the extended family and who provide economic and social values not found in mainstream society. ... Regional variations show that youth homicide rates were lowest in Western Europe and in the high-income countries of the Pacific. The highest rates are found in Latin America, the Caribbean and Africa ... This coincides with regions where there are large bulges in the youthful population’.

32 See Peter Dreier, ‘How the media compound urban problems’, in *Journal of Urban Affairs*, Vol. 27, No. 2, 2005, pp. 193–201, stating in the abstract of his research on the role of media in reporting on urban news in the United States, that: ‘Major news media coverage of cities reinforces an overwhelmingly negative and misleading view of urban America. The images ... are an unrelenting story of social pathology ... Moreover, this perspective on our cities is compounded by misleading news coverage of government efforts to address these problems. Government programs are typically covered as well-intentioned but misguided, plagued by mismanagement, inefficiency, and, in some cases, corruption. There is very little news coverage of collective efforts by unions, community organizations, and other grassroots groups to address problems. Only when such efforts include drama, conflict, and/or violence do the major media typically pay attention’.

33 United Nations Office on Drugs and Crime (UNODC), *Eighth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems*, UNODC, Vienna, 2006, p. 8.

34 See, for instance, UNODC, *Assessment of the Integrity and Capacity of the Justice System in Three Nigerian States: Technical Assessment Report*, UNODC, Vienna, January 2006, p. 125, revealing that in Lagos more than 40% of court users believed that political pressure completely dominates the justice system.

in alternative, informal spheres. Both formal and informal institutions and organizations negotiate their operational space, with various degrees of adherence to and control by the *de facto* ruling powers.³⁵

In contested areas where police and special police forces try to restore law and order, violence may involve political assassinations and can in fact turn into guerrilla and paramilitary conflict, in particular as a spill-over of economic and institutional crime when politicians resort to violence to pursue economic gains. In Colombia, for example, the political conflict has been intensified by drug-linked violence and local criminality. The fragility of the country is reproduced on a local scale, giving rise to fragile cities.³⁶

Often, but not always or necessarily, these cities are located in fragile states in which armed conflict is prevalent – for instance, Lagos in Nigeria, Kinshasa in the Democratic Republic of the Congo, or Baghdad in Iraq. At a national level, the military forces of these countries, whether or not supported by foreign military, are engaged in armed conflict, be it with other countries or with violent domestic factions, the latter in turn often also supported by foreign fighters who share an ethnic, cultural, or religious background. In these and other situations of armed conflict, cities are often the site of intense battles. The densely built and populated urban areas constitute a challenge to warring parties to uphold and respect obligations under international humanitarian law (IHL). A case in point is the Israeli–Palestinian armed conflict in Gaza in December 2008 and January 2009, of which the Goldstone Report lists several incidents where civilians in a densely built and populated area were believed to be used as human shields³⁷ and where Israeli forces stated that they regarded several situations as ‘urban warfare’,³⁸ which shaped their military actions. The situations cited mirror a general ‘urban’ challenge for parties under IHL to keep the risk of harm to the civilian population and civilian objects down to a minimum. The layout of the urban infrastructure forces the military to engage in door-to-door combat, with high risks of fatal casualties.

35 Kees Koonings and Dirk Kruijt, ‘Fractured cities, second-class citizenship and urban violence’, in Kees Koonings and Dirk Kruijt (eds), *Fractured Cities: Social Exclusion, Urban Violence and Contested Spaces in Latin America*, Zed Books, London, 2007, pp. 4–21.

36 *Ibid.*, p. 14.

37 See UN General Assembly, *Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-finding Mission on the Gaza Conflict*, UN Human Rights Council, Twelfth Session, Agenda Item 7, September 2009, available at: http://www2.ohchr.org/english/bodies/hrcouncil/specialessession/9/docs/UNFFMGC_Report.pdf (last visited 30 June 2010). Section VIII-E of the report discusses military activities of the Palestinian armed groups in Gaza in relation to their obligation to protect the civilian population, such as the alleged forcing of civilians to remain in an area for the specific purpose of sheltering that area or forces in that area from attack.

38 *Ibid.*, Section XI on the alleged deliberate attacks by the Israeli armed forces against the civilian population. Paragraph 804 of Section XI-C discusses information about the instructions given to the Israeli armed forces with regard to opening fire against civilians.

Human security and international humanitarian law

The Geneva Conventions of 1949, particularly the Fourth Geneva Convention,³⁹ can be regarded as a protection of human security in times of armed conflict.⁴⁰ Legally, the causes of an armed conflict (whether politically, socially, or economically motivated) are of no concern for the application of IHL. Central to its applicability, in light of the above, is the notion of ‘armed conflict’. Although IHL originally related only to armed conflict between two or more states, its application – and thus the understanding of what constitutes an armed conflict – has been expanded to include non-international armed conflicts. Crucial for application of IHL, however, is the distinction between internal disturbances (such as riots or acts of banditry) and armed violence that actually reaches the threshold of a non-international armed conflict. IHL applies only to the latter: that is, when a minimum level of violence is displayed and when the parties involved in the conflict show a certain minimum of organization.⁴¹ An important element is therefore that the violence should be carried out in an organized manner, which excludes, for instance, gun-related domestic violence from being classified as armed conflict. Conversely, drugs-related violence may well be labelled ‘armed conflict’.

Enhancing human security to reduce disaster risk and decrease violence

The concept of ‘human security’ has gained prominence in recent years. Its basis lies in the ‘Freedom from Fear’ and ‘Freedom from Want’ notions that underpin the United Nations Universal Declaration of Human Rights.⁴² ‘Human security’ complements ‘state security’ by placing greater emphasis on the security of people. A ‘narrow’ application focuses exclusively on security in the light of violence, by encompassing only ‘personal security’ (protection from physical violence against a person’s own state, another state, groups, or individuals), ‘community security’ (protection of communities from sectarian or ethnic violence), and ‘political

39 The Geneva Conventions of 12 August 1949 are available at: <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions> (last visited 30 June 2010).

40 Berma Klein Goldewijk, “‘New wars’ and the state: the nexus religion – human security”, in Georg Frerks and Berma Klein Goldewijk (eds), *Human Security and International Insecurity*, Academic Publishers, Wageningen, 2007, p. 82.

41 See ICRC, *How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?*, ICRC Position Paper, Geneva, 2008, available at: [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/\\$file/Opinion-paper-armed-conflict.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/$file/Opinion-paper-armed-conflict.pdf) (last visited 30 June 2010), pp. 3–5, stating that: ‘First, the hostilities must reach a minimum level of intensity. This may be the case, for example, when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of mere police forces. Second, non-governmental groups involved in the conflict must be considered as “parties to the conflict”, meaning that they possess organized armed forces. This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations’.

42 United Nations General Assembly, Resolution 217 A(III), 10 December 1948, adopting the Universal Declaration on Human Rights, available at: <http://www.un.org/en/documents/udhr/> (last visited 30 June 2010).

security' (protection from human rights violations such as political repression or state control over ideas and information). All those elements reflect a human rights focus and are, to various degrees and in various circumstances, also relevant in the light of IHL. A 'broader' definition regards human security essentially as the protection of people against any life-threatening danger related to any kind of crisis; hence it adds elements of human development to the concept: 'economic security' (an individual's right to be able to earn an assured basic income), 'food security' (access to nutritious food that is economically affordable), 'health security' (a minimum protection from diseases and unhealthy lifestyles, and affordable and accessible health care), and 'environmental security' (protection from risks of disaster and environmental degradation).⁴³

Based on the above, 'human security' (in the broad sense) is a useful concept for assessing crisis situations in an urban context. It addresses vulnerability to disasters as well as violence, which are prevalent and mutually reinforcing, particularly in an urban context. The inclusion of these two elements also renders the content very appropriate for the Red Cross and Red Crescent Movement in its approach to urbanization, as indicated above. Application of the broad definition of 'human security' in fact stresses the need to address underlying issues (concerning the economic, health, and food situation of people) that are related to poverty and inequality and that also interact with violence. In that definition, the concept highlights the close relationship between vulnerability to disasters and vulnerability to violence. The notion that vulnerability to disasters and human security are closely linked is expressed by the United Nations, too, which cites it as a 'double jeopardy' for cities.⁴⁴ In its 2007 *Global Report on Human Settlements*, it focuses on the interrelationship between urban crime and violence, security of tenure, and natural and human-made disasters, applying vulnerability as the overarching term.⁴⁵

Strengthening livelihoods as a way to enhance human security

A permanent humanitarian crisis

The security of people in slums is affected by violence as well as disaster risk, both of which hamper socio-economic development and consequently obstruct people's ability to strengthen their resilience. These vulnerabilities are shaped within the

43 United Nations Development Programme (UNDP), *Human Development Report 1994: New Dimensions of Human Security*, UNDP/Oxford University Press, New York/Oxford, 1994, pp. 24–33.

44 UN-HABITAT, *State of the World's Cities 2006/2007*, above note 1, pp. 136–142.

45 See UN-HABITAT, *Global Report on Human Settlements 2007*, above note 2, pp. 4–5. Although using different terminology and labelling 'vulnerability' as the overarching term, the report essentially applies a human security approach, since it covers 'urban crime and violence' (the narrow definition of human security), 'vulnerability to natural disasters' (the added elements of the broad definition of human security), and 'security of tenure' (as a condition for economic development, contributing to reducing poverty).

ecological, social, economic, and political domain by the factors (individually or interactively) discussed above, such as environmental degradation, unregulated economic development, marginality and exclusion, eroded social structures, violence, poverty, inequality, political structures, and access to power.

Health

All these factors, directly or indirectly, have a detrimental effect on people's health – through pollution, (risk of) disasters, lack of opportunities to improve the standard of living, and violence and inequality – in several instances to a degree that many would classify as 'crisis'. But although the word 'crisis' takes up a prominent place in the vocabulary of humanitarian organizations, definitions to underpin a common understanding of what constitutes a crisis are at best debated, but mostly absent, and are largely subject to inflation ('the worst crisis in years'). The *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*⁴⁶ lists elements that are to be addressed in humanitarian assistance (i.e. in crisis response) and that are thus an indication of a crisis: a state of calamity, loss of life, suffering and distress, and material damage. Obviously, important underlying conditions for possibly labelling a situation as a crisis are the erosion and destruction of people's livelihoods, which normally enable them to cope with traumatic events and other forms of adversity (as a manifestation of the aforementioned 'calamity' and 'distress'), and the interests of governments based on power relations in the socio-economic and political domain.

However, when focusing exclusively on key elements that ultimately determine life or death in crisis situations⁴⁷ – heat, cold, thirst, hunger, injury, or illness – a 'normal' situation in a slum can in several ways be classified as a 'crisis'. For example, when looking at mortality rates for infants and young children it becomes clear that data for slum areas are generally significantly higher than for the more affluent areas of the city.⁴⁸ The infant mortality rate in Manila's slums, for example, is about 72 per 1,000, compared to 24 for Metro Manila (and 36 nationwide). As a general rule, a doubling of the baseline mortality rate triggers humanitarian intervention,⁴⁹ so taking either the rate for Metro Manila or the nation as a whole as a baseline, the situation in Manila's slum would justify

46 IFRC, *Code of Conduct for the International Red Cross Red Crescent Movement and NGOs in Disaster Relief*, full text and definitions available at: <http://www.ifrc.org/publicat/conduct/index.asp> (last visited 30 June 2010).

47 See Vinay Gupta, *Six Ways to Die*, available at: <http://www.blip.tv/file/2710476> (last visited 30 June 2010).

48 Lawrence James Haddad, Marie T. Ruel, and James L. Garrett, 'Are urban poverty and undernutrition growing? Some newly assembled evidence', in *World Development*, Vol. 27, No. 11, 1999, pp. 1891–1904, as cited in UN-HABITAT, *Global Report on Human Settlements 2003*, above note 17, p. 74.

49 M. Michael, *Global Health Cluster: Rapid Health Assessment Guidelines*, 2007, p. 16, available at: <http://www.wpro.who.int/internet/files/eha/toolkit/web/Health%20Cluster%20Approach/Resources%20and%20Tools/Global%20health%20cluster%20rapid%20health%20assessment%20guidelines.pdf> (last visited 30 June 2010).

humanitarian action. The World Health Organization considers a global acute malnutrition (GAM) rate of 10% as critical, and 15% as alarming. In Djibouti's slum areas, UNICEF has found malnutrition rates ranging from 17% to 25% of children under five⁵⁰ – rates that are normally found in countries in a complex emergency. Yet, while the situation in many slums in the global south could be classified as a 'permanent crisis' or 'silent disaster', interventions by humanitarian agencies targeting slum populations, and moreover the means allocated by donor governments and multilateral institutions to address urban vulnerability, remain relatively limited.⁵¹

Violence

As in the aforesaid health situation, in slums that can be characterized as sites of 'permanent crisis' based on the thresholds passed, violence levels in many slums seem to exceed (IHL-related) thresholds that would justify their classification as sites where a 'permanent armed-conflict-like situation' prevails. Obviously the notions of 'level of violence' and 'degree of organization', as presented above, are open to interpretation and depend on a case-by-case analysis of the situation concerned. Yet several examples could be interpreted as meeting those criteria, such as the drug-related violence in Brazil's Rio de Janeiro or Mexico's Juárez: in 2007, in Rio's mainly drugs-related police offensive against the gangs that rule many of the city's slums, 1,330 people were killed;⁵² and in Juárez the fight against the cartels cost more than 1,300 lives.⁵³ In comparison, the conflict between the Colombian government and the FARC insurgents, generally recognized as a non-international armed conflict (in terms of the criteria cited above) caused approximately 1,000 casualties in that same year.⁵⁴ Those two cities provide examples of urban violence that could be classified as a non-international armed conflict to which IHL would apply and which would justify humanitarian assistance.

50 See IRIN, 'Djibouti: high malnutrition rates in slums "alarming"', 17 February 2009, available at: <http://www.irinnews.org/Report.aspx?ReportId=82971> (last visited 30 June 2010).

51 D. Satterthwaite, above note 6, p. 54; Janice Perlman and Molly O'Meara Sheenan, 'Fighting poverty and environmental injustice in cities', in The Worldwatch Institute, *State of the World 2007: Our Urban Future*, W. W. Norton & Company, New York, 2007, pp. 176–177.

52 Human Rights Watch, *Police Violence and Public Security in Rio de Janeiro and Sao Paulo*, New York, 2009, p. 1.

53 Alex Stevens and Dave Bewley-Taylor, *Drug Markets and Urban Violence: Can Tackling One Reduce the Other?*, Drug Policy Programme, Report 15, The Beckley Foundation, Oxford, 2009, p. 5.

54 In 2007, the FARC was allegedly responsible for 272 attacks, which led to 283 deaths and 100 kidnappings. See Stratfor Global Intelligence, 'Colombia: a militant merger?', 6 June 2008, available at: http://www.stratfor.com/memberships/117868/analysis/colombia_militant_merger; see also Project Ploughshares, *Armed Conflicts Report 2009: Colombia*, available at: <http://www.ploughshares.ca/libraries/ACRText/ACR-TitlePage.html> (last visited 30 June 2010), claiming a total of around 100 casualties due to combat; Carolina Forero and Sally Fishback, 'Human security in Colombia', in *Josef Korbel Journal of Advanced International Studies*, Vol. 1, 2009, p. 29, available at: http://www.du.edu/korbel/jais/journal/volume1/volume1_fishback_forero.pdf (last visited 30 June 2010), claiming 895 casualties from landmines, attributed to the conflict between the rebels and the Colombian government.

Livelihoods and ‘resilience’ as the link between development and vulnerability

People need access to five vital resources for sustainable living. These resources, usually termed ‘capital’, together constitute their livelihood.⁵⁵ ‘Human capital’ can be labour, skills, or knowledge; ‘natural capital’ consists of land, water, forests, and so forth; ‘physical capital’ can be food stocks, livestock, equipment, and the like; ‘financial capital’ is money (savings, loans, credit); and finally ‘social capital’ concerns the quality of relations between people (help from neighbours, religious organizations, NGOs, political parties, etc. on the basis of common rules, norms, and sanctions). What is clear is that ‘capital’ can be privately or communally owned, and can be tangible as well as non-tangible. The sustainability of living is determined by secure and ongoing access to these forms of capital when and where needed, in such a way that people can use it to increase their chances of improving their lives both economically and socially. For this purpose, people apply different strategies, which they adapt to ecological, social, economic, and political perturbations (e.g. moving within or between various informal settlements on the basis of job opportunities or housing availability, or because forced to do so by evictions).

The livelihoods approach is usually applied in a development-oriented context, in which the main emphasis is on social and economic progress and disasters are regarded as a temporary disruption of this process. A close look at the livelihood capitals shows that they are closely related to the various elements that shape people’s security: human and financial capital, for example, contribute to economic security, social capital helps to strengthen community security, and access to natural capital is a requisite for health security. In this way, the security elements can be enhanced by strengthening livelihood capitals.

Since ‘human security’, as indicated above, is an appropriate way to assess vulnerabilities (to disasters and to violence, areas on which the Red Cross and Red Crescent Movement traditionally focuses), the livelihoods approach can also be applied by humanitarian organizations, particularly when their prime focus is on strengthening resilience rather than increasing socio-economic development *per se*. This is particularly useful in relation to urbanization and its ongoing slum formation, where corresponding vulnerabilities to disaster risk (accelerated by increasing external hazards such as extreme weather events) give rise to the notion that disasters are a constant feature of life in slums rather than an accidental disruption of the development there, and where inequality and violence witnessed in many slum areas also contribute to greater and more permanent vulnerability. The sustainable livelihoods approach is therefore appropriate to address the said ‘permanent crisis’ and ‘permanent armed conflict’ in many urban centres in the global south.

55 Ian Scoones, *Sustainable Rural Livelihoods: A Framework for Analysis*, Institute of Development Studies, Brighton, 1998, pp. 7–8.

A permanent humanitarian response: challenges for humanitarian organizations

The continuing vulnerabilities, particularly those within the mandate of humanitarian organizations such as the International Red Cross and Red Crescent Movement, and the said 'permanent crisis' and 'permanent armed conflict' are a call for humanitarian organizations to become more engaged in urban centres, particularly in the global south. Given that vulnerabilities are a permanent feature of slums, this involvement should constitute a 'permanent response'. This will pose several challenges.

First, for many humanitarian organizations a permanent response seems a contradiction in terms. While development-oriented organizations concentrate on long-term processes to strengthen communities, humanitarian organizations in turn focus on the events that disrupt these processes and that constitute crises. Rather than being permanent, their interventions are by definition short-term and geared to restoring the status that existed prior to the event that triggered the crisis. However, where there is considerable and increasing vulnerability – accelerated by external trends such as climate change – their reactive response mechanisms should be complemented by proactive interventions that make people less vulnerable to disaster risk and violence. 'Climate change adaptation' and 'building back better' are emerging trends and initiatives where the Movement is already taking a proactive and risk-reducing approach. Rather than focusing on development *per se*, the proactive approach should concentrate mainly on strengthening resilience, particularly against disaster risk and violence.

A focus on greater resilience implies that a holistic approach should be applied, in which vulnerabilities need to be addressed in conjunction with their underlying causes. As pointed out above, these causes are often related to inequality and marginalization, not only in the socio-economic but also in the political domain. Appropriate housing locations, infrastructural facilities, and access to power supplies are examples of important issues that need to be considered. Advocacy vis-à-vis (local) government authorities on behalf of vulnerable people – which might be considered sensitive with regard to the principles of impartiality and neutrality to which the Movement adheres – should be an important element in any such approach. Similarly, the mandates assigned to the National Red Cross and Red Crescent Societies in their role as auxiliaries to the public authorities may also be challenged if the Movement becomes involved in situations that stem from a context of informality and illegality.

Another implication of focusing on underlying causes is that it reveals the need for initiatives in areas far outside the mandate of the Movement and where its knowledge is consequently insufficient if not altogether lacking. The need to address these causes therefore implies a need for the Movement to establish and work in partnerships – viewed as a collective responsibility – with local communities, civil society organizations, the government, and the private sector in order to be able to connect to all relevant areas. Insofar as the vulnerabilities are permanent, so too should these partnerships be.

A more active role for the International Red Cross and Red Crescent Movement in slums also implies the need to address vulnerabilities that have emerged partly or fully because of the incapability or unwillingness of (local) government to prevent or reduce them. While strengthening communities' resilience, the organization faces a risk of filling the 'governance void' by taking over government responsibilities, rendering the government's presence irrelevant and undermining its authority.

Furthermore, the holistic approach requires resilience to be increased, by tackling both disaster risk and violence more effectively. Underlying causes, as indicated in the previous paragraphs, may be similar in origin but fuel different vulnerabilities and must consequently also be addressed differently. In seeking to reduce vulnerability to disasters, humanitarian organizations should also actively take into account sociological processes in an urban context that give rise to poverty, inequality, and violence, and vice versa. This implies that instruments to assess vulnerabilities, such as vulnerability and capacity assessments, should be adjusted correspondingly.

Finally, challenges arise where governance in fragile urban areas is under strain, particularly in situations of protracted violence. The sliding scale from stability to fragility necessitates a corresponding increased focus on the relevance and application of IHL, particularly in the transition from internal disturbances and tensions to armed conflict. The roles of the various components of the International Red Cross and Red Crescent Movement may consequently shift according to their mandates.

Understanding gangs as armed groups

Jennifer M. Hazen

Dr. Jennifer M. Hazen is a Fellow at the LBJ School of Public Affairs at the University of Texas at Austin. Her areas of expertise include armed groups, conflict dynamics, and post-conflict peace-building processes.

Abstract

Gangs have long been considered a source of violence and insecurity, but they are increasingly identified as a cause of instability and a threat to the state. Yet gangs operate mainly in non-conflict settings, raising questions about whether applying a conflict lens to understand gangs is appropriate. Marked differences appear between armed groups and gangs when considering concepts of ungoverned spaces, the state, violence, and sustainability. Few gangs reach the threshold of posing a direct challenge to the state; this makes comparisons with other armed groups difficult and suggests the need for a more specific analytical lens.

⋮⋮⋮⋮⋮

...men can only be highly civilized while other men, inevitably less civilized, are there to guard and feed them.

George Orwell, 'Rudyard Kipling' (1942)

Urban violence has been characterized as endemic and unbound.¹ Such portrayals of violence in the media have created climates of fear and widespread perceptions of insecurity, regardless of the reality on the ground. Discussions of violent cities echo studies of civil wars and concerns about failed, anarchic, lawless, and ungoverned states. Yet such sweeping descriptions often fail to reveal the underlying dynamics of violence and conflict, the reasons why individuals take up arms and engage in violent acts, the concentration of violence in certain areas of otherwise stable cities or countries, the nature of the perpetrators and the victims, and the nature of governance in countries severely affected by violence. Current discussions of urban violence and gangs tend to dramatize the problem,

over-generalize about violence, simplify the nature of gangs, and justify a heavy hand by governments.

Violence in non-conflict settings produces the vast majority of violent deaths.² These deaths result from a mixture of criminal violence, interpersonal violence, organized crime, the drug trade, gang violence, state-led violence, and political violence. As scholars and practitioners try to grapple with violence in non-conflict areas, current theories of armed groups and armed conflict, drawn from the conflict studies literature and based largely on the study of civil wars, are being used to understand the situation of violence in our cities. Criminologists have long viewed gangs as a criminal problem to be handled through law and order measures. Political scientists have taken this a step further, to consider gangs as insurgents. Gangs are increasingly identified as a cause of violence, a source of instability and insecurity, and a threat to the state. This raises important questions about whether applying a conflict lens to gangs is appropriate, or whether differences in the characteristics, behaviours, and contexts of gangs require a rethinking of this approach. This article seeks to answer those questions.

The article is divided into three sections. The first section reviews common stereotypes of urban violence and gangs. Despite being inaccurate, these stereotypes often guide popular understanding of gangs and government responses to them. The second section looks at how armed groups, in general, are defined and characterized. This is followed by a discussion of how gangs fit within the broader category of armed groups. The focus is on youth gangs, though other types of gang exist: motorcycle gangs, prison gangs, skinheads, and other types of organizations, such as drug organizations and organized crime. These are all often labelled simply as gangs, yet they operate very differently from one another, making distinctions between them important. Special attention is paid at the end of the section to institutionalized gangs, which most closely resemble rebel groups. The third section presents four key concepts in conflict studies: the context of ungoverned spaces, the relationship of the group to the state, the role of violence, and the sustainability of an armed group. Since few gangs reach the threshold of posing a direct challenge to the state, this makes comparisons with other armed groups difficult and suggests the need for a more specific analytical lens.

Common stereotypes³

Gangs are commonly referred to as predators, criminals, losers, delinquents, and thugs. Gang members are demonized as inherently bad, violent, truant, poor, and uneducated. Gangs are frequently associated with violence, drugs, and the inner

1 Alisa Winton, 'Urban violence: a guide to the literature', in *Environment and Urbanization*, Vol. 16, No. 2, October 2004, p. 166.

2 Geneva Declaration Secretariat, *Global Burden of Armed Violence*, Geneva, 2008, pp. 1 and 67.

3 For a more detailed discussion of gang myths see James C. Howell, 'Menacing or mimicking? Realities of youth gangs', in *Juvenile and Family Court Journal*, Vol. 58, No. 2, Spring 2007, pp. 39–50.

city.⁴ The stereotypes of gangs abound: they prey upon innocent citizens; they are highly structured criminal organizations; all gangs are alike; all gang members are hardened criminals; gang members spend most of their time involved in criminal and violent acts; and gang members are responsible for the majority of crimes committed in their neighbourhoods.⁵ The reality is far more complex, and far less criminal and violent in nature. The stereotypes and heightened rhetoric fail to recognize the great variation that exists across gangs or the numerous factors that enable and encourage the creation and perpetuation of gangs.

Urban crime and violence have been growing concerns for the past decade among policy-makers and inhabitants of large cities around the globe.⁶ Part of this concern stems from high levels of crime and violence in many cities. Meanwhile, part of the fear results from inaccurate stereotypes that demonize certain groups and place the blame for urban violence on gangs, whether or not there is evidence to support such allegations. The young man covered in tattoos, fighting in the streets and dealing drugs is a common stereotype of a typical gang member. While tattoos, fighting, and drugs are commonplace in many gangs, they do not define gangs, and the wide variation in gang membership and gang behaviour suggests that focusing solely on these negative elements can be misleading in trying to understand gangs, their activities, and their broader role in communities.

Concerns about urbanization and growing urban populations are linked to the perception that violence and crime are urban phenomena. Urban violence has 'reached unprecedented levels in many cities' in the developing world.⁷ Today more than 50% of the world's population lives in urban settings, and developing countries account for over 90% of urban growth.⁸ This suggests that urban violence is likely to take place in those cities least capable of preventing or addressing it, and gangs may play a significant role in this violence because they are 'most visible and most violent during periods of rapid population shifts'.⁹ Although growing urban populations are correlated to higher levels of violence, this does not mean that all growth in city populations results in rising violence. The reality is not so simple. Urban growth, as a phenomenon, is not a cause of violence. Instead, it is the nature of the growth, the ability of cities to absorb new residents, the ability of the government to plan and manage growth, and the capacity of the government to

4 Tim Delaney, *American Street Gangs*, Pearson/Prentice Hall, Upper Saddle River, NJ, 2006, p. 11; Finn-Aage Esbensen, 'Preventing adolescent gang involvement,' in *Juvenile Justice Bulletin*, 2000, p. 3; Randall G. Shelden, Sharon K. Tracy, and William B. Brown, in *Youth Gangs in American Society*, 3rd edn, Wadsworth/Thomson Learning, Belmont, CA, 2004, pp. 24–26.

5 J. C. Howell, above note 3; T. Delaney, above note 4, p. 11; Judith Greene and Kevin Pranis, *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies*, A Justice Policy Institute Report, New York, July 2007, p. 51.

6 Ellen Brennan, *Population, Urbanization, Environment, and Security: A Summary of the Issues*, Woodrow Wilson Center, Occasional Paper Series, No. 22, 1999, p. 16; UN-HABITAT, *Enhancing Urban Safety and Security: Global Report on Human Settlements 2007, Vol. 1: Reducing Urban Crime and Violence: Policy Directions*, Earthscan, London, 2008.

7 A. Winton, above note 1, p. 165.

8 UN-HABITAT, *State of the World's Cities 2008/9: Harmonious Cities*, Earthscan, London, 2008, p. 15.

9 James C. Howell, 'Youth gangs: an overview', in *Juvenile Justice Bulletin*, August 1998, p. 2.

address the basic needs of the new urban population that determine the sustainability of urban growth and the risk of violence.¹⁰ When urban growth is unplanned and produces a rise in the number of urban poor, shanty towns, and slum dwellings, these populations are more vulnerable to crime and violence.¹¹

Gangs are often blamed for urban violence, despite the lack of systematic information on gang violence.¹² Not all violence perpetrated in cities is gang violence: for example, in Central America, 10–60% of criminal violence is attributed to gangs.¹³ Certainly at the lower estimate of 10%, but even at the upper estimate, many other actors are responsible for violence. In fact, it is extremely difficult to determine what percentage of crime results from gang activities.¹⁴ In the United States, law enforcement agencies use different definitions to measure gang crime – whether it is gang-related or gang-motivated.¹⁵ The former includes any crime committed by a gang member; the latter any crime committed on behalf of the gang.¹⁶ It makes a difference which definition is used. For example, research conducted on police data of homicides in Los Angeles demonstrated that using the motive-based definition results in counting half as many homicides in Los Angeles as gang homicides compared to using the member-based definition.¹⁷ In many instances, gang members acted as individuals to settle personal scores, and their actions were not committed on behalf of the gang. The involvement of a gang member in a crime or violent act does not make that act a gang activity.

Violence has often been a key attribute applied to gangs to distinguish them from other types of youth groups. However, the inclusion of violence in defining gangs has been disputed by those who suggest that gang involvement in violence needs to be assessed, rather than presumed. Gang members, although believed to be the primary perpetrators of crimes, are not.¹⁸ This myth of always being involved in criminal activities is driven largely by exaggerated portrayals in the media and gang member accounts.¹⁹ All gangs engage in some form of criminal and violent activities. However, these activities vary; they are not always violent in nature, and gang members rarely specialize in a particular type of crime.²⁰ In addition gang members, despite stereotypes, are not constantly engaged in criminal acts; instead, they spend far more time ‘hanging out’ than breaking the law.²¹

10 UN-HABITAT, above note 6, pp. 2–5 and 14–15.

11 *Ibid.*, pp. 2–5.

12 For an overview of gang violence regionally, see Scott Decker and David C. Pyrooz, ‘Gang violence: context, culture, and country’, in *Small Arms Survey 2010: Gangs, Groups, and Guns*, Cambridge University Press, Cambridge, 2010, pp. 129–156.

13 *Ibid.*, p. 141.

14 R. G. Shelden, S. K. Tracy, and W. B. Brown, above note 4, p. 21.

15 Malcolm W. Klein and Cheryl L. Maxson, *Street Gang Patterns and Policies*, Oxford University Press, Oxford, 2006, pp. 69–71; R. G. Shelden, S. K. Tracy, and W. B. Brown, above note 4, pp. 22–23.

16 J. Greene and K. Pranis, above note 5, p. 51.

17 *Ibid.*

18 *Ibid.*, p. 61.

19 J. C. Howell, above note 3, pp. 39–40.

20 M. W. Klein and C. L. Maxson, above note 15, pp. 73–74.

21 *Ibid.*, p. 69.

Rather than stereotyping gangs as violent, criminal enterprises, conceptualizing them as a particular form of social organization within a community moves the discussion beyond a subjective judgement of good and bad to a focus on the gangs, their actions, and their impacts. Gangs are one of many social actors in a community.²² They can have a positive or negative impact on communities depending on the role they play. In some instances, they act as predators and generate fear and insecurity; in others, they offer a form of protection unavailable from existing state security forces.²³ This does not imply that gangs are dangerous or benign, but that understanding gangs requires more than assessing the threat that they pose.

Understanding armed groups

What is an armed group? There is no standard, universally accepted definition.²⁴ On the surface it would seem obvious what an armed group is: at its most basic level an armed group is an organized group with a clear structure, membership, and the capacity to use violence in the pursuit of its goals. Yet this broad definition does not provide much assistance in distinguishing between different armed groups. For example, it could include state security forces, such as the police and the military, as well as state-sponsored security forces, such as paramilitaries and militias. In order to avoid the inclusion of state-controlled forces, which are widely perceived as groups that can legitimately bear and use arms, many definitions focus on those groups that exist outside state control.²⁵ Numerous groups with wide-ranging characteristics and who differ tremendously in their composition, activities, and roles in society fall under the heading of ‘non-state armed group’, including gangs, militias, rebel groups, insurgents, terrorists, and criminal organizations.²⁶

22 John M. Hagedorn, ‘Introduction: globalization, gangs, and traditional criminology’, in John M. Hagedorn (ed.), *Gangs in the Global City: Alternatives to Traditional Criminology*, University of Illinois Press, Chicago, 2007, p. 2.

23 For a discussion of the roles of gangs, see Enrique Desmond Arias and Corinne Davis Rodrigues, ‘The myth of personal security: criminal gangs, dispute resolution, and identity in Rio de Janeiro’s favelas’, in *Latin American Politics and Society*, Vol. 48, No. 4, Winter 2006, pp. 53–81; John M. Hagedorn, *A World of Gangs: Armed Young Men and Gangsta Culture*, University of Minnesota Press, Minneapolis, 2008, p. 21.

24 For various definitions of ‘armed group’ (and a discussion of competing definitions), see Jörn Grävingsholt, Claudia Hofmann, and Stephan Klingebiel, *Development Cooperation and Non-state Armed Groups*, German Development Institute, Bonn, 2007, pp. 22–28; David Petrusek, *Armed Groups and Peace Processes: Pondering and Planning Engagement*, Centre for Humanitarian Dialogue, Geneva, November 2005, pp. 8–10; Pablo Policzer, *Neither Terrorists nor Freedom Fighters*, Armed Groups Project, Working Paper 5, Latin American Research Centre, Calgary, 2005, pp. 6–10.

25 The International Council on Human Rights Policy (ICHRP), for example, defines armed groups as ‘groups that are armed and use force to achieve their objectives and are not under state control’. See ICHR, *Ends and Means: Human Rights Approaches to Armed Groups*, ICHR, Geneva, 1999, p. 5.

26 For examples of typologies of non-state armed groups, see Ulrich Schneckener, *Spoilers or Governance Actors? Engaging Armed Non-state Groups in Areas of Limited Statehood*, German Research Foundation (DFG), Research Centre (SFB)-Governance Working Paper Series, No. 21, 2009, Freie Universität Berlin,

These labels can offer some indication of the nature of the group, but can also be misleading. Positive labels, indicating that the group has some legitimacy in taking up arms, include revolutionaries, liberation movements, freedom fighters, militias, community volunteer organizations, and community defence forces. Negative labels, hinting at the illegitimacy and illegality of the group, include terrorists, rebels, insurgents, criminals, gangs, and warlords. These labels have at times been used interchangeably, and often the application of the label says more about who applies it than about the group itself.²⁷ Thus it is often more helpful to detail the characteristics of an armed group than to apply a particular name to it.

Rather than focusing on slotting groups into particular categories, researchers have suggested a number of ways of comparing groups based on their characteristics. One analyst categorizes groups based on how they fare across nine dimensions: motivation, purpose, strength, scope, funding, organizational structure, role of violence, relationship to the state, and the function they play in society.²⁸ Another suggests the use of ‘the lowest common denominator’ of how groups choose to mobilize, based on three key elements: membership (e.g. recruitment), logistics (e.g. weapons and food), and direction (e.g. command, control, and communication).²⁹ Another way of considering armed groups is to think of them as positioned along a spectrum that captures the respective group’s relationship to the government, its level of organization, and its capacity to perpetrate wide-scale violence.³⁰ The use of a spectrum underscores, and tries to address, the difficulty of providing clear definitions for commonly used group labels (e.g. militias, rebels, or warlords), the challenges involved in ranking different types of groups (e.g. according to levels of violence or organization), and the fact that particular armed groups may move across the spectrum over time (e.g. by becoming more or less violent, changing their level of organization, or shifting from supporting the government to opposing it).

Situating gangs

An important question is how gangs relate to armed groups.³¹ One tends to think of non-state armed groups as those that act in opposition to the government: groups

Berlin, October 2009; Richard H. Schultz, Douglas Farah, and Itamara V. Lochard, *Armed Groups: A Tier-one Security Priority*, Institute for National Security Studies (INSS), Occasional Paper 57, Colorado, September 2004; Anthony Vinci, ‘The “problems of mobilization” and the analysis of armed groups’, in *Parameters*, Vol. 36, No. 1, Spring 2006, pp. 49–62; Phil Williams, *Violent Non-state Actors and National and International Security*, International Relations and Security Network (ISN), Swiss Federal Institute of Technology, Zurich, 2008.

27 Michael V. Bhatia, ‘Fighting words: naming terrorists, bandits, rebels and other violence actors’, in *Third World Quarterly*, Vol. 26, No. 1, 2005, pp. 5–22.

28 P. Williams, above note 26, p. 8.

29 A. Vinci, above note 26, p. 50.

30 Jennifer M. Hazen, ‘Force multiplier: pro-government armed groups’, in *Small Arms Survey 2010*, above note 12, p. 258.

31 It is important to note that not all gangs are armed, and not all armed gangs use guns. See S. Decker and D. C. Pyrooz, above note 12, pp. 144–145.

engaged in civil wars – insurgents, freedom fighters, rebels – are the stereotypical non-state armed groups. Yet several more groups fall under the heading, although not all directly challenge the state. Other examples include gangs in Los Angeles, *maras* in El Salvador, and skinheads in Germany, the Russian Federation, and Ukraine. Gangs are certainly one type of non-state armed group, but how they compare to other non-state armed groups is less well understood. This differentiation is made harder by the fact that the label ‘gang’ is used broadly, covering an assortment of groups including youth gangs, motorcycle gangs, drug cartels, prison gangs, and organized crime.

The focus in this article is on youth gangs.³² As with armed groups, there is no single definition of gang.³³ However, a number of definitions are often used. Klein describes a youth gang as

any denotable adolescent group of youngsters who (a) are generally perceived as a distinct aggregation by others in their neighbourhood, (b) recognize themselves as a denotable group (almost invariably with a group name), and (c) have been involved in a sufficient number of delinquent incidents to call forth a consistent negative response from neighbourhood residents and/or law enforcement agencies.³⁴

Thrasher describes a gang as ‘an interstitial group originally formed spontaneously and then integrated through conflict’.³⁵ Hagedorn identifies gangs as ‘alienated groups socialized by the streets or prisons’.³⁶ Gang definitions have been challenged on a number of points, in particular the inclusion of crime or violence.³⁷ However, the inclusion of criminal and violent activities is useful for distinguishing a gang from other types of youth group.³⁸

Despite various concerns about being able to generalize, we can say that gangs share a number of characteristics. They are a predominantly urban phenomenon in larger cities, although they are now also found in smaller cities and

32 Unless otherwise noted, the term ‘gang’ refers to youth gangs, also often called street gangs. For a description of other types of gangs (e.g. motorcycle gangs, prison gangs, skinheads), see T. Delaney, above note 4, pp. 13–34.

33 For various definitions of ‘gang’ (and a discussion of competing definitions), see Robert J. Bursik and Harold G. Grasmick, ‘Defining and researching gangs’, in Arlen Egley, Jr. et al. (eds), *The Modern Gang Reader*, 3rd edn, Roxbury Publishing Company, Los Angeles, 2006, pp. 2–13; S. Decker and D. C. Pyrooz, above note 12, p. 131; J. Greene and K. Pranis, above note 5, pp. 9–11; J. M. Hagedorn, above note 23, pp. 23–31; M. W. Klein and C. L. Maxson, above note 15, pp. 5–9.

34 Malcolm W. Klein, *Street Gangs and Street Workers*, Prentice-Hall, Englewood Cliffs, NJ, 1971, p. 13, quoted in M. W. Klein and C. L. Maxson, above note 15, p. 6.

35 Frederic Thrasher, *The Gang: A Study of 1,313 Gangs in Chicago*, University of Chicago Press, Chicago, 1927, p. 57.

36 J. M. Hagedorn, above note 23, p. 31.

37 Mercer L. Sullivan, ‘Are “gang” studies dangerous? Youth violence, local context, and the problem of reification’, in James F. Short and Lorine A. Hughes (eds), *Studying Youth Gangs*, Rowman and Littlefield Publishers, Lanham, MD, 2006, pp. 15–16.

38 See Malcolm W. Klein, *The American Street Gang*, Oxford University Press, Oxford, 1995, pp. 23–28.

non-urban areas.³⁹ They tend to be groups that are marginalized from broader society. While a gang tends to be of a single ethnicity, no single ethnicity defines a gang.⁴⁰ Gang members tend to be young, in the age range of 12 to 30.⁴¹ Gangs have long been assumed to be predominantly male though, while this is still true, evidence suggests that females are playing an increasing role in gangs.⁴² Most gangs are loosely organized and moderately cohesive, and those that are more cohesive tend to be more delinquent.⁴³ Gangs rarely specialize in their offending; instead they engage in various delinquent acts, with violent crime being the least common activity.⁴⁴ The longevity of a gang ranges from a few months to decades.⁴⁵ The goals of gangs vary, but a key characteristic that distinguishes gangs from other non-state armed groups is that they do not seek to overthrow the state.

Institutionalized gangs

Early research on gangs suggested that they would simply run their course and would often dissolve as members aged; gangs were seen as temporary and part of a normal cycle of youth development.⁴⁶ Thus, while they might constitute a short-term nuisance to communities, they were not seen as a long-term threat to law and order. However, the identification of ‘institutionalized gangs’ in the 1980s challenged these views, prompting a discussion of developmental or evolutionary models of gangs and the concern that youth or street gangs could, over time, evolve into criminal organizations.⁴⁷ Although institutionalized gangs remain rare, their ability to sustain themselves, their involvement in extensive criminal activity and their capacity for large-scale violence have made them a focal point of policing efforts and government concern.⁴⁸

Institutionalized gangs have been called super gangs, criminal business organizations, and corporate gangs, and are characterized as being highly organized and formal organizations.⁴⁹ In many cases this is an exaggeration. Institutionalized

39 M. W. Klein and C. L. Maxson, above note 15, p. 108; David Starbuck, James C. Howell, and Donna J. Lindquist, ‘Hybrid and other modern gangs’, in *Juvenile Justice Bulletin*, December 2001, p. 2.

40 F.-A. Esbensen, above note 4, pp. 3–4; M. W. Klein above note 38, p. 29.

41 F.-A. Esbensen, above note 4, p. 3; M. W. Klein, above note 38, p. 29; Irving A. Spergel, ‘Youth gangs: continuity and change’, in *Crime and Justice*, Vol. 12, 1990, pp. 217–219.

42 M. W. Klein and C. L. Maxson, above note 15, p. 109; Joan Moore and John M. Hagedorn, ‘Female gangs: a focus on research’, in *Juvenile Justice Bulletin*, March 2001, p. 2.

43 M. W. Klein and C. L. Maxson, above note 15, p. 110; M. W. Klein, above note 38, p. 2.

44 M. W. Klein and C. L. Maxson, above note 15, p. 110.

45 M. W. Klein, above note 38, p. 29; Rob White, ‘Understanding youth gangs’, in *Trends & Issues in Crime and Criminal Justice*, No. 237, Australian Institute of Criminology, August 2002, p. 5.

46 I. A. Spergel, above note 41, pp. 177–179, 199.

47 See Deborah Lamm Weisel, *Contemporary Gangs: An Organizational Analysis*, LFB Scholarly Publishing, New York, 2002, pp. 73–77.

48 J. M. Hagedorn, above note 23, p. 20.

49 John M. Hagedorn, ‘Gangs in late modernity’, in J. M. Hagedorn, *Gangs in the Global City*, above note 22, p. 304; Sudhir Alladi Venkatesh, *Community justice and the gang: a life-course perspective*, unpublished paper, available at: http://www.streetgangs.com/academic/venkatesh_paper.pdf (last visited 1 June 2010); R. White, above note 45, p. 2.

gangs are not necessarily hierarchical with a single figurehead or a military-style chain of command. They are not, or at least rarely, 'godfather-run, centralized, efficient crime syndicates'.⁵⁰ They do tend to have a formal structure, but this often resembles a network more than a unified chain of command.⁵¹ Institutionalization encompasses two elements: longevity and normality.⁵² Longevity refers to the capacity of the group to sustain the gang over time;⁵³ normality refers to the gang becoming recognized as a normal part of the neighbourhood. What is fundamental to institutionalization is the gang's ability to perpetuate itself through the ongoing induction of members, the replacement of members who 'mature out', and the development of a sense of identity. Thus the gang exists independent of any one leader or leaders, which ensures that it persists even as membership and leadership change.

There is a tendency for both researchers and law enforcement officers to focus on larger, more violent, and more institutionalized gangs. Arguably these gangs are the most problematic in terms of security, which justifies a focus on them. However, this focus also tends to equate gangs with criminals or organized crime, which leads to a criminal justice approach of jailing gang members and heavy-handed policing tactics in many countries.⁵⁴ In most places, such military-style tactics (e.g. *Mano Dura* in El Salvador) have not worked well.⁵⁵ Although they may initially reduce gang violence, they do not appear to have a sustainable impact on reducing gang presence.⁵⁶ Instead, an emphasis on heavy-handed tactics can increase violence and gang cohesion. The use of the military to fight drug gangs in Mexico, for example, has provoked higher levels of violence.⁵⁷

Some researchers have suggested that gangs should be understood and treated as a form of insurgent group, arguing that cities face 'another kind of war' and that gangs are out to 'neutralize, control, or depose governments'.⁵⁸ Supporting evidence for this is extremely weak. Gangs share few characteristics with insurgent groups. Most importantly, gangs do not share the primary goal

50 J. M. Hagedorn, above note 23, p. 19.

51 *Ibid.*; D. L. Weisel, above note 47, p. 73.

52 John M. Hagedorn, 'Gangs, institutions, race, and space: the Chicago School revisited', in J. M. Hagedorn, *Gangs in the Global City*, above note 22, p. 23.

53 J. M. Hagedorn, above note 23, p. 8.

54 Robert K. Jackson and Wesley D. McBride, *Understanding Street Gangs*, Thomas Higher Education, Belmont, CA, 2000, pp. 28–29.

55 Jennifer M. Hazen and Chris Stevenson, 'Targeting armed violence: public health interventions', in *Small Arms Survey 2008: Risk and Resilience*, Cambridge University Press, Cambridge, 2008, pp. 289 and 293; Oliver Jutersonke, Robert Muggah, and Dennis Rodgers, 'Urban violence and security promotion in Central America', in *Security Dialogue*, Vol. 40, 2009, pp. 382–385.

56 J. M. Hagedorn, above note 23, p. 20.

57 See e.g. Sandra Dibble, 'Mexican military on drug war's front lines', in *San Diego Union Tribune*, 1 February 2009, available at: http://www.newssafety.org/index.php?view=article&catid=345%3Aamexico-security&id=11589%3Aamerican-military-on-drug-wars-front-lines&option=com_content&Itemid=100298 (last visited 23 June 2010); Duncan Kennedy, 'Mexico extends army's drugs fight', in *BBC News*, 28 May 2008, available at: <http://news.bbc.co.uk/1/hi/world/americas/7424797.stm> (last visited 23 June 2010).

58 Max G. Manwaring, *A Contemporary Challenge to State Sovereignty: Gang and Other Illicit Transnational Criminal Organizations in Central America, El Salvador, Mexico, Jamaica, and Brazil*, Strategic Studies Institute Monograph, US Army War College, Carlisle, PA, December 2007, pp. 1–2.

of insurgents: to seize state power. They are not a ‘new urban insurgency’ that ‘must eventually seize political power to guarantee the freedom of action and the commercial environment they want’.⁵⁹ They have not declared wars on governments or states. They have not sought to overthrow governments. In fact, in many places gangs seem more intent on either remaining under the radar of law enforcement or collaborating with state actors (including law enforcement) to ensure that they are not harassed and can continue their economic ventures.

Applying a conflict lens to gangs

This section assesses whether a conflict lens should be applied to the study of gangs. In particular, it focuses on four concepts often used in discussions of armed groups, and especially of insurgents: ungoverned spaces, the relationship to the state, the role of violence, and group sustainability.⁶⁰ This analysis provides a cautionary note to those who normally research issues of internal conflict and armed groups that simply applying a conflict lens to urban violence may not be appropriate. It is a warning to policy-makers and practitioners, who seem to be shifting their attention and their funding to focus on armed groups in non-conflict settings – which undoubtedly means a focus on gangs – that they are approaching uncharted waters and should move forward with caution. It will be necessary to question prior assumptions, approaches, modes of thinking, and typologies of groups and violence. It is not simply a matter of shifting the conflict lens to focus on gangs.

Ungoverned spaces

The term ‘ungoverned spaces’ was coined by a former US Secretary of State, George Shultz. Since then, it has risen to prominence in the vocabulary of the US military and in discussions of failed states and feral cities.⁶¹ The concept is intended to capture the lack of effective state presence in particular countries or cities. For the US government, the primary concern is that ungoverned spaces can provide a safe haven to terrorist groups, such as Al Qaeda, and to other armed groups and gangs, which could capitalize on the lack of government presence in areas in which they operate.⁶² Ungoverned spaces are perceived as threats to the state because they

59 Max G. Manwaring, *Street Gangs: The New Urban Insurgency*, Strategic Studies Institute Monograph, US Army War College, Carlisle, PA, March 2005, p. 2.

60 J. M. Hagedorn, above note 49, in comparing gangs to other armed groups, argues that gangs should be treated as social actors not terrorists.

61 See Jonathan Di John, *Conceptualizing the causes and consequences of failed states: a critical review of the literature*, Crisis States Research Centre, Working Paper Series, No. 2, January 2008; Richard J. Norton, ‘Feral cities: the new strategic environment’, in *Naval War College Review*, Vol. 56, No. 4, Autumn 2003, pp. 97–106.

62 See e.g. Robert D. Lamb, *Ungoverned Areas and Threats from Safe Havens*, Final Report of the Ungoverned Areas Project, Office of the Under Secretary of Defense for Policy, Washington, DC, 2008;

allow for the establishment and expansion of power of an armed group, the free reign of its activities, the resetting of the rules in those areas, and the flourishing of illegal activities that often contribute to supporting and sustaining the armed group.⁶³ In other words, ungoverned spaces provide a staging ground for armed groups to plan, prepare, and launch attacks against the state.

The term is misleading, however, since absolute ungoverned areas are rare. 'Ungoverned' refers to the lack of effective state governance, not the lack of governance in total – that is, anarchy. 'Ungoverned' states or areas are characterized by poorly controlled borders or airspace, lack of government authority beyond the capital or city centres, little or no provision of security by the state and limited protection of citizens from violence, weak political systems, deficiency in the rule of law, and the inability to establish a legitimate monopoly of power.⁶⁴ The extent to which a state or territory exhibits these characteristics varies. This variation can be depicted along a continuum:

At the benign end of the continuum are otherwise healthy states that have lost control of some geographic or functional space within their territories ... At the other end are failed states, in which the institutions of the central government are so weak that they cannot maintain authority or political order beyond the major cities and sometimes not even there.⁶⁵

In many developing countries, the state simply does not reach far from the capital city. The lack of state presence may be unavoidable, resulting from a lack of capacity, resources, and manpower to effectively administer distant towns and cities. It can be intentional, resulting from a concentration of power in the capital and a choice to ignore peripheral areas. It can also result from motives of profit. Ungoverned spaces are, and have been, created and tolerated for a variety of purposes: for example, to reduce border disputes, to enable corrupt politicians to facilitate dubious financial transactions, and to facilitate the drug trade.⁶⁶ The economic profits generated in and through ungoverned spaces create a constituency committed to maintaining these spaces.⁶⁷ This constituency can include anyone from a local vendor interested in selling his goods to a local leader who can tax local economic activities to the national politician who profits from

US Department of Defense, *US National Defense Strategy*, Washington, DC, June 2008. Also see Stewart Patrick, 'Weak states and global threats: fact or fiction?', in *Washington Quarterly*, Vol. 29, No. 2, 2006, pp. 27–53; Angel Rabasa et al., *Ungoverned Territories: Understanding and Reducing Terrorism Risks*, RAND Corporation, Santa Monica, CA, 2007, pp. 1–2.

63 Troy Thomas, 'Control roaming dogs: governance operations in future conflict', in *Military Review*, January–February 2006, p. 80.

64 A. Rabasa et al., above note 62, p. 1; Laura Tedesco, *The Latin American state: 'failed' or evolving?*, FRIDE Working Paper 37, May 2007, p. 1.

65 A. Rabasa et al., above note 62, p. 1.

66 Anne L. Clunan and Harold Trinkunas, *Ungoverned spaces? Alternatives to state authority in an era of softened sovereignty*, paper delivered at International Studies Association annual meeting, San Francisco, 26–30 March 2008, available at: http://www.allacademic.com/meta/p_mla_apa_research_citation/2/5/1/3/5/pages251351/p251351-1.php (last visited 23 June 2010).

67 *Ibid.*

allowing these activities to take place. It can also include a variety of armed groups who take advantage of limited government presence in order to organize and operate. However, even in ungoverned spaces there is still some form of governance.

In areas where there are no formal governance structures, or where they are extremely weak and ineffective, some form of informal structure usually exists to fill the security vacuum left by government.⁶⁸ In some cases this comes in the form of local or tribal leadership, which is often considered benign and acceptable, though perhaps not preferable to state rule. Community groups might also provide security. In Nigeria, communities have organized vigilante groups (akin to neighbourhood watch groups in the United States) to patrol villages and deter crime because they cannot rely on the police, or because the police simply have no presence in the village.⁶⁹ In other cases, governance, of a sort, is provided by an armed group capable of imposing its will on the area in question. Armed groups vary in the level of governance they impose and the extent to which they provide social services. The role they play often depends on their goals and what they need to achieve them.

No armed group, except for those aiming to overthrow the government, prefers a complete absence of governance. Armed groups gain nothing from chaos or the absolute lack of governance. Instead, informal actors are more likely to prefer the under-provision of governance, or at least the assurance of a functioning economy and basic security, but nothing that would interfere with their illegal activities.⁷⁰ Despite notions that the ‘bad guys’ like to fill in where the state is completely absent, and that such groups seek out those areas, this is unlikely to be entirely true. In an environment with absolutely no services or administration, the group would have to provide these services at its own cost in order to carry out its activities. In anarchy, it would be hard (and costly) for informal groups to function.⁷¹

Often it is not a question of whether there is governance but of what type of governance is being exercised and by whom.⁷² *Who* fills gaps matters because they become the centre of power in the community. *How* these gaps are filled matters because this determines the extent of the challenge to the state. Actors in these settings possess varying motivations for filling governance gaps and therefore pose different challenges to the state. Gangs, rebel groups,

68 Monika Francois and Inder Sud, ‘Promoting stability and development in fragile and failed states’, in *Development Policy Review*, Vol. 24, No. 2, 2006, p. 143.

69 Jennifer M. Hazen with Jonas Horner, *Small Arms, Armed Violence, and Insecurity in Nigeria: The Niger Delta Perspective*, Small Arms Survey, Occasional Paper No. 20, Geneva, 2007, pp. 73–75, 90–91, and 106–107.

70 See Jessica Piombo, *Growing wild? Ungoverned spaces and terrorist proliferation in Africa*, paper presented at the American Political Science Association annual meeting, Chicago, 30 August–2 September 2007, available at: http://www.allacademic.com/meta/p_mla_apa_research_citation/2/0/9/5/2/pages209529/p209529-1.php (last visited 23 June 2010).

71 *Ibid.*

72 A. L. Clunan and H. Trinkunas, above note 66.

organized crime, terrorists, and drug traffickers, depending on how they ‘govern’ and what services they provide, exhibit different levels of control over and support within the community. The more security and services the group provides, the more support the community is likely to give the group, and the less the community needs the government. This situation can erode support for government and diminish the value and legitimacy of a return of government to the area.⁷³

Given the wide variation of armed groups – including insurgents, rebel groups, criminal organizations, and terrorists – it is difficult to generalize how they operate within ungoverned spaces. Criminal organizations and terrorists may enjoy the room to manoeuvre offered by such spaces, but they are unlikely to seek to establish effective governance over them. Lack of state presence is most marked in cases of civil war, where rebel groups control certain parts of a state. In rare cases, rebel groups have created a form of parallel government that offers some level of governance and may even provide limited social services, such as in Côte d’Ivoire.⁷⁴ These actions are not altruistic charity: armed groups provide services when they serve their larger goals. Gangs tend to operate in areas that are under-governed. In these situations, the determining factor is not an absence of government, or that government services are not available, but that both are inadequate. While this provides opportunities for gangs to take advantage of this gap in state control, the causal arrow points both ways; under-governed areas also contribute to the creation of gangs as a result of the insecurity there.

In some cases gangs provide a form of governance, dispute resolution, and security.⁷⁵ Over time, this can erode the capacity of the government to act in these areas and embolden and empower a gang, and eventually lead to its entrenchment in a particular community. However, while gangs do tend to be armed actors, who want to control certain aspects of neighbourhood life (e.g. economic activities, local neighbourhood dynamics, territorial claims with competing groups), they rarely directly challenge the state. Therefore, unlike armed groups in civil wars (where that *is* their intention), gangs pose a different challenge to the state – not one of survival in the crudest sense, but in terms of presenting an alternative to government in areas where government is weak and ineffective. This poses an indirect threat to the state in that it undermines governance, democracy, and law and order in these areas.

Relationship to the state

Many armed groups can pose a direct threat to the state. This is especially true in cases where their goal is to overthrow the government, secede, or in some other

73 E. D. Arias and C. D. Rodrigues, above note 23, pp. 77–78.

74 See Daniel Balint-Kurti, ‘Côte d’Ivoire’s *Forces Nouvelles*’, Africa Programme Paper, Armed Non-state Actors Series, Chatham House, London, September 2007.

75 E. D. Arias and C. D. Rodrigues, above note 23, pp. 65–73.

way change the governing structure of the state. This is not the case with gangs. Certainly, gangs with great involvement in the informal, and in particular illegal, economy seek to have friends inside government and the police to pave the way for smooth business operations. But this is far different from aiming to take over the government and become the governing power. The relationship between the gang and the state – and, importantly, the level of the challenge that the gang poses to the state – depends on four factors: the goals of the gang; the relationship of the gang to political and security officials; the desire of the state to impose control in ungoverned areas; and the relationship of the gang to the community in which it operates.

The goals of gangs vary and can be numerous, including the creation of a brotherhood and family, economic gain, ensuring security, and in some cases engaging in politics. It is rare for a gang to seek to overthrow a government. Despite concerns about gangs becoming insurgents,⁷⁶ there are no examples of a gang organizing and arming in order to depose a standing government. Gangs do engage in clashes with law enforcement and, in some instances, with state military forces. However, these clashes result from government efforts to impede or eliminate the gang's illegal activities, and tend to originate from the state. Gangs do not appear to seek violent confrontation with the state, which would be expected if they did desire to depose the government. Thus there is no direct physical threat to the state. However, survival and economic goals could create indirect challenges to the state. It is not uncommon for a gang to seek to maintain control over the areas in which it operates. In many cases this is a neighbourhood, not a large territory. Gangs will seek to defend their territory from other gangs, and may aim to control economic activities within the neighbourhood, but such actions rarely deny state actors access to the territory.

The second important factor is the nature of the gang's relationship to the government or to political leaders. In most instances, such activities are on a small scale. Most gangs are loosely organized groups, whose involvement in criminal activities at times brings them into contact with law enforcement, but which otherwise remain largely outside of politics. In some cases, gangs possess links to politicians and have been used as political tools to help politicians win elections, intimidate opponents, and implement policies.⁷⁷ In such situations, the gang does not pose a threat to the state but instead acts to further the interests of the state, or at least certain political interests. Gangs may also collaborate with politicians or security officials in order to ensure the smooth operation of their economic activities, such as drug trafficking. Such collaboration may be with certain elements of the state and not others, leading to mutually beneficial relations with collaborators but to conflictual and often violent relations with other elements of the state. It is the role of institutionalized gangs in the broader 'infiltration' of the

76 M. G. Manwaring, above note 59, develops an argument for linking gangs to insurgency.

77 J. M. Hagedorn, above note 49, pp. 302–303; J. M. Hazen, above note 30, pp. 262–267; I. A. Spergel, above note 41, p. 240.

political system and security sector that raises the most concerns about corruption and insecurity.

The third factor is the desire of the state to control ungoverned spaces, whether because of internal or external pressure, which often entails efforts to rein in gangs. Gangs most often exist and operate in neighbourhoods that are already largely marginalized from mainstream society. Such areas tend not to have a strong government presence. They could be considered as being at the lower end of the spectrum of ungoverned, but most of them do not generate challenges to the state and gangs operating in them focus their attention internally on the neighbourhood, not externally against the government. Governments are unlikely to pay much attention to those areas or their gangs. Instead, they are more likely to focus on areas where identified gangs are engaged in high levels of homicide or where institutionalized gangs and organized crime operate and use the lack of government presence to their advantage, for example, to conduct drug trafficking, smuggling, or other large-scale illicit activities. In the former areas, law enforcement has often used a mix of negotiations and policing to reduce violence;⁷⁸ in the latter areas, it has engaged in a 'war on drugs' and a 'war on gangs'.

The fourth factor is the nature of the relationship between the gang and its host community. This includes both what the gang provides to the community and how much support the gang receives from it.⁷⁹ The acceptance and identification of a gang with a particular neighbourhood does not necessarily equate with widespread community support. Communities may tolerate, or even support, gangs because of a security or economic function that they perform in the community. However, gangs may be less supported than they are feared, and normality may result from an inability to change the situation and a reluctant acceptance of the gang's authority. The more beneficial the presence of the gang, the more likely the community is to support it, even if it does not support all of the gang's activities.

The relationship of the gang to the state is directly linked to the challenge it poses to the state. In situations where the gang poses no or little threat, the state is likely to allow it to persist. In situations where gang activities disturb normal daily life – for example, through high levels of homicide or crime – the state is likely to crack down to the extent that the gang retreats to a less visible role. In situations where gangs openly and actively try to control illegal trade (e.g. drugs, trafficking, money laundering), engage in extremely high levels of violence, or collaborate with politicians and infiltrate the state, the state is likely to view the situation as a more direct threat to its sovereignty and stability. Few gangs reach the level of posing this kind of threat, and most that do are not youth gangs but drug-trafficking and organized crime organizations.

78 In the US, a number of cities have followed the Boston model of Operation Ceasefire. See National Institute of Justice, *Reducing Gun Violence: The Boston Gun Project's Operation Ceasefire*, US Department of Justice, Washington, DC, 2001.

79 J. C. Howell, above note 9, p. 5.

The role of violence

In war, violence remains the primary means by which an armed group gains territory, defends itself against attack, and seeks to overthrow the government. Violence is also a tool to instil fear in populations. This fear makes populations more malleable and gives the armed group an element of control through which it can extract resources and reluctant support. Armed groups have used violence to forcefully recruit members. They have also kept new recruits by making them commit acts of violence against their communities, ensuring that they cannot return home. Commonly, when an armed group cannot pay its soldiers, it allows them to loot for their salary. Armed groups use violence in many ways in war, and not all of them are to the benefit of the population.

In an urban situation, gangs use violence in ways that are similar to armed groups' use of violence in war. Gangs can use violence, or the threat of violence, to create fear in a community and to control the neighbourhood. They often engage in clashes to defend their territory; such clashes tend to take place along the borders of gang territories, where two gangs meet. Gangs direct their violence toward other gangs for territorial defence and to protect the group from physical attack, but also to defend the gang's honour and reputation, and to settle vendettas. However, there are important differences in how gangs use violence compared to armed groups.

Many gangs appear to have rules for how and when violence can be used, and rules for how violations are punished.⁸⁰ Gangs do not use violence to recruit members, who usually join the gang by choice, although in some cases insecurity and peer pressure can encourage enlisting. While the initiation of new gang members can be violent, the intent is not to harm but rather to prove their bravery and commitment to the gang. Some gangs have rules about how or whether members can leave the gang. In some cases the departure is violent, similar to the initiation process, but in very few cases is death the punishment imposed for leaving. Violence is not used to pay or reward gang members, as in armed groups, but members have used violence to resolve their own personal disputes or for economic gain.

The targeting of violence is also different. Whereas armed groups may move through areas and have no attachment to particular towns, gangs tend to be territorially based and protect their 'turf' and the people living in it.⁸¹ They often use violence to protect their home community from external (and internal) threats. The one exception is drug gangs, which act more like adult criminal organizations and are largely responsible for 'gang' homicides and 'gang' drug wars.⁸² In addition,

80 Dennis Rodgers, '*We live in a state of siege*': violence, crime, and gangs in post-conflict urban Nicaragua, DESTIN Working Paper Series, No. 02–36, Development Studies Institute, London School of Economics, September 2002, p. 6.

81 *Ibid.*

82 James C. Howell, 'Youth gang homicides: a literature review', in *Crime and Delinquency*, Vol. 45, No. 2, April 1999, p. 227.

armed groups tend to target civilians in civil wars. By contrast, most gang violence tends to target other gang members. Clashes with state forces happen, but these are not inherent to the goals of the gang: gangs do not engage in violence as a means to try to overthrow the government.

Sustainability of the group

The notion of sustainability pertains to the question of group longevity. In many instances gangs do not last more than a few years, yet some are able to perpetuate themselves over decades. The question is what enables some gangs to persist over time. In the conflict literature, explanations of armed group sustainability focus on factors such as insecurity, economic opportunities, organization, access to resources, and irreconcilable differences with the state. Similar factors seem to contribute to the perpetuation of a gang. At least four factors play a role in sustainability: institutionalization (which has already been discussed), security concerns, normalization of the group, and economic opportunities.

Security concerns contribute to the creation of a gang and are a common reason for sustaining it. Gangs often emerge in difficult circumstances and in response to a threat posed to individuals, who then group together to become gangs. Conflict then provides a reifying force: something that not only binds individuals together through a common purpose but keeps them together when the threat persists. It also provides an incentive for new members to join the gang. Gangs often emerge in areas of high poverty, discrimination, and marginalization. These conditions contribute to insecurity, and gangs offer a form of security by providing another form of social institution for individuals separated from mainstream institutions.⁸³

Thrasher described the normalization of the gang as an organic process that resulted largely from collective behaviours that, over time, generated 'the development of tradition, unreflective internal structure, esprit de corps, solidarity, morale, group awareness, and attachment to a local territory'.⁸⁴ In this sense, normalization refers to the development of the gang itself. As discussed earlier, normalization is also a part of institutionalization and refers to the external normalization of the group whereby gangs become normal features of neighbourhoods where they are tolerated, if not liked, and allowed to continue their activities.⁸⁵ Internal and external normalization develop patterns and structures that are reified through repeated behaviour, thereby contributing to the solidification and perpetuation of the gang.

Sustainability also depends on the ability of the gang to establish itself as an economic player. Many gangs engage in activities in the informal market. Yet there is a difference between being involved in the informal market and being

83 I. A. Spiegel, above note 41, p. 171.

84 F. Thrasher, above note 35, p. 57.

85 J. M. Hagedorn, above note 52, p. 23.

an organized crime enterprise. Most youth gangs are involved in petty crimes; some may offer a form of employment or income. By contrast, institutionalized gangs ‘support and enrich themselves by the underground economy’.⁸⁶ In many cases, involvement in the informal market includes participation in the illegal drug trade;⁸⁷ it may also include other activities such as prostitution, local taxation of street vendors, the imposition of security fees, or the provision of security services for hire. Most institutionalized gangs are not highly organized criminal syndicates. Those that do reach this level tend to be gangs that have evolved into drug cartels or organized criminal groups. This evolution, and the fact that these groups often exhibit characteristics and behaviour different from those of youth gangs, suggests the need to reconsider how we conceptualize and analyse special sub-sets of gangs.

Conclusion

Part of the problem in trying to understand gangs is the ease of lumping all of the bad guys together. Gangs resemble other armed groups. They are engaged in criminal and violent activities like other armed groups, though usually on a much smaller scale. They operate, when engaged in these activities, outside the law. They also operate in cities where extremely high levels of violence, though not all gang-perpetrated, raise concerns about gang presence. As a result, it might be tempting to use the same analytical frameworks. Instead, there is a need to distinguish between and among different armed groups, including gangs.

Wide variation exists among armed groups, as it does among different types of gang. The challenge is to develop a better framework for understanding these differences, as well as group similarities, in order to start disaggregating groups into more easily understood phenomena. Some gangs – the institutionalized and very violent – may in fact share characteristics with insurgencies, and thus the conflict lens and armed group framework might apply. But very few gangs reach this level, suggesting that such an approach is neither appropriate nor useful for understanding the thousands of gangs that exist in communities across the globe.

86 J. M. Hagedorn, above note 23, p. 19.

87 Steven D. Levitt and Sudhir Alladi Venkatesh, ‘An economic analysis of a drug-selling gang’s finances’, in *Quarterly Journal of Economics*, Vol. 115, No. 3, August 2000, pp. 755–789.

Territorial gangs and their consequences for humanitarian players

Olivier Bangerter*

Dr. Olivier Bangerter has been working for the International Committee of the Red Cross (ICRC) since 2001 and has been the advisor for the dialogue with armed groups in the unit for relations with arms carriers since 2008. He is a graduate in theology of both Lausanne (masters) and Geneva (PhD) universities.

Abstract

Territorial gangs are among today's main perpetrators of urban violence, affecting the lives of millions of other people. They try to gain control of a territory in which they then oversee all criminal activities and/or 'protect' the people.

Such gangs are found to differing degrees on every continent, although those given the most media attention operate in Central America. The violence that they cause has a major impact on the population in general and on their members' families, as well as on the members themselves.

Humanitarian organizations may find themselves having to deal with territorial gangs in the course of their 'normal' activities in a gang's area, but also when the humanitarian needs per se of people controlled by a gang justify action.

This article looks at some courses of action that may be taken by humanitarian agencies in an environment of this nature: dialogue with the gangs (including how to create a degree of trust), education, services, and dialogue on fundamental issues. Such

* The views expressed in this article reflect the author's opinions and not necessarily those of the International Committee of the Red Cross. This article was written prior to the publication of the Small Arms Survey's Yearbook 2010 on 'Gangs, Groups and Guns' (Cambridge University Press). The reader can find there a photo essay on gang life and seven chapters on the various aspects of the phenomenon (pp. 68–253).

action only makes sense over the medium to long term; it may have a very positive impact but only allows the symptoms of a deep-seated problem to be treated.



Gangs are one of the key players in urban violence. That has been the case throughout history, but the urbanization of our societies is making them more visible and increasing their numbers. Today, hundreds of thousands of people belong to territorial gangs, affecting the lives of millions of others. In many countries, humanitarian workers come face to face with that reality, not only in the fields of health, education, and development but also in connection with refugee work and protection work in prisons.

The word ‘gang’ is often misused in media reports; some gangs, whose members indicate their membership by tattoos on their faces and who can be extremely violent, provide excellent material for sensationalist reporting. Some years ago, one American writer went so far as to suggest that gangs are a new form of insurgency against the state, or even against the states in an entire region.¹

It is important to define what is meant by the word ‘gang’, particularly when the gang is described as ‘territorial’. Etymologically, a ‘gang’ is a team or a group. In English, the word has in turn designated a group of convicts chained together and then a group of individuals engaging in criminal activities. The nature of those criminal activities is often ill-defined: whereas some use the word ‘gang’ for any kind of group of adolescents hanging around on street corners, others do not hesitate to apply it to transnational organizations such as the Italian or Russian mafia.

We will begin by giving a broad typology of the perpetrators of armed violence in order to position gangs with regard to other organizations and to shed light on some of their specific features. We will then study the main characteristics of gangs, and some elements that suggest that they are more likely to survive or even to grow than to die out. We will conclude by considering the humanitarian implications of their activities and the courses of action that may be taken by humanitarian players working in communities affected by gangs or among gang members.

1 Max G. Manwaring, *Street Gangs: The New Urban Insurgency*, March 2005, available at <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub597.pdf> (last visited 7 June 2010). One can go along with the author when he says that gangs are a serious security problem for states, but not when he goes on to assert that they seek to topple them. That takes no account of the fact that the gangs to which he refers have no political programme, or of the fact that they present no real threat to the states even if they are more numerous than the uprisings that preceded them. Manwaring states that the gangs in El Salvador have 39,000 members, which represents more than ten times the number of combatants in the Frente Farabundo Martí para la Liberación Nacional (FMLN) during the war (approximately 3,500); the FMLN gained control of 20% of the national territory, far more than these ‘*maras*’. Even if account is taken of the fact that there are two dominant gangs, those *maras* would be powerful enough to topple the state if they really constituted an insurgency.

Armed perpetrators of internal violence

In situations of internal violence,² parties are more diverse than the parties to non-international armed conflicts. Before we focus on territorial gangs, it is useful to establish an overview of the perpetrators of internal – frequently urban – violence. The police and/or the army may find themselves dealing with some players who do not resort to organized armed violence and others who make systematic use of it. Among the groups that only resort to armed violence in exceptional circumstances, reference may be made to trade unions, student groups,³ indigenous movements and/or landless farmers' associations,⁴ unorganized mobs, and groups with minimal organization.⁵

The players who habitually resort to armed violence may be divided into five categories, based on the rationale behind their activities: armed opposition groups, armed pro-government groups, 'community' groups, territorial gangs, and 'criminal' groups. Their activities and often their very existence place all these groups in conflict with the national law.

There is no broadly accepted definition of these categories. For want of genuine definitions, we will make use here of ideal types. The main goal is not to seek the perfect definition but to determine the operational rationale of a given group, which then guides our understanding of the phenomenon and helps when devising the strategy to be pursued by a humanitarian player. It is enough to bear in mind that a given group may present characteristics found in several models or – more frequently – may shift from one to another.⁶

Typology

Armed opposition groups

Armed opposition groups take part both in internal conflicts and also in situations of internal violence. They set themselves up in opposition to the state or its administration, by contesting either their existence or some of their decisions. Their political aim may be vague but they generally have at least one slogan. They are found in both urban and rural areas. Examples: the Movement of Democratic

2 This is not a legal category, unlike the categories of non-international armed conflict, internal disturbances, or internal tension. It is used here to cover non-conflict situations in which organized violence is used by at least one of the parties.

3 The events of May 1968 in France are a good illustration.

4 In Bolivia in 2009, for example.

5 The youth gangs in the French suburbs should be included in this category, although some of them seem to be trying increasingly to procure firearms or even war weapons.

6 Bandits blocking roads in Central Africa, the Aryan Brotherhood (an American prison gang), and Cosa Nostra are thus midway between territorial gangs and criminal groups. Arkan's Tigers, who were originally supporters of Red Star Belgrade, became a pro-Serbia armed group in the conflict in Bosnia; their leader had a previous criminal record.

Forces of Casamance (MFDC) in Senegal, the Sabaot Land Defence Forces (SLDF) in Kenya until 2008, the remnants of Shining Path in Peru after 1999, the Huthis in Yemen.⁷

Pro-government armed groups

These groups are active in non-international armed conflicts, as well as in situations of internal violence. They set themselves up in rivalry to armed opposition groups, although they do not work directly under state control. They are frequently created with the agreement and the support of the states or of some of their agents. They exist more frequently in rural areas. Examples: the Autodefensas Unidas de Colombia (AUC) in Colombia, the Civil Defence Forces/Kamajors in Sierra Leone.

‘Community’ groups – for want of a better term

‘Community’ groups see themselves as taking part in a struggle but do not set themselves up as rivals to the state; their adversaries are other similar groups. They oppose them to protect ‘their own people’ or to harm ‘others’. Although they are very diverse in nature, what they have in common is that they act in defence of their own interests, or rather those of the community to which they belong. The clashes are often motivated by the desire to gain physical or symbolic territory but sometimes also property such as livestock. These groups are rarely permanent and, once an operation is over, their members generally merge back into the community. They are found in urban and rural areas. Examples: the *lashkars* (tribal armies) in Afghanistan and in Pakistan, the so-called Arab groups in Darfur, the armed ‘citizen’s defence patrols’ in Guatemala, European football hooligans, landowners’ militias in the Philippines, ‘youth gangs’ in French *banlieues*.

As a source of more or less ready-made ‘troops’, they are often instrumentalized by the parties during a non-international armed conflict and fairly easily become pro-government armed groups; among the best known examples of this shift are the Kamajors in Sierra Leone and the Awakening Councils in Iraq.⁸

‘Criminal’ groups⁹

The aim of these groups is to get rich by means of illegal activities. They may specialize in one particular illegal activity, such as drug trafficking, burglary, or

7 At different times in their history, most of these groups have been parties to a non-international armed conflict and to a situation of internal violence; some of them have changed several times: they were not set up at the official start of a conflict and have frequently not been disbanded at the official end of a conflict.

8 They may also act as an environment fostering the development of armed opposition groups, such as some tribal militias in Darfur.

9 All groups described carry out activities that are prohibited under national law and may therefore be qualified as ‘criminal’ by an external observer. However, we all instinctively recognize that there is a difference between a group of bank robbers or drug traffickers and the other categories listed.

racketeering. They may be very small or spread out over an entire country or region, city or rural area. They do not need to have physical control of a territory and they think more in terms of controlling the markets; rather than challenging the state, they try to infiltrate it if they can, so that they are, to a certain extent, left in peace. Examples: the Russian mafia, the Chinese triads, the Afghan narcotics smugglers, the Somalian pirates.¹⁰

Territorial gangs

These groups are midway between criminal groups and community groups: they try to gain control of a territory to oversee all criminal activities in that area and/or to 'protect' the people living there. They only question the authority of the state (or of some of its representatives) when it gets in the way of their activities or interferes on their territory. The phenomenon is mainly urban and prison-related.¹¹ Examples: the Bloods and the Crips in the USA,¹² the Seven Seven in Timor-Leste,¹³ the Numbers in South Africa, the Mungiki in Kenya,¹⁴ the *maras* in North and Central America.

- 10 Although crime is governed by national law, some types of criminal activities are also subject to specific rules under international law; these activities include piracy, which is defined in the United Nations Convention on the Law of the Sea; drug trafficking – United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention); and human trafficking – Annex II of the United Nations Convention against Transnational Organized Crime.
- 11 See American National Gang Intelligence Center, *National Gang Threat Assessment 2009*, Washington, DC, which distinguishes between three categories of gangs operating in the United States: street gangs, prison gangs, and motorcycle gangs. Including the last category makes sense from the perspective of criminal repression and because they share a fair number of organizational features. However, their dynamics are different from those of the other two categories in the sense that they do not control any physical territory and do not aspire to do so. That constitutes a major difference for humanitarian agencies, although that way of viewing things may seem strange to security forces. Readers interested in motorcycle gangs may refer to the writings of Arthur Veno on such gangs in Australia and to a recent article by John Bruni, 'Cycles of violence: Australia's outlaw motorcycle gangs', in *Jane's Intelligence Review*, January 2010, pp. 38–43.
- 12 Two gangs that comprise mainly Afro-Americans and that are involved in drug trafficking and other criminal activities. The Bloods have between 7,000 and 30,000 members in the USA, spread over 123 towns in 33 states; the Crips have 30–35,000 members in 221 towns in 41 states (see *National Gang Threat Assessment 2009*, above note 11, p. 25). These two gangs are more a collection of subgroups with the same culture than a centralized organization.
- 13 For Timor-Leste, reference may be made to James Scambary, *A Survey of Gangs and Youth Groups in Dili, Timor-Leste*, 2006, available at: http://www.etan.org/etanpdf/2006/Report_Youth_Gangs_in_Dili.pdf (last visited 7 June 2010) or to Austcare and Small Arms Survey, *Timor-Leste Armed Violence Assessment (TLAVA), Groups, Gangs, and Armed Violence in Timor-Leste*, TLAVA Issue Brief No. 2, April 2009, available at: http://www.smallarmssurvey.org/files/portal/spotlight/country/asia_pdf/asia-timor-leste-TLAVA-IB2-En.pdf (last visited 7 June 2010).
- 14 This group is often described as a sect because of its religious beliefs; however, it behaves like most of the gangs in the world in terms of controlling territory and relation to the state. See Commission of Inquiry into the Post Election Violence (CIPEV), *Final Report*, 2008, p. 27, which refers to 'Mungiki, which up through the 1980s had been largely a cultural cum religious cult in the Kikuyu inhabited parts of the Rift Valley. Later it metamorphosed into a Mafioso style gang that grew and eventually became a shadow government in the slums of Nairobi and in parts of Central Province'. Like the gangs in Jamaica and Timor-Leste, it is partly supported by politicians in exchange for services (*ibid.*, pp. 104, 121–123).

Some territorial gangs provide a protection service for criminal groups, and particularly for drug traffickers, which makes it difficult to distinguish between them.

The phenomenon of territorial gangs

Having situated them in the environment of internal, frequently urban, violence, we can now consider territorial gangs as such. ‘Gangs’ are not a new feature of the landscape of violence: the sociologist Frederic Milton Thrasher counted 1,313 of them in Chicago in 1927.¹⁵ ‘Gangs’ are found in all societies throughout the world. They mainly flourish in the disadvantaged and marginalized neighbourhoods of large cities, where the police provide little security and where the state services are not very effective. Many of them are no more than very short-lived youth gangs, but a certain number of them have become permanent enough to allow them to control an area and enforce their law there, thus changing from being an ordinary gang to a territorial gang. The best known of these currently exist in Central America, in Brazil, and in the USA,¹⁶ but every continent is affected, albeit to differing degrees.¹⁷

A gang responds primarily to two needs: the sense of belonging to a group and personal status. Territorial gangs are primarily made up of young people¹⁸ with no economic or social prospects, for whom gang membership opens up the perspective of a more enjoyable or more exciting life, even if it is shorter, and provides a sense of purpose. The decision to join a gang may be perfectly logical when other economic and social prospects are limited. In Brazil, the hallowed expression defines the choice as living ‘*pouco como um rei, ou muito como um zé*’ (‘a little like a king or a lot like a nobody’).¹⁹ Poverty and marginalization are at one and the same time the causes and the consequences of gangs, and a culture of violence in the youth environment may be an aggravating factor in terms of their emergence. That culture of violence often includes domestic violence, violence linked to an armed conflict,²⁰ or a culture that glorifies the power of

15 For an overview of some gangs in Chicago from 1904 to the present, see John Hagedorn, *A World of Gangs*, Minnesota University Press, Minneapolis, 2008, pp. 65–83.

16 To a lesser extent in Canada and the United Kingdom.

17 In Russia (and the USSR, historically), they are referred to as the ‘Kazan phenomenon’, following the studies by Alexander Salagaev of that town. See, for example, Alexander Salagaev, Alexander Shashkin, Irina Sherbakova, and Elias Touriyanskyi, ‘Contemporary Russian gangs: history, membership, and crime involvement’, in Scott H. Decker and Frank M. Weerman (eds.), *European Street Gangs and Troublesome Youth Groups*, AltaMira Press, Oxford, 2005, pp. 169–191. For China, reference may be made to the studies by Lening Zhang: for example, Lening Zhang, Steven F. Messner, Zhou Lu and Xiaogang Deng, ‘Gang crime and its punishment in China’, in *Journal of Criminal Justice*, Vol. 25, No. 4, 1997, pp. 289–302.

18 Frequently, but not exclusively, young men.

19 In the words of a popular piece of rap music, quoted by Pablo Dreyfus *et al.*, *Small Arms in Rio de Janeiro: The Guns, the Buyback and the Victims*, a study by the Small Arms Survey, Viva Rio and ISER, December 2008, p. 116.

20 The role of demobilized combatants is obvious in El Salvador and Nicaragua, and also in Sierra Leone.

warriors;²¹ but music and film productions, as well as video games and magazines,²² also glorify criminal violence or that of gangs.²³

Evolution

Although gangs that control a territory are not a new phenomenon, several developments have been observed that alter the problem and seem to predict long life for them.

First, the urban population is increasing (representing 50% of the world population in 2008²⁴), thus creating more and more densely populated agglomerations, which are as many recruitment areas, especially when essential services are not – or only inadequately – provided. Second, the weapons used are increasingly powerful: the gangs have graduated from using steel weapons such as flick knives to the systematic use of handheld firearms. At present, war weapons – including assault rifles such as the M16 and the AK47 – are regularly used or seized. Various indications suggest that the development will not end there and that heavy weaponry could become more widespread among both the gangs and criminal groups: in France, anti-tank missiles and explosives have been used in some robberies;²⁵ and in some *favelas* in Rio de Janeiro, Brazil, heavy machine guns have been used against police helicopters.²⁶

Moreover, the largest gangs extend far beyond the limits of their town of origin. Fairly centralized organizations may operate on a countrywide scale (Bloods and Crips in the USA) or even across a whole continent (*maras* in Central and North America). They may also have thousands of members, often more than the police force. Two extreme cases may be cited: according to some estimations, in Timor-Leste the gangs outnumber the police, the army, and the United Nations

21 When a young man is immersed in a culture in which he is taught that the use of violence is one way (or the only way) of gaining respect and of becoming respectable, there is a considerable risk that he will consider violence as the norm.

22 The American magazine *Don Diva* is an interesting example, despite the formal denials by its editors.

23 The influence of these items is very real but has more to do with the type of violence than with the emergence of violence as such (interview between the author and a researcher on the causes of extremist violence, Geneva, Switzerland, January 2009).

24 United Nations Population Fund, *State of World Population 2007: Unleashing the Potential of Urban Growth*, New York, 2007, p. 1.

25 Such as on 30 May 2002 against a cash transport vehicle belonging to Brink's at Penne-sur-Huveaunne (RPG) and on 3 July 2008 in Cassis against another cash transport vehicle, this time belonging to Loomis (explosive).

26 Including on 17 October 2009, when a helicopter was shot down over the *favela* Morro dos Macacos. The state head of military police, Mario Sergio Duarte, said after this affair that the police had already seized grenade launchers, .50 calibre machine guns (12.7 mm) and anti-aircraft missiles. The percentage of machine guns among the weapons seized by the police in Rio de Janeiro increased almost fourfold between 1981–1992 and 1993–2003 (0.32% to 1.2%), and the total number of weapons seized has also increased; see Patricia Silveira Rivero, 'The value of the illegal firearms market in Rio de Janeiro city: the economic and symbolic value of guns in crime', in P. Dreyfus *et al.*, above note 19, p. 65.

mission taken together;²⁷ similarly, the MS 13, a gang originally from El Salvador, is said to have 10,000 members in the United States and 20–40,000 others in Central America.²⁸ In both cases, those figures may be exaggerated, but the phenomenon has clearly assumed a dimension that goes far beyond that of most guerrilla forces.

To conclude this list, the predominant position assumed by narcotics in gang activities has helped to boost potential profits and hence to raise the level of violence.²⁹ It also proved to be a tremendous opportunity for gangs who needed resources to finance a higher level of activity.

Structure and identification

As we have already mentioned, there is no agreed definition of a ‘gang’.³⁰ All existing definitions are, to an extent, intuitive and are, moreover, often too broad to be of any use to humanitarian agencies, for which the territorial – or non-territorial – nature of a gang has a direct bearing on their operational ability. The definition proposed by the anthropologist Dennis Rodgers goes a fair way towards meeting their needs. He states that gangs are:

definite social organizations that display an institutional continuity independent of their membership. They have fixed conventions and rules, which can include *initiation rituals, a ranking system, rites of passage and rules of conduct* that make the gang a *primary source of identity for its members*.

Gang codes often demand particular behaviour patterns from members, such as adopting characteristic dress, tattoos, graffiti, hand signs and slang, as well as regular involvement in illicit and violent activities. ... their relationship with local communities can be *either oppressive or protective* (indeed, this can shift from one to the other over time).³¹

Territorial gangs have an organized structure, often with a clear hierarchy that is sometimes pyramidal in form. A member must prove himself; if he is

27 Estimates of the number of members in the largest gangs in Timor-Leste, particularly the Seven Seven and the Persaudaraan Setia Hati Terate (PSHT), vary between 20,000 and 50,000 members. In every case, the Timo-Leste army is said to comprise 1,500 regular soldiers and 1,500 reserves, the police perhaps 3,000, and the United Nations Integrated Mission in Timor-Leste (UNMIT) 1,552 men in uniform plus a thousand civilians (source: United Nations Department of Peacekeeping Operations (UNDPKO)). Gang members therefore far outnumber the security forces present in Timor-Leste.

28 See *National Gang Threat Assessment 2009*, above note 11, p. 26.

29 Nicaragua is just one example among many: see Dennis Rodgers, ‘An urban gang moves from social to economic violence’, in José Luis Rocha and Dennis Rodgers, *Gangs of Nicaragua*, Managua, 2008, p. 83. The most common sources of money among the gangs are drug trafficking, extortion, and the money provided by political players.

30 See the opinion of Anika Oettler, ‘Prologue’, in J. L. Rocha and D. Rodgers, above note 29, p. 6: ‘The term “gang” is generic and non-specific. A quick overview of the literature shows that it can refer to a range of phenomena, from spontaneous youth peer groups to organised criminal collectives’.

31 Dennis Rodgers, ‘The gangs of Central America: major players and scapegoats’, in J. L. Rocha and D. Rodgers, above note 29, p. 169, emphasis added.

successful, he may be promoted. That change involves new functions³² and may be signalled by an external mark such as a new tattoo. Decision-making processes may be fairly democratic or very authoritarian; as a general rule, the larger the gang, the less decision-making power is given to its individual members. Some high-ranking leaders retain their influence even while in prison and may continue to give orders to those on the outside. National or regional gangs are often made up of smaller units known as *sets* or *chapters* in the USA and as *cliquas* and *pandillas* in Central America. These units have considerable independence, although they comply with certain rules, which often involve handing some of their gains over to the higher echelon. They may adopt a quasi-military structure in their confrontations with other gangs.³³

For the members of a territorial gang, there is a clear dividing line between them and the rest of the world.³⁴ Becoming a member is often the outcome of an initiation process to determine whether the potential recruit has the character required for membership of the group. Some gangs require newcomers to commit an illegal act: often murder,³⁵ and sometimes theft. In Rio, many gangs merely observe the youngsters that ‘hang out with them’ before giving them minor tasks to do.³⁶ In El Salvador, the *maras* resort to the candidate being beaten up by several members.³⁷ Very young children may be recruited as full members; the socialization aspect of gangs must not be underestimated as it allows young people to form an

32 In Rio, nine functions may be identified, with different names: *dono*, *gerente geral*, *sub-gerente*, *soldado*, *fiel*, *vapor*, *olheiro*, and *endolador*; see Luke Dowdney, *Children in the Drug Trade: A Case Study of Children in Organised Armed Violence in Rio de Janeiro*, 7Letras, Rio de Janeiro, 2003, p. 48.

33 For figures on a gang’s income and expenses related to the war with other gangs, see Steven D. Levitt and Sudhir Alladi Vekantesh, ‘An economic analysis of a drug-selling gang’s finances’, in *Quarterly Journal of Economics*, Vol. 115, No. 3, August 2000, pp. 755–788.

34 This dividing line is far less obvious for an external observer; the existence of ‘wannabees’ (an American term also used in South Africa) – young people who copy the cultural codes of the gangs in their neighbourhood without belonging to a gang – leads to some confusion. Some gangs have institutionalized the status of ‘prospective member’, as sort of halfway stage between civilian life and membership of the gang, such as the Mongrel Mob in New Zealand, for instance, which calls them ‘prospects’. See Tuhoë Isaac and Bradford Haami, *True Red: The Life of an Ex-Mongrel Mob Gang Leader*, True Red, Pukekohe, New Zealand, 2008. The Mongrel Mob is, moreover, one of the current examples of the (slow) transformation of a gang into a criminal organization. In addition, some features of the culture associated with the gang may be shared with a far larger group: rap or hip hop music – even ‘gangsta rap’ – is also listened to widely outside the gangs; see Andre Standing, *The Threat of Gangs and Anti-Gangs Policy*, Institute for Security Studies (ISS) paper 116, 2005, pp. 10, 12–13. Furthermore, to make the matter even more complicated, there are often a large number of intense connections between a gang (or some of its members) and the police, or the civil society. Some experts estimate that territorial gangs need the complicity of elements within the police force to survive and prosper. These connections may be formed through corruption, but also thanks to support from important political figures.

35 See *ibid.*, p. 2; the gangs in South Africa often require rape or murder to be committed as an initiation.

36 L. Dowdney, above note 32, pp. 123–125.

37 The last scene of the documentary *La Vida Loca* by Christian Poveda shows one instance of such aggressions in the Mara 18. Girls are in principle put through the same initiation, but in some *maras* and other gangs they can avoid being beaten up by agreeing to be ‘sexed in’, in which case their status is that of a second-class member. One American example is described by Jody Miller, ‘Gender and victimization risk among young women in gangs’, in *Journal of Research in Crime and Delinquency*, Vol. 35, No. 4, 1998, pp. 445–446.

alternative identity to that proposed by society.³⁸ That makes it particularly difficult to leave a gang unless there is another option.

As a corollary to the dividing line between members and non-members, a gang has its own codes, its own values, its own rules, and, ultimately, its own culture. Several groups have a code or sign language. This culture may reinterpret elements of the culture of the prevailing society³⁹ and often implies ostentation: the choice of colours for their clothes,⁴⁰ tattoos,⁴¹ and graffiti on the walls, which is, moreover, one way of marking out their territory.

Gang rules are often simple, the emphasis being on solidarity with other members and an absolute ban on informing the police. Behaviours such as disobedience and desertion are punished because they threaten the very existence of the gang.⁴² However, several agree to their members leaving them on good terms if certain conditions are fulfilled.⁴³ The rules regarding relations with ‘civilians’, members of other gangs, and the police vary enormously from one gang to another.

Territory and relations with the local population

The notion of territory is fundamental to gang life; it is what defines the gang. Moreover, a number of gangs use street or neighbourhood names in their official designation, even if they have largely outgrown their original location.

Territorial control must first be guaranteed against other gangs. That gives rise to veritable wars, in which a vast array of weapons may be used. A gang generally has more members than a criminal group: it needs them to be able physically to control its territory or to extend it. Control must also be guaranteed

38 These are not all the reasons for joining a gang; they vary too much from one individual to another and especially from one country to another for us to try to draw up an exhaustive list as part of this article.

39 The use of postcodes to define gang membership is one example; MS 13, one of the *maras* from El Salvador that also exists in the USA and in a large part of Central America, has made use of a hand sign known as ‘the devil’s horns’, which originated in heavy metal culture.

40 Wearing clothes of certain colours allows members to recognize each other, to impress the local people, and to recognize the enemy, all without doing anything illegal that might bring the law down on them. In the USA, the colours are, for example, red for the Bloods, blue for the Crips, and black and gold for the Latin Kings. In Brazil, red is unsurprisingly the colour of the Comando Vermelho.

41 Members of *maras* in Central America (MS 13 and Mara Salvatrucha) often have elaborate visible tattoos – even on their faces – that indicate their membership of the gang and their status. When members of rival gangs are in the same prison, these tattoos become a focal point of conflicts. In South Africa, the Numbers use tattoos to show to which gang a member belongs (26, 27, or 28) and his rank.

42 The murder in December 2003 of Brenda Paz, a 17-year-old woman who was a former member of the gang MS 13, can be explained by the fact that she had agreed to work with the FBI.

43 To be expecting a child is often considered a good reason to leave a gang, as long as that does not imply becoming an informer. See also José Luis Rocha, ‘The hand that rocks the mortar launcher’, in J. L. Rocha and D. Rodgers, above note 29, stating that, in the case of Nicaragua, both conversion in an evangelical church and university studies are often a way out (p. 35).

against the state,⁴⁴ but the gangs do not set out to overthrow the authorities; they may even be an offshoot or creation of political players, as is the case in Jamaica, for example, or be used by them for political purposes, as is the case in Nigeria. They then help to collect votes in the elections or to prevent the opposition from campaigning on their territory. In the rare cases of gangs attempting to undermine a state directly, this is in response to a direct threat.⁴⁵

Relations with the people living in the controlled neighbourhoods are more complex than might be thought: the gangs may be predators or protectors⁴⁶ and change over from one to the other.⁴⁷ Some even use the vocabulary of social justice and present themselves as an alternative to a state that is absent within their limited territory.⁴⁸ Even if the group is more predator than protector, it should not be forgotten that the community may derive immediate tangible benefits from it, for example 'protection, status, income, credit, rough justice'.⁴⁹ Control of the neighbourhoods sometimes creates a kind of moral obligation towards the inhabitants, who allow the gangs to rule in exchange for security from other threats, or consider them 'part of the family'.

Some gangs view civil society associations that may offer an alternative to their control of the community with little appreciation. Generally, however, assistance and development activities are likely to be received well; activities

44 The state is often absent or represented solely by a police force that is either in collusion with gangs or adept at carrying out large-scale operations for media purposes without having any major impact on the gangs. The emergence of territorial gangs and especially their continuation is also due to the breakdown of the policing system. That does not rule out a nominal police presence in some places or formal patrols, but the stronger a gang feels, the more it will resist even that.

45 The massacre of twenty-eight bus passengers in Honduras on 23 December 2004 was the response by the MS 13 gang to government plans to reintroduce the death sentence. The most impressive example of an attack on the state was given by the Primeiro Comando da Capital (PCC) in Brazil in May 2006: in response to the transfer of its imprisoned leaders (to cut them off from the organization), the PCC organized riots in more than 70 prisons and nearly 300 attacks on public infrastructure in the state of Sao Paulo.

46 It would be wrong to take account only of the statistical view of things. Admittedly, 'where the groups' dominion is absolute, as in the *comando*-dominated favelas of Rio, burglary, mugging, and street violence ... become astonishingly rare'. However, the security established by the *comandos* is relative: it concerns common law crimes but is not sufficient for people to feel safe, if only because of the threat of heavy-handed police raids caused by the gangs: according to a former resident, 'This type of security, as in public order, sure, OK. Now, security as in a feeling of physical integrity, the people don't feel safe with the drug trade ...'. See Benjamin Lessing, 'Demand for firearms in Brazil's urban periphery: a comparative study', in P. Dreyfus *et al.*, above note 19, pp. 112–113.

47 From the point of view of efficacy, a mixture of the two would seem to be most frequently adopted by the gangs, relying both on violence or threat and the quest for support by means of 'popular' actions in the area of protection or justice; a gang needs at least passive support from the local people, especially during police action or war with another gang. Outside prison, very few gangs try to obtain it solely by terrorizing the people.

48 On the videos that are said to be from the PCC in Brazil, references are found to Chiapas, to Venezuela, to Bolivia, and to the Indians in Brazil, all of which are referred to as causes that have the backing of the PCC; however, it remains to be shown that this stems from a political conscience. The main or only claim of the PCC's 'statutes', available at: <http://www.midiaindependente.org/pt/blue/2006/05/353333.shtml> (last visited 7 June 2010), is to change conditions in some places of detention.

49 James Cockayne and Adam Lupel, 'Conclusion: from iron fist to invisible hand – peace operations, organized crime and intelligent international law enforcement', in *International Peacekeeping*, Vol. 16, No. 1, 2009, p. 158.

relating to human rights, to community empowerment, and demobilization of gang members without the consent of their leaders are often badly perceived.

Humanitarian consequences

The local population may be both direct victims (targets of extortion, rape, or killing to enforce gang dominance) and indirect victims (gang activities disrupt life and do damage to the rare services that are available). When warfare between gangs or against the police is permanent, the phenomenon of victimhood is intensified.

In some countries the level of violence matches, or even exceeds, that observed during a non-international armed conflict, with extremely high homicide rates. To give some examples, the homicide rate per 100,000 inhabitants worldwide may be estimated as 7.6.⁵⁰ It was 57.9 in Honduras in 2008,⁵¹ 51.8 in El Salvador in 2008, and 45.2 in Guatemala in 2006. These figures may be compared with those of countries in conflict in the same region, such as Colombia where the homicide rate was ‘only’ 38.8 in 2008.⁵² Gang members may themselves fall victim to violence, being killed or wounded,⁵³ and they may also be taken captive by security forces.

The families of gang members who have been killed or imprisoned suffer similar consequences to those observed during internal conflicts in terms of economic security or even of security pure and simple. If the prisoner was the only source of revenue for his family, the fact that the revenue was gained illegally makes little difference: unless support is coming from the gang hierarchy, his family is without an income. While gang members cannot expect to earn a fortune,⁵⁴ their absence may mean destitution for the members of their families.

People caught up in a ‘war’ between gangs or between a gang and the security forces are exposed to forced displacement as a result of the fighting going on close to their homes. Gang activity also disrupts the smooth functioning of services such as health care, drinking water, refuse collection, and education. This may occur because restrictions of movement have been imposed on the

50 Geneva Declaration, *Global Burden of Armed Violence*, Geneva Declaration Secretariat, Geneva, 2008, p. 71. The rate was calculated for 2004, the last year in which the NGO had access to the data of 201 countries.

51 Broken down as 8.0 for women and 109.5 for men, according to Bulletin No. 13 of the Observatory on Violence, January 2009, pp. 3 and 5, available at: http://www.ocavi.com/docs_files/file_661.pdf (last visited 7 June 2010).

52 These figures are available on the website of the United Nations Office on Drugs and Crime (UNODC) at: http://www.unodc.org/documents/data-and-analysis/Crime-statistics/Criminal_justice_latest_year_by_country.20100201.xls (last visited 7 June 2010) and are based on the most recent criminal data, between 2003 and 2008.

53 According to many interviews, membership of a gang offers both a form of protection and potential victimization; see, for example, J. Miller, above note 37, pp. 429–453.

54 We have considerable anecdotal evidence of this from interviews; it is also confirmed by one of the rare studies providing figures: see S. D. Levitt and S. A. Vekantesh, above note 33.

population⁵⁵ or because the employees in those services no longer feel safe enough in the neighbourhood. It may also be because those services did not exist even before the gang came into being.

The greatest concern regarding the consequences of gang violence for the population is that they affect countries, regions, or communities that have already been weakened by a difficult social and economic environment. Gang activity causes even greater disruption to the *coping mechanisms* that have been developed. The most blatant example of that dynamic has to do with money levied on the income of the economic players⁵⁶ in both the informal sector and the rare businesses in the formal sector within the neighbourhoods controlled by gangs. Small shopkeepers have little choice other than to put up with the levies imposed on them, which prevents them from building up their businesses. As for formal businesses, they relocate as soon as they can or cease trading. The loss of these jobs contributes to reducing the number of opportunities for young (and not so young) people, pushing them into the gangs. This phenomenon is all the stronger in that merely living in such a neighbourhood may cause an external employer to turn down an application for fear of the applicant's being a 'gangster'.⁵⁷

Prisons in which members of different gangs are detained are the scene of numerous clashes between gangs and of atrocities meted out to the other detainees (rape, murder, extortion, etc.). The battle for control of the territory is shifted into the prisons. Imprisoned gang members are a factor aggravating prison violence, unlike the situation frequently observed with members of armed opposition groups in armed conflicts, where places of detention tend to remain relatively calm.

Is there a place for humanitarian agencies?

A priori, urban violence seems fairly far removed from the situations in which humanitarian agencies work; this is not a case of armed conflict, natural disaster, or even underdevelopment.⁵⁸ Moreover, it could be argued that any external intervention in the neighbourhood controlled by a gang could only contribute to reinforcing the gang's structures or its control and would be in violation of the principle 'do no harm'.

A large number of humanitarian agencies intervene nonetheless in such situations without the legitimacy of their action being called into question. To be convinced of this, it is sufficient to take a look at programmes in the fields of health

55 The use of human shields is far rarer (or less well documented) than threats by other gangs.

56 By means of theft and/or taxes.

57 A. Standing, above note 34, p. 18, notes that, in Cape Town, identification is both geographic and racial.

58 Although it goes beyond the scope of this article, another challenge presented by gangs should be mentioned here: how should one assess asylum claims caused by, or otherwise related to, gang activities? This has been considered by several organizations, quite recently by the Office of the United Nations High Commissioner for Refugees (UNHCR) in its document *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, UN Division of International Protection, Geneva, March 2010, available at: <http://www.unhcr.org/refworld/docid/4bb21fa02.html> (last visited 7 June 2010).

or education carried out by various NGOs and Red Cross or Red Crescent national societies. There are two scenarios in which a humanitarian agency – regardless of whether it is an international organization, a national society, or an NGO – may have reason to interact with a gang.

In the first instance, the organization is carrying out its ‘normal’ activities in the same area in which a gang is carrying out its own activities. It will, for example, be difficult to avoid detainees belonging to a gang in the course of rehabilitation work in a prison. The gang is present in areas where that organization had in any case decided to act but its presence has no direct connection with the humanitarian impact.

In the second instance, the humanitarian needs of people under the control of the gang may themselves justify action. That is frequently the case immediately after a peace agreement has been reached, when the consequences of the conflict continue to exist and are made more complicated by gangs that have taken advantage of the confusion to organize themselves or to strengthen their position. The presence of a gang is thus a direct cause of problems, with an impact in humanitarian terms.

In practice, the two scenarios are not so very different; it is, for example, difficult to know what situation in some *favelas* in Rio is caused by the activities of the *comandos* and to what extent the emergence of those same *comandos* is the outcome of pre-existing conditions. The main thing is for a humanitarian agency to identify real needs and for it to have the capacity to manage the activities that it intends to carry out, while being aware that this will imply dialogue with gangs and long-term commitment. Not every humanitarian agency is necessarily prepared for that and the decision must be carefully thought through.⁵⁹

Courses of action for humanitarian agencies: contact and dialogue with gangs

It is possible for external players to meet gang members, though that implies serious research before any voluntary meeting, including research into the gang’s culture. That research is all the more important because the media and the authorities tend to make scapegoats of the gangs.⁶⁰ It is illusory to hope that the gang will spontaneously make contact with a humanitarian player unless the latter has already encroached onto its territory.

Any work carried out by humanitarian players in a city neighbourhood, or in an area within a prison, that is controlled by a gang will be subject to discussion or authorization by the gang, whether one is aware of it or not. An agreement must be given by one or more leaders at the appropriate level of command. The ICRC’s prison work (and occasionally the work carried out on the fringes of gang territory)

59 Dialogue with a gang is no picnic.

60 A. Standing, above note 34, sheds light on the possible gaps between the external image of the gangs and reality.

has sometimes enabled it to establish initial contact, but few humanitarian agencies have that possibility.

Approaches made to individual members, in particular to offer reintegration programmes,⁶¹ have proved limited. They are difficult to carry out when a gang is strong and well structured, and dangerous if they are undertaken without its consent. Moreover, they do not allow the greatest potential problem to be resolved: that is to say, the pressure that a gang may put on its former members to get them to return to the fold.

Entering into dialogue with the gang as a group first involves engaging with the leaders. It is illusory to believe it possible to turn up in a neighbourhood without being invited or tolerated in the hope that an intrusion of that kind will not be noticed.⁶² The *top-down* approach is the only viable one, the only one that may allow discussions to take place with any semblance of security guarantees. The leaders may sometimes be approached directly; when that is not the case, intermediaries may enable a meeting with the leaders (or an envoy) to take place or messages to be transmitted. Those intermediaries will often be former members who still enjoy respect. Some political players also have privileged communication channels. It is vital for the intermediary to be personally credible.

Gang members are often prepared to talk to outsiders (to justify themselves, to show off, or out of boredom). It is vital to listen to them and to take time to do so. That is the price to pay for a relationship of personal trust and a better understanding of the gang's culture. However, that must not be at the expense of sound judgement: part of the 'game' for them consists of showing off in front of someone from the outside, if necessary by completely inventing imaginary atrocities. The *Comemurtos* (dead-eaters) in Nicaragua, for example, developed an appalling reputation as eaters of the flesh of the dead as a result of unfounded boasting that was obligingly taken up by rumour and by some media.

Credibility of humanitarian agencies

The credibility of every humanitarian agency depends to a large extent on the personal credibility of its staff. Criteria relating to language, nationality, training, and experience must be taken into consideration. That credibility will also depend on the humanitarian agency's not being perceived as a police informant and on its ability to provide useful services for the population controlled by the gang and hence indirectly for gang members.

Isn't that tantamount to reinforcing the gang's structures or its control over the population? That question is sometimes raised but takes little account of the 'services' on which that control is actually based. If coercion is excluded, the reasons given by communities to explain why they accept being controlled by the

61 For example, through educational or vocational training or through social programmes.

62 The gangs have several ways of gathering information; the simplest and the most systematic is to post lookouts throughout their territory; the arrival of an external player is very unlikely not to be reported.

gang are not related to services such as water or electricity but to security and justice. In particular, the population benefits from gang control by being protected against enemy gangs, the police, or violence by the gang itself. The contribution made by a humanitarian agency does not reinforce a gang's ability to provide that protection.⁶³ As its intention is not to replace the state, a territorial gang has very little to gain in terms of legitimacy if it allows humanitarian players to carry out their activities.

By contrast, an external contribution tends rather to be seen as a threat to the gang, which until then had a monopoly as the only contact to which the local people could appeal, and which has to ask itself whether those outsiders are not working for its opponents. It is vital for the humanitarian agency to be credible if an atmosphere of sufficient trust is to be created for work to be carried out in acceptable conditions. In that process, trust is first placed in an individual and only then (and not always) in the institution that he or she represents.

Courses of action for humanitarian agencies: education

Community assistance is certainly the area in which humanitarian agencies can have the greatest impact. It is not without difficulties, however, if only because of the material resources used and the wealth that these represent. Blackmail and robbery are more than likely occurrences.

Another area of difficulty is often overlooked when the aim is to give gang members an alternative through education or vocational training, for example. Most young people in a neighbourhood are not gang members and do what they can to avoid having to join a gang.⁶⁴ An over-generous offer made to gang members would ultimately amount to rewarding them for having taken part in criminal activities, favouring them over people who have kept out of such activities. It would violate the principle of non-discrimination. The ideal situation would be to give members and non-members the same opportunities, even if they are offered by different agencies, which implies the need for effective co-ordination.

A humanitarian agency cannot really give a comprehensive answer for the reasons why gangs develop; poverty, the lack of social prospects, or the lack of state services cannot be alleviated by NGOs, however numerous and effective they are. It is just as illusory to hope to change the cultural features in the medium term.

An approach that sets out to prevent young people at risk from joining gangs seems more promising but is not without difficulties. It can be achieved, for

63 Unless the gang is given enough money to buy weapons, combatants, and alliances, but that is outside the humanitarian field.

64 *National Gang Threat Assessment 2009*, above note 11, p. 12, estimates that, in the neighbourhoods most at risk, 29.4% of girls and 32.4% of boys consider themselves members of a gang. That is the highest estimation of which we are aware and it leaves a sizeable majority of 70% for those who are not members.

example, by offering alternative activities to unemployed young people.⁶⁵ Humanitarian agencies may at best address some consequences and not the causes for the gangs' existence,⁶⁶ thus making a major difference in the lives of the people whom they are assisting. To an extent, it is possible to provide an alternative to gang culture: for example, by arranging sports activities.

Literacy and vocational training are another area where humanitarian assistance may bear fruit and even provide an alternative to involvement in a gang. Young people who can read, write, and do arithmetic have a greater chance of finding paid employment. If they have also completed a course of vocational training, involvement in a gang becomes even less attractive: unless they rise very quickly in the hierarchy, they will not earn more money in the gang and will be exposed to greater risks.

Courses of action for humanitarian agencies – provision of services

Access to essential services, particularly to drinking water and health care, is often a critical issue in neighbourhoods controlled by gangs, because such services either are not available, are poor in quality, or cost more than the inhabitants can afford. This is an area in which the involvement of humanitarian players may fill a gap that cannot be tackled by anyone else. On the other hand, there is a risk that this will result in total substitution of the usual service providers, leaving the inhabitants even more destitute if the NGO has to stop its work.

From 2004 to 2007, the ICRC engaged in a regular dialogue with gangs in Cité Soleil and Martissant, two shanty towns in Port-au-Prince. It was not particularly difficult to make contact with the leaders, although the approach had to be cautious and methodical. At the end of 2007 in Martissant, the ICRC had established direct regular contact with the leaders of five gangs and had made contact through an intermediary with the leader of a sixth gang.

The ICRC's work focused primarily on two areas in which it was convinced that it would be able to have an impact on the population of those

65 The NGO Fight for Peace arranges sports activities, particularly related to boxing, but also runs vocational training and courses and provides support for youth councils in the *favelas* in Rio (see <http://www.fightforpeace.net>, last visited 7 June 2010). The ICRC and the Honduran Red Cross organized art classes for 2,000 young people in disadvantaged neighbourhoods of Tegucigalpa in 2008 (ICRC, *Annual Report 2008*, ICRC, Geneva, p. 315). This is involvement in social work rather than humanitarian emergency relief, which requires very different methods.

66 The solution to the problem of gangs requires concerted action by the state, which ensures decent conditions for all inhabitants and effective long-term security by the police. Heavy-handed approaches, such as those dubbed by the authorities in El Salvador *Mano Dura* and *Super Mano Dura*, appear only to have a short-term positive impact and seem, conversely, to increase the level of violence over the medium term. In Haiti, the United Nations mission finally disbanded the gangs as the result of a long-term intelligence campaign; see James Cockayne, 'Winning Haiti's protection competition: organized crime and peace operations past, present and future', in *International Peacekeeping*, Vol. 16, No. 1, 2009, pp. 77–99.

neighbourhoods. First, it repaired the water system, while at the same time working to convince the gangs to allow the employees of the water board safe access to the neighbourhood. It had also ensured that the inhabitants would have access to drinking water without having to pay the gangs for it. Second, together with the Haitian Red Cross, it introduced a system for evacuating wounded and sick people and established first aid stations. That made it possible to evacuate 1,500 people from Cité Soleil between 2005 and 2007 (of a population of 250,000) and to treat around 200 more each month at the first aid stations.

The difficulties encountered in that operation mainly concerned the security of the personnel of the ICRC, the Haitian Red Cross, and the water board;⁶⁷ all the gangs contacted gave their assurance that they would respect those people as well as the wounded being evacuated. The few minor incidents were settled fairly quickly, thanks to the huge investment in dialogue with gang members at every level (once authorization had been obtained from the leaders).⁶⁸ The two factors that permitted this success were the immediate visible benefits of the activities and an approach based on the principles of the Red Cross and Red Crescent Movement, which was presented as such.⁶⁹

Courses of action for humanitarian agencies: dialogue on fundamental issues

Rather than trying to make the gangs' overall behaviour more 'moral', small but significant changes must be targeted. The area in which those changes seem possible is respect for the medical mission, in particular during the evacuation of wounded people,⁷⁰ with, as a corollary, giving the Red Cross or another humanitarian player access to the controlled areas.

67 CAMEP, a state service responsible for the drinking water supply and hence also for repairing the equipment.

68 After several years of attempts, the United Nations Mission in Haiti (MINUSTAH) tackled the problem, starting by establishing a good intelligence network. That allowed it to target key individuals in the gangs and to arrest them, thus displaying its superiority over the gangs. At the end of 2007, the main gangs had been disbanded and there was a substantial improvement in the situation of the local inhabitants.

The leaders were being held in the Port-au-Prince prison but the earthquake on 12 January 2010 allowed nearly 4,200 prisoners to escape. Fewer than 200 of them had been neutralized on 10 March, and the gang leaders went back to their neighbourhoods, with differing outcomes: some of them were lynched in Cité Soleil and others given a hero's welcome in Martissant. Perhaps they will take advantage of the confusion following the disaster to try to re-form their gangs and to take control of some neighbourhoods again. Various clashes between groups in February and kidnappings in March suggest that attempts of that kind are being made, although the gangs are still far weaker than they were in 2005; see International Crisis Group (ICG), *Haiti: Stabilisation and Reconstruction after the Quake*, 31 March 2010, p. 10, available at: [http://www.crisisgroup.org/~media/Files/latin-america/haiti/32_haiti___stabilisation_and_reconstruction_after_the_quake.aspx](http://www.crisisgroup.org/~/media/Files/latin-america/haiti/32_haiti___stabilisation_and_reconstruction_after_the_quake.aspx) (last visited 22 June 2010). If those endeavours were to prove successful, the ICRC should certainly envisage resuming the dialogue where it was broken off in 2007. At the time of writing (April 2010), this does not, however, seem to be the most likely scenario.

69 Interview with an ICRC delegate returning from a second mission to Haiti, Geneva, 8 April 2010.

70 Provided that there is no obligation on the part of the medical personnel to report cases of gunshot wounds to the police.

The areas in which those changes seem difficult but possible to achieve are the practice of hiding the bodies of killed opponents and some forms of resort to armed violence, when the gangs might be convinced that it would be counter-productive for them (e.g. damaging their control of population⁷¹) or futile (e.g. ill-treatment of a hostage).

The areas in which those changes seem impossible – unless they are dealt with on a case-by-case basis (without changing the nature of the gang) – are trafficking (including of human beings) and other lucrative activities in which the gang specializes (such as kidnapping), murder (the aim of armed violence being to intimidate the population or the police), and the recruitment of minors.

The notion of humanitarian consequences may be used in discussions but it needs to be borne in mind that a fair number of those consequences are the direct outcome of the gang's activities or of reasons that go beyond them.

Medium- and long-term action

None of these activities will be able to achieve a significant result in the short term; to change dynamics just a little, there must be a commitment over several years or even decades. Some categories of people are even more vulnerable and may need very long-term support; these include orphans (whether related to gang members or not), women left without resources because their partners have been arrested or killed, and gang members who want to leave the gang.

The reintegration of those gang members is a particularly sensitive issue because they suffer from a number of disadvantages: a criminal record, lack of training, outward signs (such as tattoos) that are likely to put any employer off, grudges borne by members of other gangs – or of their own – in their regard but without the protection previously provided by their fellow gang members, active efforts to recruit them back, and the need to learn another way of living. All that should inspire caution before launching a programme of this kind. Continual support must be provided over several years and all dimensions of the problem must be taken into account. That difficulty militates in favour of activities conducted as upstream as possible to avoid young people joining gangs. It also suggests giving precedence to work carried out by local players rather than by organizations from another country, which are more likely to change the direction of their activities two or three years later.

Efficient activities that are stopped too soon may create more problems than they resolve. For example, the establishment of a drinking water distribution system by a humanitarian agency may undermine the coping mechanisms of the communities, who will cease to maintain their makeshift wells. If the humanitarian agency leaves a few years later, the inhabitants will find themselves in

71 In Haiti, until 2007, it was not unusual for a gang leader to punish one of his men for having 'gone beyond the limits' with the local people. Some punishments went as far as execution.

a situation worse than before anything was done. The same may apply to reintegration activities: former gang members may be given protection because of their participation but that will cease when the programme comes to an end because of a lack of funds or because new priorities have been established. In the ‘do no harm’ assessment, the capacity to carry out an activity over more than five years seems to be one of the decisive criteria.

Conclusion

Of the humanitarian agencies that may be called to work in an environment of gang activity, the National Red Cross or Red Crescent Societies have potentially several advantages: first, they have a fairly broad network of volunteers, which will provide them with intermediaries when endeavouring to contact a gang, and qualified people in areas as diverse as law, education, health, local customs and languages, sociology, security, and legal defence. Second, by definition they are required to remain in the country over a very long period, which is not the case for an international NGO, the ICRC, or a United Nations agency; they can thus plan long-term projects without being caught up in annual priority reviews. Lastly, they often carry out activities at the national level whose benefits are also felt in the neighbourhoods affected by gangs; first aid training, health and AIDS education, or the prevention of diseases such as malaria are examples that come to mind.

That does not mean that they are the only ones authorized or able to address the problem of gangs. First, not all of them have the organizational capacities to do so; second, other local or international humanitarian agencies may have knowledge not available to them. That may include security management – which, as we have already mentioned, is vital – as well as the management of complex projects or the ability to be perceived by the gangs as more trustworthy players because of their very local or, conversely, international basis.

Humanitarian action is, however, only one part of the necessary response to the phenomenon of gangs. On the one hand, the very existence of gangs presents problems and, on the other, it is merely a sign of greater problems. The provision of services and security and socio-economic perspectives, which may be the sole means of resolving those problems, is the remit of the states. In Haiti, during the years spent by the ICRC in dialogue with the gangs, the problem in Cité Soleil was as much the lack of security – with its trail violence, killings, rape, and extortion – as it was poverty and decay. That lack of security was caused by the gangs, and the means to remedy it was not solely humanitarian action.

Organized crime and gang violence in national and international law

Pierre Hauck and Sven Peterke

Dr. jur. Pierre Hauck LL.M. (Sussex) is assistant professor (*Akademischer Rat*) in the department for criminal law, criminal procedure, and comparative criminal law (Chair, Prof. Dr. Walter Gropp) at Justus Liebig University Giessen, Germany. Professor Dr. jur. Sven Peterke M.A. teaches political science and public international law at the Centre for Juridical Sciences (CCJ), Federal University of Paraíba (UFPB), Brazil.

Abstract

Organized crime and gang violence are global phenomena that often emerge in urban areas. Although they are not new, states only recently began to perceive them as serious threats to public security. Laws specifically designed to combat them have consequently been enacted. This article outlines the difficulties of dealing adequately in legal terms with these phenomena and analyses the different approaches adopted so far at the national and international level.



Organized crime and gang violence can be found in both poor and rich countries. They often pose serious problems, particularly in urban areas, to the state and to society.¹ Various national and international laws have consequently been enacted to combat organized crime as well as gangs and their violence more effectively. Due to the gangs' highly dynamic and heterogeneous nature, dealing with them in legal terms has proved to be a challenging and even delicate task. Although it seems more appropriate to distinguish between organized crime and gangs and their violence, such a distinction is often difficult to draw. Legislators have therefore opted for different approaches. The present article analyses the steps taken so far at the national and international level, against the background of the respective practical and theoretical challenges.

Organized crime, gangs, and gang violence as analytical concepts

The study of organized crime, gangs, and gang violence belongs to the domain of criminal science, especially criminology.² It is through this interdisciplinary lens that the challenges posed by them to state and society are primarily comprehended.³ Analysis of the difficulties in adequately addressing these phenomena in legal terms therefore presupposes some knowledge of how far they have evolved as analytical concepts.

Organized crime

Numerous national and international instruments, in particular the United Nations Convention against Transnational Organized Crime (UNTOC),⁴ indicate that '(transnational) organized crime' has become a legal concept.⁵ Whether this is the case or not is, however, of minor practical relevance. For the purposes of the present article it is important to understand why the definition of 'organized crime' is the object of continuing controversy and what this means for law-making and enforcement.

Definitional problems

'Organized crime' is a very pithy term that has become part of the vocabulary of many politicians and the broader public as well. It is often applied without a clear reference point and is, in fact, highly indeterminate and vague.⁶ This lack of clarity also affects the relevant academic debate.

On the one hand, the term can be used to refer to certain types of more sophisticated criminal activities embedded, in one form or another, in complex

- 1 Graduate Institute of International and Development Studies (ed.), *Small Arms Survey 2007: Guns and the City*, Cambridge University Press, Cambridge, 2007, pp. 169–176; see also Olivier Bangerter, 'Territorial gangs and their consequences for humanitarian players', in this issue.
- 2 Michael Levi, 'Organized crime and terrorism', in Mike Maguire, Rod Morgan, and Robert Reiner (eds), *The Oxford Handbook of Criminology*, Oxford University Press, Oxford and New York, 2007, p. 771; Hans Joachim Schneider, 'Organisiertes Verbrechen', in Rudolf Sieverts and Hans Joachim Schneider (eds), *Handwörterbuch der Kriminologie*, de Gruyter, Berlin and New York, 1998, p. 562.
- 3 Bernd-Dieter Meier, *Kriminologie*, Beck, Munich, 2007, p. 27; Klaus von Lampe, 'The interdisciplinary dimensions of the study of organized crime', in *Trends in Organized Crime*, Vol. 9, No. 3, 2006, pp. 77–94.
- 4 UN Convention against Transnational Organized Crime (2000), 40 ILM (2001), 335 (entered into force 29 September 2003).
- 5 Sappho Xenakis, 'Difficulties in applying generic conceptualizations of organized crime to specific national circumstances', in Franck G. Shanty and Patit Paban Mishra (eds), *Organized Crime: An International Encyclopedia*, ABC-Clio, Santa Barbara, CA, 2008, p. 47; Fusun Sukullu-Akinci, 'Transnational organized crime and trafficking of human beings', in Joshua D. Freilich and Rob T. Guerette (eds), *Migration, Culture Conflict, Crime and Terrorism*, Aldershot, Hampshire, 2006, p. 157.
- 6 Michael Woodiwiss and Dick Hobbs, 'Organized evil and the Atlantic Alliance: moral panics and the rhetoric of organized crime policing in America and Britain', in *British Journal of Criminology*, Vol. 49, 2009, pp. 106–128.

illicit markets. Arms, drug, and human trafficking are often correlated with a set of ‘enabling activities’ such as (the threat of) violence, corruption, and money laundering.⁷ One group of authors assumes that the former constitute core activities of organized crime;⁸ another refers to the latter.⁹ In both cases the offences can usually be categorized as ‘serious crimes’. It may be more accurate to use the term ‘organized criminality’.

One problem of this approach is that it is merely based on indicator criminality. Violence against persons, for instance, may be an important means for and characteristic of some illegal activities, but not necessarily.¹⁰ Furthermore, there exist numerous illicit markets, ranging from trade in contraband cigarettes and stolen cars to extortion of multinational corporations, gambling, prostitution, and so forth.¹¹ Yet, as the example of prostitution shows, it is not possible to state in general terms that those engaged in the respective activities are involved in organized criminality. One may consequently find that ‘a simple listing of crimes does not tell us much about organized crime’.¹² Hence, an alternative approach puts organized crime on a level with ‘professional crime’,¹³ confining – and thus diminishing – the inalienable breadth that any definitional concept of organized crime has to have.

On the other hand, ‘organized crime’ may be used in the sense of criminal organizations¹⁴ such as the Colombian and Mexican ‘drug cartels’, the Japanese ‘yakuza’, the Chinese ‘triads’, or the Italian and US ‘mafia’.¹⁵ However, as complex

- 7 Alan Wright, *Organised Crime*, Willan Publishing, Cullompton, Devon and Portland, OR, 2006, p. 49.
- 8 See Jan van Dijk, ‘Mafia markers: assessing organized crime and its impact on societies’, in *Trends in Organized Crime*, Vol. 10, 2007, p. 40; Allan Castle, ‘Transnational organized crime and international security’, Institute of International Relations, University of British Columbia, Working Paper No. 19, 1997, p. 2; Stefan Mair, ‘The world of privatized violence’, in Alfred Pfaller and Marika Lerch (eds), *Challenges of Globalization: New Trends in International Politics and Society*, Transaction Publishers, New Brunswick, NJ, 2005, p. 54.
- 9 Edgardo Buscaglia and Jan van Dijk, ‘Controlling organized crime and corruption in the public sector’, in *Forum on Crime and Society*, Vol. 3, Nos. 1 and 2, 2003, p. 6; Donald Cressy, *The Theft of the Nation*, Harper and Row, New York, 1969, p. 1.
- 10 R. Thomas Naylor, ‘Violence and illegal economic activity: a deconstruction’, in *Crime, Law and Social Change*, Vol. 52, No. 3, 2009, pp. 231–242; H. Richard Friman, ‘Drug markets and the selective use of violence’, in *Crime, Law and Social Change*, Vol. 52, No. 3, 2009, pp. 285–295.
- 11 See Cyrille Fijnaut, ‘Transnational crime and the role of the United Nations in its containment through international cooperation: a challenge for the 21st century’, in *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 8, No. 2, 2000, p. 121; Michael D. Lyman and Gary W. Potter, *Organized Crime*, Pearson Prentice Hall, Upper Saddle River, NJ, 2007, pp. 148–185.
- 12 James O. Finckenauer, ‘Problems of definition: what is organized crime?’, in *Trends in Organized Crime*, Vol. 8, No. 3, 2005, p. 75.
- 13 Edwin H. Sutherland, *The Professional Thief*, University of Chicago Press, Chicago, 1937; see further, Mary McIntosh, *The Organisation of Crime*, Macmillan, London, 1975, pp. 9ff.
- 14 Hagan proposes ‘that “Organized Crime” be used to refer to crime organizations, while “organized crime” will refer to activities, crimes that often require a degree of organization on the part of the committing them’ and notes ‘that not all “organized crime” is committed by “Organized Crime” groups’. See Frank E. Hagan, ‘“Organized Crime” and “organized crime”: indeterminate problems of definition’, in *Trends in Organized Crime*, Vol. 9, No. 4, 2006, p. 134.
- 15 Whether the Italian mafias can be classified as organized crime is controversial. Against that classification see Mario Bezotti, ‘Organisierte Kriminalität: zur sozialen Konstruktion einer Gefahr’, in *Angewandte Sozialforschung*, Vol. 22, Nos. 3 and 4, 2002, p. 136; see also Douglas Meagher, *Organised Crime: Papers*

and different as the illicit markets are the defining characteristics of the groups that supply them. They vary from small, loosely connected networks, comprising a handful of persons, to large, hierarchical organizations.¹⁶ Not all of them, whether small or not, highly organized or rather disorganized, use secret codes, skilled personnel (such as economists, lawyers, or technicians), or behave like legal enterprises.

It is therefore very difficult to reach a consensus on the appropriate use and meaning of the term ‘organized crime’.¹⁷ Suggestions have been made that this concept, suspected of being a vehicle for ideologically motivated repression of individuals and social groups, an ‘enemy’ artificially created but ill-defined, should be abandoned.¹⁸ This, however, has not happened.

Analytical and practical consequences

There are good reasons to deem a definition of organized crime desirable and necessary. One is that the repression of organized crime often implies law measures that may conflict with fundamental guarantees such as the right to privacy or the freedom of communication. Without a definition that steers its correct application, activities and groups of individuals that in fact do not represent organized crime, and consequently pose no serious threats to public security, might be affected and criminalized. Furthermore, defining ‘organized crime’ facilitates the work of the law-enforcement institutions by giving it a clearer focus and therefore tends to increase its effectiveness, avoiding the waste of human and financial resources.

Obviously the dilemma is that, if ‘organized crime’ is defined too broadly, the steps taken may be ineffective or incompatible with the rules and principles of the constitutional state, and might even become abusive. However, if ‘organized crime’ is defined too narrowly, important developments and events that could have been prevented may be left out of range.

Another question that has practical implications for legislators is which of the two basic options described above is more appropriate. The focus on illegal activities is clearly favoured by the fact that modern criminal law does not punish individuals for what they are (e.g. members of a criminal organization) but for what they do (e.g. application of violence). Using ‘indicator activities’ may also be helpful in detecting ‘organized crime’ as clandestine criminality that only becomes

presented by Mr Douglas Meagher, Q.C., to the 53rd ANZAAS Congress, Perth, Western Australia, 16–20 May 1983, AGPS, Canberra, 1983, pp. 3ff.

16 Phil Williams, ‘Transnational criminal networks’, in John Aquilla and David F. Ronfeld (eds), *Netwars and Networks: The Future of Terror, Crime, and Militancy*, RAND, Santa Monica, CA, 2001, p. 65; United Nations Office on Drugs and Crime (UNODC), *Global Programme against Transnational Organized Crime: Results of a Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries*, Geneva, 2002, p. 30.

17 For a comprehensive list of definitions, see Klaus von Lampe’s compilation, available at: <http://www.organized-crime.de/OCDEF1.htm> (last visited 15 February 2010).

18 Peter-Alexis Albrecht, *Kriminologie: Eine Grundlegung zum Strafrecht*, Beck, Munich, 2005, pp. 343–352.

evident upon further investigation. Yet the existence of criminal organizations is also a fact. Even if the desirability of their criminalization is questioned, it is at least important to observe and, if possible, to deter and destroy such groups.

In view of these considerations, it is entirely understandable that legislators have gone in quite different directions when dealing with organized crime, and why finding a common denominator is so difficult. While it cannot be ignored that specific political and institutional interests underlie the various initiatives to fight what is deemed to be ‘organized crime’, there can ultimately be no doubt of the existence of phenomena of collective criminality that can have devastating effects on state and society, impeding the rule of law, sustainable development, and, in particular, human security.¹⁹ In extreme cases, organized criminal groups dominate entire social segments, such as the hundreds of thousands of inhabitants of Rio de Janeiro’s shanty towns.²⁰

Gangs and gang violence

An alternative approach, which may be seen as a compromise with regard to the aforesaid risks and challenges, is to draw a line between ‘organized crime’ and less professional and less sophisticated criminal collectives. The situation in Rio de Janeiro is a good illustration of the need to distinguish between ‘organized crime’ and gangs and gang violence, and of the problems involved in doing so.

In Rio de Janeiro, urban violence results in far more than one thousand homicides per year.²¹ Adolescents and young men toting machine guns and grenades who patrol through the city’s shanty towns have become symbolic of this complex situation.²² They are systematically used by drug lords, who pay them (well) for defending their territory against the state and rival groups.²³ The drug

19 Nicole Sobotkiewiz and Matthias Klopstein, ‘Organisierte Kriminalität: bestehende Bedrohung – trotz definitorischer Unbestimmtheit’, in *Angewandte Sozialforschung*, Vol. 22, Nos 3 and 4, 2002, pp. 151–154; Katarina Hofmann, ‘The impact of organized crime on democratic governance: focus on Latin America and the Caribbean’, in *FES Briefing Paper*, No. 13, 2006, pp. 2–8; John T. Picarelli, ‘Transnational organized crime’, in Paul D. Williams (ed.), *Security Studies: An Introduction*, Routledge, New York, 2008, p. 464.

20 For a description of Rio de Janeiro’s urban violence, see Sven Peterke, *Rio de Janeiro’s ‘Drogenkrieg’ im Lichte der Konfliktforschung und des Völkerrechts*, Berliner Wissenschafts-Verlag, Berlin, 2009, pp. 5–22; Robert Neuwirth, *Shadow Cities: A Billion Squatters, a New Urban World*, Routledge, New York, 2006, pp. 253–270.

21 For details see ‘Promotion and protection of all human rights, civil, political, economic, social and cultural rights including the right to development’, Report of the Special Rapporteur on extrajudicial, summary, and arbitrary executions, Mr Philip Alston, Addendum, ‘Mission to Brazil’, UN Doc. A/HRC/11/2/Add.2, 23 March 2009, p. 9.

22 For an instructive analysis and photos, see Luke Dowdney, *Children of the Drug Trade: A Case Study of Children in Organized Armed Violence in Rio de Janeiro*, 7Letras, Rio de Janeiro, 2003. See also Jailson de Souza e Silva and André Urani, *Brazil: Children in Drug Trafficking – A Rapid Assessment*, International Labour Office (ed.), International Programme against the Elimination of Child Labour, Geneva, 2002, pp. 5–8.

23 L. Dowdney, above note 22, pp. 46–51.

lords are embedded in larger but only loosely connected criminal organizations that have emerged from prison gangs.²⁴ As drug dealers in the streets of the shanty towns, the many so-called ‘foot-soldiers’ are not directly engaged in the ‘big business’ of the local criminal networks that order and purchase tons of drugs and thousands of weapons, manipulate corrupt officials, and maintain contact with other criminal organizations. It therefore seems appropriate to qualify the groups of adolescents and young men as gangs whose violence may be attributed to the respective criminal organization,²⁵ while not placing them on an equal footing with it and treating them accordingly.

Many efforts have been made to distinguish gangs and their delinquency from more (and less) severe forms of collective criminality. Studies have shown that the formation of youth gangs is primarily a result of ‘street socialization’ and social exclusion: their members often share the same bleak situation of unemployment and lack of prospects. Gangs and their specific ‘culture’, sometimes consisting of rituals, symbols, and the like, seem to impart a sense of identity, status, and solidarity,²⁶ which the use of violence and ‘turf wars’ (the defence of territory) often serve to strengthen. It can be said that gang violence is mainly of a tactical nature to achieve short-term goals, whereas criminal organizations use violence more strategically to consolidate long-term goals.²⁷ Many authors therefore stress that gangs are less sophisticated and are not true market players: they do not exist to provide regular goods or services professionally, but commit less well-organized and well-planned crimes without any clearly defined purpose.²⁸

In practice, however, the dividing line between gangs and organized crime often becomes blurred. Again, the dynamics and heterogeneity of the phenomena in question must be borne in mind. Criminal organizations often emerge out of gangs (and hence continue to use their names and symbols) and may also recruit members of street gangs to spread violence or provide other services.²⁹ Indeed, there are well-structured gangs that represent quite permanent associations and professionally commit serious and even transnational crimes.³⁰

24 Although many refer to them as ‘gangs’, their classification as criminal organizations does not seem to be controversial. See Roberto Porto, *Crime organizado e sistema prisional*, Atlas, São Paulo, 2006, p. 86; Ana Luiza Almeida Ferro, *Crime organizado e organizações criminosas*, Juruá, Curitiba, 2009, p. 545.

25 In favour of such differentiation: Dieter Schwind, *Kriminologie: eine praxisorientierte Einführung mit Beispielen*, Kriminalistik Verlag, Heidelberg, 2008, p. 620; S. Peterke, above note 20, p. 9.

26 The numerous theories attempting to explain the phenomenon outlined cannot be presented here. For a general overview, see Larry J. Siegel and Brandon C. Welsh, *Juvenile Delinquency: Theory, Practice, and Law*, Wadsworth, Belmont, CA 2009, pp. 312–315; Merry Morash, ‘Gangs, groups and delinquency’, in *British Journal of Criminology*, Vol. 23, No. 4, 1989, pp. 309–331.

27 Scott H. Decker and Barrik van Winkle, *Life in the Gang: Family, Friends, and Violence*, Cambridge University Press, Cambridge, 1996, pp. 23–25; A. Wright, above note 7, p. 44.

28 M. W. Klein, *Gang Cop: The Words and Ways of Officer Paco Domingo*, Alta Mira Press, Walnut Creek, CA, 2004, p. 59; Ulrich Eisenberg, *Kriminologie*, Beck, Munich, 2005, p. 920; D. Schwind, above note 25, p. 583.

29 See Francis A. Ianni with Elizabeth Reuss-Ianni, *A Family Business: Kinship and Social Control in Organized Crime*, Russel Sage Foundation, New York, 1972, p. 53; A. Wright, above note 7, pp. 38–39.

30 See Celinda Franco, *The MS-13 and 18th Street Gangs: Emerging Transnational Threats?*, CRS Report for Congress, Congressional Research Service, Washington, DC, 2008, p. 6; Deborah L. Weisel, ‘The

It might therefore be argued that the distinction between organized crime, gangs, and gang violence is artificial and of little use. Whether and to what extent such a view can be justified ultimately depends on the definitions applied.³¹ However, as we have seen, there is no satisfactory definition and consequently no consensus in that regard.³²

Organized crime and gang violence in national (criminal) law

Against this background, national legislators have taken different approaches to deal with organized crime on the one hand, and with gangs and gang violence on the other.

‘Organized crime’ has only rarely become a legal term of art in national legislation. One example is the Indian ‘Maharashtra Control of Organised Crime Act’ of 1999. It defines organized crime as

any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.³³

This definition is evidently very broad and covers phenomena, such as insurgency, that the majority of academics would presumably exclude from the term ‘organized crime’. India, however, is not unique in this respect. Mexico, for instance, has only recently opted to criminalize ‘organized delinquency’³⁴ and the definition of that term explicitly includes terrorism.³⁵

Other states have opted for a more differentiated approach. One example is Austria. Instead of criminalizing ‘organized crime’, Austria’s Penal Code criminalizes the formation of a ‘criminal organization’ (*kriminelle Organisation*),³⁶ and the former offence of ‘formation of a gang’ (*Bandenbildung*) has now become the

evolution of street gangs: an examination of form and variation’, in Winifred L. Reed and Scott H. Decker (eds), *Responding to Gangs: Evaluation and Research*, US Department of Justice, National Institute of Justice, Washington, DC, pp. 25–65.

31 Irving A. Spergel, *The Youth Gang Problem: A Community Approach*, Oxford University Press, New York, 1995, p. 129.

32 Richard A. Ball and G. David Curry, ‘The logic of definition in criminology: purposes and methods for defining “gangs”’, in *Criminology*, Vol. 33, No. 2, 1995, p. 225; Jonathan Matusitz and Michael Repass, ‘Gangs in Nigeria: an updated examination’, in *Crime, Law and Social Change*, Vol. 52, 2009, p. 496; A. Wright, above note 7, p. 31.

33 Maharashtra Control of Organised Crime Act, Art. 2(e), available at: <http://www.satp.org/satporgtp/countries/india/document/actandordinances/maharashtra1999.htm> (last visited 30 March 2010).

34 Ley Federal contra la Delincuencia Organizada, DOF 23–01–2009, available at: <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/101.pdf> (last visited 30 March 2010).

35 *Ibid.*, Art. 2.

36 Austrian Penal Code, Art. 278a, available at: <http://www.ibiblio.org/ais/stgb.htm> (last visited 30 March 2010).

offence of forming a ‘criminal association’ (*kriminelle Vereinigung*), with its own separate section under the heading of Chapter 28 (‘Criminal conduct against the public peace’).³⁷ A ‘criminal organization’ is qualified as being businesslike and consisting of a larger number of persons. Other provisions also penalize the foundation of and participation in a ‘terrorist organization’ and ‘armed associations’.³⁸

Apart from that quite exceptionally wide-ranging legislation, most countries in the European Union, for instance Germany, tend to punish participation in ‘criminal’ and ‘terrorist associations’ only.³⁹ Those offences, which do literally require some sort of personal set-up, significantly used to be called ‘organization offences’ (*Organisationsdelikte*). Furthermore, as is typical of both civil and common law jurisdictions, the German Penal Code considers an aggravation of rather ubiquitous everyday crimes such as theft, robbery, or bodily harm to be attributable to group and gang conduct. Hence, conduct by somewhat ‘organized’ groups may easily rate as an aggravated case of serious theft or serious robbery committed by a gang (*Bandendiebstahl/Bandenraub*)⁴⁰ and of dangerous bodily harm committed jointly.⁴¹ These offences ‘qualify’ (*qualifizieren*) the underlying basic offence for a higher level of sentencing, which is why their existence mainly belongs to the domain of sentencing. When it finally comes to sentencing, offenders operating in groups or gangs often receive a more severe sentence, in common law countries too,⁴² because such conduct is deemed to involve greater harm, greater fear, a greater sense of helplessness, and uncontrollable group dynamics.

Other states largely follow this doctrinal approach, though without clearly distinguishing between the formation of gangs and that of criminal associations or organizations. For example, Brazil’s Penal Code criminalizes the association of ‘*quadrilhas e bandas*’.⁴³ Special legislation designed to combat organized crime also exists.⁴⁴ It does not, however, define or delimit this term in relation to the aforesaid

37 *Ibid.*, Art. 278(2): ‘A criminal association is a confraternity of more than two people established for a longer period of time and for the commitment by one or more of its members of one or more felonies [*Verbrechen*], other serious crimes [*Gewalttaten*] against life or limb, not only minor damage to property, thefts, frauds, or offences [*Vergehen*] under Articles 104a, 165, 177b, 233 to 239, 241a to 241c, 241e, 241f, 304 or 307 [of the Penal Code] or under Articles 114(2) or 116 of the Aliens Police Law [*Fremdenpolizeigesetz*]. Conversely, the formation of a gang (*Bandenbildung*) only required a loose confraternity of more than two people to commit an ‘undetermined multitude’ of crimes, according to Gudrun Hochmayr, ‘Österreich’, in Walter Gropp and Arndt Sinn (eds), *Organisierte Kriminalität und kriminelle Organisationen: präventive und repressive Massnahmen vor dem Hintergrund des 11. September 2001*, Nomos, Baden-Baden, 2007, pp. 262ff.

38 Austrian Penal Code, Arts. 278b and 279.

39 German Penal Code, Arts. 129, 129a, 129b, available at: http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html (last visited 30 March 2010).

40 *Ibid.*, Arts. 244(1)2, 244a, 250(1)2, and (2)2.

41 See *ibid.*, Art. 224(1)2, No. 3.

42 See, also for the following analysis, Andrew Ashworth, *Sentencing and Criminal Justice*, 5th edn, Cambridge University Press, Cambridge, 2010, p. 163, with further references in note 29.

43 Código Penal, Art. 288, available at: <http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848.htm> (last visited 30 March 2010).

44 Law No. 9.034 (1999), modified by Law No. 10.217 (2001), available at: http://www.planalto.gov.br/ccivil_03/Leis/L9034.htm (last visited 30 March 2010).

phenomena.⁴⁵ In the United States of America, states such as California punish active participation in ‘criminal street gangs’, described as

any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity,⁴⁶

when this membership is followed by an act of promotion of, furthering, or assistance in any felonious criminal conduct by members of that gang.

Another way to take in gang or organized group conduct is by referring to general principles of criminal law, particularly as regards the inchoate offence of conspiracy in common law jurisdictions and – its equivalent in civil law countries – attempted participation.

In common law countries such as England, both group and organized deviance often fulfils the requirements for the inchoate offence of conspiracy.⁴⁷ This crime consists of an agreement between two or more persons to commit a criminal offence and more precisely exists

if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible.⁴⁸

Of course, this approach entails another, different concept that indeed ‘may be defended as a vital tool against organized crime’.⁴⁹ However, as ‘preliminary crimes’, inchoate offences incur the punishment of conduct prior to any harm being inflicted.⁵⁰ On that basis, the scope of criminal liability is extended to activities that normally constitute a much less serious nuisance but show a mere intention that is to be prevented.⁵¹ There are, however, states such as Japan that

45 For details, see Sven Peterke, ‘Die Strafbarkeit krimineller Vereinigungen nach brasilianischem Recht’, in *Zeitschrift für Internationale Strafrechtsdogmatik*, Vol. 3, No. 5, 2008, p. 259, available at: http://www.zis-online.com/dat/artikel/2008_5_237.pdf (last visited 30 March 2010).

46 California Penal Code, Section 186.22.(f), available at: <http://law.justia.com/california/codes/pen.html> (last visited 30 March 2010). For further analysis, see François Haut and Stéphane Quéré, *Les bandes criminelles*, Presses Universitaires de France, Paris 2001, pp. 13ff.

47 For the three distinct forms of conspiracy under English law, see *Blackstone’s Criminal Practice 2009*, Oxford University Press, Oxford, 2008, A6.39ff.

48 Criminal Law Act 1977, Section 1(1).

49 Andrew Ashworth, *Principles of Criminal Law*, 6th edn, Oxford University Press, Oxford, 2009, p. 452. For the ambivalent nature of conspiracy, see *ibid.*, p. 451.

50 Glanville Williams, *Criminal Law: The General Part*, 2nd edn, Sweet & Maxwell, London, 1961, p. 609.

51 For the debate on the justification for the offence, see A. Ashworth, above note 49, pp. 448–452; G. Williams, above note 50, p. 710.

have no conspiracy law, nor have they criminalized participation in an organized criminal group.⁵²

A further characteristic of national jurisdictions is to deal with *gang violence* in particular as a criminal offence affecting public order. As ‘violent disorder’ (e.g. in England and Wales under the Public Order Act 1986), gang violence requires the use or threat of violence by three or more people in a way that would cause a person of reasonable firmness present at the scene to fear for his personal safety.⁵³ Here, in contrast to the offence of conspiracy, harm already exists in the form of actual violence or the threat thereof, but in this case, too, there are limitations to the criminalization of gang violence: the conduct has to affect the public in some way and, as long as fewer than three persons engage in it, the offence is not given.⁵⁴ Interestingly, English courts tend to impose heavier sentences whenever there is evidence of ‘organization’. Civil law jurisdictions often arrive at the same result by statutory provisions aggravating the sentence for group or gang conduct.⁵⁵

In essence, none of these offences criminalizes conduct that actually harms legally protected interests of an individual (they do not criminalize violence, damage to property, etc.), but founding those organizations as such is held to endanger public order in an abstract manner.

To sum up, many national laws differ substantially with regard to the treatment of organized crime, gangs, and gang violence. There are highly differentiated and less differentiated approaches to criminalization. Sometimes, as in the case of Japan, there are still no specific laws designed to combat organized crime. Most of the concepts presented seem to provide an understanding of organized crime broad enough to cover all the facets of gang violence. Conversely, no single national jurisdiction would include gang violence as such as an organized crime, because gang violence in itself simply lacks too many elements required by the prevalent understanding of organized crime. Thus organized crime and gang violence share an intersection or interface but are not congruent phenomena in national legislation.

Organized crime and gang violence in public international law

Organized crime and gang violence has increasingly become subject to international regulation. Particularly after the cold war, states became more and more

52 Chris Coulson, ‘Criminal conspiracy law in Japan’, in *Michigan Journal of International Law*, Vol. 28, 2007, p. 864.

53 Public Order Act 1986, Section 2(1). German law provides for a very similar concept in Section 125 of the Penal Code.

54 In German law, there is a similar restriction for what is termed ‘act from out of a crowd’ (*Menschenmenge*), i.e. an act by fewer than a crowd.

55 See e.g. German Penal Code, Art. 244(1)2 (from a fine to imprisonment from six months to ten years), Art. 250(1)2 (from at least one year’s to at least three years’ imprisonment) and Art. 224(1)2 No. 4 (from a fine to at least six months’ and up to ten years’ imprisonment), increasing the mandatory range of punishment for theft, robbery, and bodily harm in cases of group or gang conduct.

aware of the transnational dimensions of organized crime as a side-effect of globalization.⁵⁶ They therefore adopted an international framework to repress ‘organized criminal groups’ and their most harmful activities. The following analysis will begin by explaining the evolution and significance of the legal regime.

International humanitarian law (IHL) and international criminal law both address violence by ‘organized armed groups’. This raises the question whether armed criminal groups may become party to an armed conflict and, if so, under which specific preconditions. Their qualification as an ‘organized armed group’ would then allow for their members to be held responsible for international crimes.

International framework to combat organized crime

Co-operation in criminal matters is a very sensitive issue. Its effectiveness often depends on the confidential exchange of information and a common interest in the success of a particular operation. During the cold war, such mutual confidence was rather limited in the community of states. Organized crime was moreover perceived as being primarily a domestic problem. Yet the lack of common interests and mutual confidence, and the slowly developing awareness of the transnational dimensions of organized crime, explain only in part why states have been reluctant to establish a legally binding multilateral framework designed to encourage and promote international co-operation for the suppression of organized crime.⁵⁷ As transnational offending⁵⁸ – truly a catch-all term understood to mean deviant behaviour at a level of criminality that by its very nature necessarily involves either transcending state borders, violating the laws of several states, or evading a state’s jurisdiction by not being attributable to a certain state territory⁵⁹ – many forms of organized crime have tended to be subject to so-called suppression treaties, that is, multilateral agreements between state parties in order to fight deviance effectively from an international perspective.

A glance a little further back in history shows that states themselves have often tried to profit from markets that later become illegal and are therefore now supplied by criminal organizations. This holds especially true for drug and human

56 David Felsen and Akis Kalaitzidis, ‘A historical overview of transnational crime’, in Philip Reichel (ed.), *Handbook of Transnational Crime and Justice*, SAGE Publications, London, 2005, p. 12; Robert Esser, *Auf dem Weg zu einem europäischen Strafverfahrensrecht*, DeGruyter, Berlin, 2002, p. 22.

57 Although bilateral agreements undoubtedly have been and still are of great relevance, often containing special rules or closing important legal gaps, these international treaties cannot be dealt with in the present article.

58 See in general Nikos Passas (ed.), *Transnational Crime*, Ashgate, Aldershot, Hampshire, 1999; Raimo Väyrynen, *Illegal Immigration, Human Trafficking, and Organized Crime*, United Nations University, World Institute for Development Economics Research, Helsinki, 2003; Gargi Bhattacharyya, *Trafficked: The Illicit Movement of People and Things*, Pluto, London, 2005; Kimberley L. Thachuk (ed.), *Transnational Threats: Smuggling and Trafficking in Arms, Drugs, and Human Life*, Praeger Security International, Westport, CT, 2007; David Kyle and Rey Koslowski (eds), *Global Human Smuggling: Comparative Perspectives*, Johns Hopkins University Press, Baltimore, 2001.

59 Neil Boister, ‘Transnational criminal law?’, in *European Journal of International Law*, Vol. 14, No. 5, 2003, p. 954; Nikos Passas, in *European Journal of International Law*, Vol. 14, No. 5, 2003, pp. xiii–xiv.

trafficking, which are today considered to be the world's most harmful and most lucrative illegal activities.⁶⁰

Human trafficking is essentially a modern form of slave trade that involves practices such as sexual exploitation, forced labour, slavery, and similar practices.⁶¹ Mainly for economic reasons, governments hesitated until the nineteenth century to recognize in their constitutional instruments the fundamental right of every person not to be held in slavery or servitude and not to be traded as a commodity.⁶² In the United States, a civil war (1861–1865) was fought to enable this basic human right to prevail over the economically driven interests of the South. In other states, for instance Brazil, its recognition came about peacefully, but even later.⁶³ It was not until after the Second World War that it was universally recognized⁶⁴ and subsequently became customary international law with the status of *jus cogens*, from which obligations *erga omnes* derive.⁶⁵ European states had adopted the Declaration on the Abolition of the Slave Trade in 1815,⁶⁶ yet it took more than a hundred years to reach an international consensus on a relatively narrow definition of slavery, slavery-like institutions and practices, and the slave trade.⁶⁷ Telling documents addressing shameful issues, such as the 1904 International Agreement for the Suppression of the White Slave Traffic,⁶⁸ mark this historic struggle. While slavery, slave-related practices, and forced labour became recognized as

60 The UNODC estimates the global value of the illicit drug trade at US\$ 322 billion, and that of human trafficking at US\$ 32 billion; see UNODC (ed.), *2007 World Drug Report*, UNODC, New York, 2007, p. 170.

61 Walter Kälin and Jörg Künzli, *Universeller Menschenrechtsschutz*, Nomos, Basel, 2005, p. 411. For an instructive historical overview, see David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, New York and Geneva, 2002 (UN Doc. HR/PUB/02/04), pp. 3–8.

62 See Seymour Drescher, *Abolition: A History of Slavery and Antislavery*, Cambridge University Press, New York, 2009, pp. 267ff.; Michael Haas, *International Human Rights: A Comprehensive Introduction*, Routledge, New York, 2008, pp. 47–50.

63 Brazil formally abolished slavery in 1888. See Luiz Flávio Gomes and Valério de Oliveira Mazzuoli, *Comentários à Convenção Americana sobre Direitos Humanos: Pacto de San José da Costa Rica*, Editora Revista dos Tribunais, São Paulo, 2009, p. 46.

64 See e.g. Universal Declaration of Human Rights, 10 December 1948, GA Res. 217A (III), Art. 4; and International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Art. 8 (entered into force 23 March 1976).

65 International Court of Justice (ICJ), *Barcelona Traction, Light and Power Company, Ltd. (Belgium v. Spain)*, Judgment of 5 February 1970, ICJ Reports 1970, p. 32; Anne M. Trebilcock, 'Slavery', in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Vol. IV, 2000, p. 422; A. Yasmin Rassam, 'Contemporary forms of slavery and the evolution of the prohibition of slavery and the slave trade under customary international law', in *Virginia Journal of International Law*, Vol. 3, 1999, p. 303.

66 Declaration Relative to the Universal Abolition of the Slave Trade, 8 February 1815, 63 Consol. TS 473, adopted during the Peace Conference in Vienna.

67 1926 Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention, 25 September 1926, 212 UNTS 17, Art. 1 (entered into force 9 March 1927). The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 226 UNTS 3 (entered into force 30 April 1957) broadened its scope of application.

68 International Agreement for the Suppression of the White Slave Traffic, 18 May 1904, 11 LNTS 83 (entered into force 18 July 1905); succeeded by the International Convention for the Suppression of the White Slave Traffic, 4 May 1910; both instruments were supplemented by the International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921 (entered into force 15 June 1922), which abolished the limitation to white persons.

international crimes before the adoption of the 1988 Rome Statute of the International Criminal Court (ICC),⁶⁹ it was not until the year 2000 that states adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.⁷⁰

Great Britain fought the Opium Wars (1839–1842, 1856–1860) to force China to accept free trade in that drug and to open its domestic market. The process of international repression of drugs only started in 1909 with the Shanghai Opium Conference.⁷¹ It led to the first international anti-drug treaty, the 1912 International Opium Convention,⁷² which related to the trade in cocaine and heroin and distinguished between legal and illegal drugs.⁷³ Various other anti-drug instruments have been adopted since then, successively criminalizing all kinds of drugs, their production, trading, and consumption.⁷⁴ In Article 2 of the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs,⁷⁵ states parties were enjoined ‘to make the necessary legislative provisions for severely punishing’ acts such as ‘possession, offering (for sale), distribution, purchase, sale, delivery ..., brokerage, despatch (in transit), transport, importation, and exportation of narcotic drugs’. In addition, the *aut dedere aut judicare* principle was included (Articles 7, 8, and 9(1–3)), with an exception for ‘not sufficiently serious’ crimes (Article 9(4)).⁷⁶ As the power, influence and transnationality of criminal groups involved in these markets became more evident in the 1980s, the international efforts to combat them culminated in the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and

69 See e.g. Rome Statute of the International Criminal Court, 2187 UNTS 90, Art. 7(2) (entered into force 1 July 2002); M. Cherif Bassiouni, ‘Enslavement as international crime’, in *New York University Journal of International Law*, Vol. 23, 1991, p. 448.

70 Adopted by UN General Assembly Resolution 55/25 of 15 November 2000, *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 49 (A/45/49)*, Vol. I (entered into force 25 December 2003).

71 Sandeep Chawla and Thomas Pietschmann, ‘A historical overview of transnational crime’, in P. Reichel, above note 56, p. 161; Istvan Bayer and Hamit Ghodse, ‘The evolution of international drug control, 1945–1995’, in *Bulletin on Narcotics*, Vol. 51, Nos 1 and 2, 1999, p. 1.

72 International Opium Convention, 23 January 1912, 8 LNTS 187 (entered into force 19 February 1915).

73 *Ibid.*, Art. 8–16 and 19–21.

74 To name a few: Second International Opium Convention, 19 February 1925, 81 LNTS 318 (entered into force 25 September 1928); Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 13 July 1931, 139 LNTS 301 (entered into force 9 July 1933); Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 26 June 1936, 198 LNTS 299 (entered into force 26 October 1939); Single Convention on Narcotic Drugs, 1961, 520 UNTS 204 (entered into force 13 December 1964); Protocol Amending the Single Convention on Narcotic Drugs, 25 March 1972, 976 UNTS 3 (entered into force 8 August 1975); Convention on Psychotropic Substances, 21 February 1971, 1019 UNTS 175 (entered into force 16 August 1976). Yet some issues, such as the status of coca, still remain unclear. See Francis E. Thoumi, ‘A modest proposal to clarify the status of coca in the United Nations conventions’, in *Crime, Law and Social Change*, Vol. 42, 2004, pp. 297–307.

75 See Patrick Robinson, ‘The missing crimes’, in Antonio Cassese, Paola Gaeta, and John R. W. D. Jones (eds), *The Rome Statute of the International Criminal Court*, Oxford University Press, Oxford, 2002 pp. 498–499 and 523–524, listing the thirteen most important conventions.

76 This convention was – like many others – signed in 1936 by the more or less particularly affected states, such as China, Colombia, Cuba, Ecuador, Honduras, Mexico, Panama, Uruguay, and Venezuela.

Psychotropic Substances,⁷⁷ which today enjoys quasi-universal character.⁷⁸ Again, however, it only covers one specific illegal market and does not address organized crime in a more comprehensive way.

These treaties have mainly focused on international consent and co-operation, rather than on establishing international or even universal jurisdiction over the crimes concerned. It is therefore safe to say that group or organized criminal conduct might indeed be regulated by them. The criminalization of those crimes, however, rests with national jurisdictions, not with supranational authorities, and it is hard to link the notion of transnational offending to gang violence and organized crime whenever the deviance does not cross borders.

The United Nations Convention against Transnational Organized Crime

In view of these antecedents, the United Nations Convention against Transnational Organized Crime (UNTOC), adopted in Palermo, Italy, on 15 December 2000, marks a major breakthrough, as the following brief outline of its content and significance shows.⁷⁹

The declared purpose of the Convention is ‘to promote cooperation to prevent and combat transnational organized crime’.⁸⁰ Since the effectiveness of such co-operation depends on the applicability of common legal standards, the Convention obliges states parties to criminalize participation in an organized criminal group, corruption,⁸¹ the laundering of the proceeds of crime (money laundering),⁸² and the obstruction of justice.⁸³ It thus focuses on the ‘enabling’ or ‘secondary activities’ that are characteristic of organized crime. The ‘primary activities’ have been separated from the core instrument and are dealt with by the three Protocols thereto. This approach facilitated finding a consensus and increases

77 Adopted on 20 December 1988, entered into force on 11 November 1990 (reprinted in 28 ILM 493 (1988)).

78 In January 2010, it had 184 states parties: see <http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html> (last visited 29 January 2010).

79 For a comprehensive study, see David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols*, Oxford, 2007.

80 UNTOC, Art. 1.

81 Independently from organized crime, corruption is dealt with in a series of universal and regional instruments, and in particular in the United Nations Convention against Corruption, 31 October 2003, 43 ILM (2004) 37 (entered into force 14 December 2005). For an instructive overview of pertinent instruments, see Sebastian Wolf, ‘Internationale Korruptionsbekämpfung: Anmerkungen zum zehnjährigen Jubiläum des OECD-Bestechungsübereinkommens’, in *Kritische Justiz*, Vol. 41, No. 4, 2008, pp. 367–370.

82 Similarly, money laundering and asset recovery are dealt with independently from organized crime in a series of instruments such as the above-mentioned United Nations Convention against Corruption or the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 8 November 1990, Council of Europe, CETS No. 141. However, the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances already obliged states to criminalize the laundering of profits obtained from drug offences.

83 UNTOC, Arts. 5, 6, 8, and 23.

the Palermo Convention's chance of gaining universal acceptance. Indeed, it already has 147 states parties.⁸⁴ Moreover, the decision to deal with the 'primary activities' in autonomous international treaties allows for the adoption of further protocols dedicated to specific aspects that are not covered by the existing instruments. It also facilitates its revision and amendment.

The Convention against Transnational Organized Crime does not lay down a legal definition of (transnational) organized crime. As we have seen, a consensus to that effect would have been impossible to reach, and the desirability of such a definition may be questionable in light of the dynamics, explained above, of the phenomena.⁸⁵ However, the Convention does specify the use of some basic terms⁸⁶ in order to give states some necessary guidance for its implementation in national law. Article 2 contains meaningful explanations with regard to the duty to criminalize participation in an 'organized criminal group' (Article 5). It stipulates that:

For the purposes of the Convention:

- a) 'Organized criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.
- b) 'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.
- c) 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure...

These definitions are subject to criticism for being over-inclusive and vague.⁸⁷ While this point is relatively easy to make, it must not be overlooked that the

84 See <http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html> (last visited 25 March 2010). Major countries that still have not ratified the UNCTOC include the Czech Republic, Greece, Japan, the Republic of Korea, Thailand, and Vietnam.

85 See UNODC (ed.), *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, United Nations, New York, 2006, p. xxi.

86 UNCTOC, Art. 2.

87 See e.g. Alexandra W. Orlova and James W. Moore, '“Umbrellas” or “building blocks”: defining international terrorism and transnational organized crime in international law', in *Houston Journal of International Law*, Vol. 27, No. 2, 2005, pp. 282–287; J. O. Finckenauer, above note 12, p. 68. The UNCTOC treaty is also criticized for other reasons: see e.g. Jennifer L. Enck, 'The United Nations Convention against Transnational Organized Crime: is it all that it is cracked up to be? Problems posed by the Russian mafia in the trafficking of human beings', in *Syracuse Journal of International Law and Commerce*, Vol. 30, 2003, pp. 394.

consensus reached is nonetheless a remarkable achievement. Since it is the result of difficult multilateral negotiations, it at least represents a quasi-universal common denominator.⁸⁸

The definition recognizes that criminal associations do not always have a hierarchical structure comparable to real enterprises, but often function as networks consisting of a few loosely connected members.⁸⁹ Nonetheless, there has to exist a ‘Structured group ... that is not randomly formed for the immediate commission of an offence’. This means that more spontaneous forms of collective criminality are excluded from it. This is an important limitation that may help to draw a line between organized crime and gang criminality.

Furthermore, the subjective element (‘in order to obtain, directly or indirectly, a financial or other material benefit’) confirms the dominant view that organized crime is not driven by political motives but is primarily out to make a profit. Groups such as terrorists and insurgents are therefore not covered by the scope of application of the Convention against Transnational Organized Crime.⁹⁰ This protects the Convention from being overly politicized. Whether such an important consensus could have been achieved after the 11 September 2001 terrorist attack on the United States and the US-proclaimed ‘merger of terrorism and organized crime’ is doubtful.⁹¹

Admittedly, the reference to the commitment of ‘serious crimes’ gives states considerable latitude in deciding whether to criminalize a specific form of conduct as being constitutive of an organized criminal group.⁹² The more explicit mention in Article 2(b) that serious crimes would be those ‘punishable by a maximum deprivation of liberty of at least four years or a more serious penalty’ still allows for a very broad interpretation of the term. Yet it is difficult to imagine an alternative solution that would have met with the approval of states. In the final analysis, it is their responsibility to implement the Palermo Convention in good faith in accordance with their national particularities and in conformity with the rule of law and other international obligations.⁹³

As the purpose of the Convention against Organized Transnational Crime is to promote co-operation in police and judicial matters, the majority of its

88 For the struggle to reach a definition in the *travaux préparatoires*, see D. McClean, above note 79, pp. 38ff.

89 Stefano Betti, ‘New prospects for inter-state co-operation in criminal matters: the Palermo Convention’, in *International Criminal Law Review*, Vol. 3, 2003, p. 152.

90 UNODC (ed.), *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol thereto*, United Nations, New York, 2004, para. 26.

91 Recent studies convincingly demonstrate the continuing need to distinguish between these phenomena. See e.g. Vanda Felbab-Brown, *Shooting Up: Counterinsurgency and the War on Drugs*, Brookings, Washington, DC, 2010; also Emma Björnehed, ‘Narco-terrorism: the merger of the war on drugs and the war on terror’, in *Global Crime*, Vol. 6, Nos 3–4, 2004, p. 315.

92 Valsamis Mitsileges, ‘From national to global – from empirical to legal: the ambivalent concept of transnational organized crime’, in Margaret E. Beare (ed.), *Critical Reflections on the Concept of Transnational Organized Crime*, University of Toronto Press, Toronto, 2003; A. W. Orlova and J. W. Moore, above note 87, p. 284.

93 Sven Peterke and Silvia Regina Pontes Lopes, ‘Crime organizado e legislação brasileira à luz da Convenção de Palermo: algumas observações críticas’, in *Verba Juris*, Vol. 7, 2008, p. 413.

forty-one articles specify how this is to be achieved. Among other things, it deals with international co-operation for purposes of confiscation of proceeds of crime, extradition and transfer of criminals, mutual legal assistance, and joint investigations.⁹⁴ In addition, it addresses the protection of witnesses and victims, data collection and exchange, training and technical assistance, and special investigative techniques.⁹⁵ A special provision is devoted to the prevention of organized crime.⁹⁶ As an abstract definition of such measures is hardly possible, these norms are primarily meant to guide the states parties in their efforts to implement the Convention. Such efforts by states are, however, obligatory.⁹⁷

A crucial point for all international treaties is the existence of a mechanism that promotes and reviews the respective treaty's effective implementation. The Palermo Convention delegates this task to the Conference of the Parties to UNCTOC,⁹⁸ which is assisted by a Secretariat.⁹⁹ So far, the Conference has not set up such a mechanism.¹⁰⁰ A recent evaluation shows, however, that the Convention is being increasingly applied by states as a legal basis for international co-operation, in particular with regard to extradition, mutual legal assistance, and confiscation of proceeds of crime.¹⁰¹ Yet many states parties still have not fully implemented the Convention.¹⁰² In this respect, important assistance is offered by the United Nations Office for Drugs and Crime (UNODC).¹⁰³

All in all, it can be said that the United Nations Convention against Transnational Organized Crime is the most important and comprehensive international instrument to combat organized crime.¹⁰⁴ As it obliges states to establish the aforesaid offences 'independently of the transnational nature or the involvement of an organized criminal group',¹⁰⁵ its impact goes beyond improving and promoting international co-operation against transnational organized crime¹⁰⁶ and

94 See UNCTOC, Arts. 11–21.

95 *Ibid.*, Arts. 20, 24–30.

96 *Ibid.*, Art. 31.

97 *Ibid.*, Art. 34(1); UNODC, above note 90, para. 36.

98 UNCTOC, Art. 32(1).

99 *Ibid.*, Arts. 33(1), (2)(a) and (b).

100 Its last session was held in Vienna, 8–17 October 2008. The numerous documents produced are available at: <http://www.unodc.org/unodc/en/treaties/CTOC/CTOC-COP.html?ref=menuaside> (last visited 22 February 2010).

101 Decision 4/2, 'Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime', in *Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime in its Fourth Session*, UN Doc. CTOC/COP/2008/19, 1 December 2008, sub-para. II(i).

102 Decision 4/1, 'Possible mechanisms to review implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto', in *ibid.*, sub-para. (f).

103 For an overview of the work done by UNODC, see <http://www.unodc.org/unodc/en/organized-crime/index.html?ref=menuaside> (last visited 22 February 2010).

104 Thilo Marauhn, 'Völkerrechtliche Massnahmen zur Bekämpfung von organisierter Kriminalität und Terrorismus', in W. Gropp and A. Sinn, above note 37, pp. 485ff.

105 UNCTOC, Art. 34(2). With regard to the involvement of an organized criminal group, the article makes it clear that Article 5 (participation in an organized criminal group) logically presupposes such an association.

106 For this, 'substantial effects in another State' are sufficient (UNCTOC, Art. 3(2)).

thus helps to create ‘a common language in the fight against organized crime’ in general.¹⁰⁷

The Protocols to the Palermo Convention

The three Protocols supplementing UNCTOC and dealing with specific ‘primary activities’ are as follows: the aforesaid Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol);¹⁰⁸ the Protocol against the Smuggling of Migrants by Land, Sea, and Air (Migrant Smuggling Protocol);¹⁰⁹ and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition¹¹⁰ (Firearms Protocol).

The Firearms Protocol is intended to play an important part in reducing the violence and harm resulting from firearms illegally produced and supplied by organized criminal groups.¹¹¹ As we have seen above, urban areas in particular are often plagued by firearms-related gang violence. Ultimately, there can be no doubt that an international mechanism for the record-keeping, marking, and tracing of arms that promotes their deactivation and creates a licensing and authorization system for their import, transit, and export¹¹² is indispensable to avert or de-escalate a number of violent situations, armed conflicts included. However, the Firearms Protocol itself proved very difficult to negotiate. It was therefore not adopted until 2001 and only seventy-nine states have ratified it to date;¹¹³ these do not include the most relevant arms-producing countries.¹¹⁴ Regional instruments and initiatives try to compensate for that deficit,¹¹⁵ but the firearms business is global. As with the fight against drug and human trafficking, the reluctance of states is once again largely due to economic considerations.¹¹⁶

107 Vincenzo Militello, ‘The Palermo UN Convention: a global challenge against transnational organised crime’, in Jan C. Joerden et al. (eds), *Vergleichende Strafrechtswissenschaft: Frankfurter Festschrift für Andrzej Szwarc zum 70. Geburtstag*, Duncker & Humblot, Berlin, 2009, p. 365.

108 Adopted on 15 November 2000, entered into force 25 December 2003, UN Doc. A/Res/55/25.

109 Adopted on, 15 November 2000, entered into force 28 January 2004, UN Doc. A/Res/55/25.

110 Adopted on 31 May 2001, entered into force 3 July 2005, UN Doc. A/Res/55/255.

111 Firearms Protocol, Art. 1. For a discussion of the drafting history, see Marjorie Anne Brown, ‘The United Nations and “gun control”’, in Marilyn F. Swartz (ed.), *United Nations in Focus: Issues and Perspectives*, Nova, New York, 2007, pp. 61–67.

112 Based on a broad definition of ‘firearm’ (Art. 3(a)), Articles 8 and 9 in particular of the Firearms Protocol contain important minimum standards for record-keeping and marking.

113 See <http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html> (last visited 25 February 2010).

114 For an instructive list of countries, see <http://www.iansa.org/un/firearms-protocol.htm> (last visited 29 April 2010).

115 Besides numerous plans or actions and pertinent soft law, there are, for instance, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, 14 November 1997; the Southern African Development Community’s Protocol on the Control of Firearms, Ammunition and Other Related Materials, 14 August 2001; and the Organization for Security and Cooperation in Europe (OSCE) Document on Small Arms and Light Weapons, 24 November 2000.

116 For a discussion of the difficulties in regulating the trade in small arms, see Nicholas Marsh, ‘Two sides of the same coin? The legal and illegal trade in small arms’, in *The Brown Journal of World Affairs*, Vol. 9, No. 1, 2002, p. 217.

More successful in terms of acceptance by states are the Trafficking and Migrant Smuggling Protocols. The former contains a very broad definition of its subject matter:

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs ...¹¹⁷

In contrast, the latter states that:

‘Smuggling of migrants’ shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident...¹¹⁸

The reason for this distinction seems to be the intention to deal under different premises with the criminal organizations involved. States are of the opinion that, because smuggled migrants agree with that illicit activity, they deserve less protection.¹¹⁹ In practice, however, many persons who pay criminal groups to be smuggled, often in inhumane conditions, are handed over to other criminal organizations for purposes of exploitation, in particular sexual.¹²⁰ Despite this critique it can be said that both instruments, which are supplemented by a number of international and especially regional instruments,¹²¹ set up a specific framework for co-operation. To date, 137 states have ratified the Trafficking Protocol and 123 the Migrant Smuggling Protocol.¹²² Since these treaties are less accepted than the mother convention, they share the latter’s shortcomings in terms of implementation. However, it might still be too early to evaluate their success.

117 Trafficking Protocol, Art. 3(a), supplemented by sub-para (b) and (c). The details of this definition are not easy to understand and are subject to criticism. See Silvia Scarpa, ‘Child trafficking: international instruments to protect the most vulnerable victims’, in *Family Court Review*, Vol. 44, No. 2, 2006, p. 434; Hans-Joachim Heintze and Sven Peterke, ‘Inhalt und Bedeutung des VN-Protokolls zur Verhütung, Unterdrückung und Bestrafung des Menschenhandels’, in *Humanitäres Völkerrecht-Informationsschriften*, Vol. 21, No. 1, 2008, pp. 10–11.

118 Migrant Smuggling Protocol, Art. 3(a).

119 Anne Gallagher, ‘Trafficking, smuggling and human rights: tricks and treaties’, in *Forced Migration Review*, No. 12, 2002, pp. 25–27.

120 Jacqueline Bhaba and Monette Zard, ‘Smuggled or trafficked?’, in *Forced Migration Review*, No. 25, 2006, p. 8.

121 For a listing of the pertinent instruments, see Irena Omelaniuk, *Trafficking in Human Beings*, United Nations Expert Group Meeting on Migration and Development, 6–8 July 2005, UN Doc. UN/POP/MIG/2005/15, 1 July 2005, p. 8. See also the Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, 16 May 2005 (entered into force 1 February 2008).

122 See <http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html> (last visited 25 February 2010).

As we have seen, the fact that a general framework has been adopted to combat organized crime is in itself remarkable.

The impact of the treaty on European Union law

Within the European Union in particular, member states are already obliged to approximate their national laws in order to fight organized crime, by virtue of European Union law (see Articles 83(1) and 87(2)(c) of the Treaty on the Functioning of the European Union).¹²³ Thus supranational demands outside general public international law are superimposed on national law even in terms of defining ‘organized crime’. According to the so-called working definition of the EU being used in many reports and documents:

In order to speak about organised crime at least six of the following characteristics need to be present, four of which must be those numbered 1, 3, 5 and 11:

1. Collaboration of more than 2 people;
2. Each with own appointed tasks;
3. For a prolonged or indefinite period of time (refers to the stability and (potential) durability);
4. Using some form of discipline and control;
5. Suspected of the commission of serious criminal offences;
6. Operating at an international level;
7. Using violence or other means suitable for intimidation;
8. Using commercial or businesslike structures;
9. Engaged in money laundering;
10. Exerting influence on politics, the media, public administration, judicial authorities or the economy;
11. Determined by the pursuit of profit and/or power.¹²⁴

Moreover, the Council Framework Decision of 24 October 2008 on the ‘Fight against Organised Crime’ recently defined a ‘criminal organisation’ as being:

a structured association [i.e. not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure], established over a period of time, of more than two persons acting in concert with a view

123 C 115/47 (entered into force 1 December 2009), *Official Journal of the European Union*, 9 May 2008. See Arndt Sinn, ‘Das Lagebild der organisierten Kriminalität in der Europäischen Union: Tendenzen, rechtliche Initiativen und Perspektiven einer wirksamen OK-Bekämpfung’, in W. Gropp and A. Sinn, above note 37, pp. 506ff.

124 ‘Towards a European strategy to prevent organised crime’, Commission Staff Working Paper, joint report from Commission services and EUROPOL, SEC (2001) 433, Annex, p. 42, available at: http://ec.europa.eu/justice_home/news/information_dossiers/forum_crimen/documents/sec_2001_433_en.pdf (last visited 29 April 2010).

to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit.¹²⁵

Regarding the implementation of these European specifications, it has already been pointed out above that, interestingly, like Germany, most European Union countries do not refer to the term 'organized crime' in their legislation at all, but intend to deal with the underlying criminal conduct indirectly by using various legal measures to punish behaviour that typically accompanies organized crime.

International law and the use of force

The terrorist attacks of 9/11 have provoked an intense debate about non-state entities and international law governing the use of force. In this particular context, little attention has been paid to the role and significance of organized crime and gang violence as potential immediate threats to international peace and security. However, it is by no way excluded that powerful drug barons and arms traffickers are capable of launching similar attacks, for example in order to blackmail governments. While it certainly is an adequate approach to consider merely the individual attacks and to qualify them, under certain conditions, as terrorism, another question is whether the groups behind it can therefore be classified as terrorist organizations.¹²⁶ It may be recalled that the death of 107 passengers of the Avianca Airlines Flight 203 of 27 November 1989 was due to a bomb for which the Medellín Cartel, at that time headed by Pablo Escobar-Gavira, assumed responsibility.¹²⁷ It should, moreover, be noted that Rio de Janeiro's most famous drug trafficker, 'Fernandinho Beira-Mar' (Luiz Fernando da Costa), whose detention in Colombia in April 2001 was even commented on by the US Secretary of State, Colin Powell, is supposed to have tried to purchase a Stinger missile.¹²⁸ Also in Rio de Janeiro, members of the city's drug factions shot down a military police helicopter as recently as October 2009.¹²⁹

Article 2(4) of the UN Charter¹³⁰ prohibits 'the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'. Since it is

125 See Article 1 of the Council Framework Decision 2008/841/JHA of 24 October 2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:300:0042:0045:EN:PDF> (last visited 30 March 2010).

126 As explained above, criminal organizations can metamorphose into terrorist organizations. When this point is reached is difficult to say. It is clear that criminal organizations also pursue political interests, but their primary motivation is material benefit and not an ideology.

127 See David Southwell, *Die Geschichte des organisierten Verbrechens*, Fackelträger, Cologne, 2007, p. 283.

128 See Carlos Amorim, *CV-PCC: A Irmandade do Crime*, Record, Rio de Janeiro and Sao Paulo, 2005, p. 380.

129 Three policemen died. See E. Luiz, 'PM não resiste a queimaduras', in *Correio Braziliense*, 20 October 2009. At least thirty-nine people were killed in the wave of violence that followed.

130 Charter of the United Nations, 26 June 1945, UNCIO XV, 355 (entered into force 24 October 1945).

customary international law¹³¹ and has the status of *jus cogens*,¹³² its content is binding for all entities with international legal personality. However, the proposal by some writers that Al Qaeda be recognized as a (passive) subject of international law, in order to justify self-defence against its attacks on foreign territory,¹³³ has gained little support in legal literature. Agreement with this assumption would raise the question whether the prohibition of the use of force is also binding for certain criminal organizations comparable to Al Qaeda. The dominant doctrine is that acts of criminal and terrorist organizations need to be attributable to a state or other recognized subject of international law and that terrorists have no such status.¹³⁴ In the Friendly Relations Declaration (Resolution 2625 (XXV) of 24 October 1970), the UN General Assembly stated that: ‘Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State’. The term ‘armed bands’ can be interpreted as also including criminal organizations and even gangs. The resolution was applied by the International Court of Justice in the *Nicaragua* case, in which it declared that financial support for armed bands – in the case in point, rebels – was sufficient to attribute their violence to a state.¹³⁵

Whether and to what extent states sponsor (clandestinely) criminal collectives that are not driven by an ideology is difficult to answer. The rule is that democratically elected governments try to fight these groups. Sometimes, as the so-called ‘war on drugs’ shows, they even use military means to arrest criminals or destroy their infrastructure. An example is Colombia, whose government receives international military assistance for that purpose, namely from the United States.¹³⁶ It should also be noted, however, that in 1989 the US invaded Panama to capture General Noriega, who was at that time the head of government and commander-in-chief. Noriega was transferred to the US and initially treated as a common criminal, then later as a prisoner of war, but was finally convicted of drug-related offences against US law.¹³⁷ This shows that there is sometimes a thin line between organized crime and state governments and that in this context the prohibition of the use of force may become relevant.

131 ICJ, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment of 27 June 1986, ICJ Reports 1986, pp. 14ff., para. 147.

132 *Ibid.*, para. 100; Georg Dahm, Jost Delbrück, and Rüdiger Wolfrum, *Völkerrecht*, Vol. I/2, Duncker & Humblot, Berlin 2002, p. 822; Knut Ipsen, *Völkerrecht*, Beck, Munich, 2004, para. 58, margin note 29.

133 Seemingly: see Thomas Bruha and Matthias Bortfeld, ‘Terrorismus und Selbstverteidigung: Voraussetzungen und Umfang erlaubter Selbstverteidigungsmassnahmen nach den Anschlägen des 11. September 2001’, in *Vereinte Nationen*, Vol. 49, No. 5, 2001, p. 163.

134 Ian Brownlie, *Principles of Public International Law*, Oxford University Press, Oxford and New York, 2008, pp. 732ff.; Stefan Hobe, *Einführung in das Völkerrecht*, UTB, Köln, 2008, p. 328; Joachim Wolf, *Die Haftung der Staaten für Privatpersonen nach Völkerrecht*, Duncker & Humblot, Berlin, 1997, pp. 456ff.

135 ICJ, above note 131, para. 191.

136 See Dario Azzellini, ‘Kolumbien: Versuchslabor für privatisierte Kriegsführung’, in Dario Azzellini and Boris Kanzleiter (eds), *Das Unternehmen Krieg: Paramilitärs, Warlords und Privatarmeen als Akteure der Neuen Kriegsordnung*, Assoziation A, Berlin, 2003, p. 32.

137 See Leslie C. Green, *The Contemporary Law of Armed Conflict*, Juris Publishing, New York, 2008, p. 93.

The 9/11 debates mainly concentrated on the question whether states can invoke the right to self-defence against armed attacks by non-state entities, in particular terrorists. The subjects discussed included not only the actual level of intensity required for the attacks to qualify as ‘armed’, but also the (non-)applicability of the rules of attribution.¹³⁸ Although the details of this discussion cannot be spelled out here, it is evidently assumed in some legal literature that the intensity required to constitute an ‘armed attack’ does not need to stem from a single act, but that the threshold can be reached by the cumulative effect of various low-intensity acts that have resulted in a high number of victims and that disrupt the functioning of the state.¹³⁹ On the other hand, the ICJ has stated that terrorist acts have to be attributable to a state.¹⁴⁰ If this were not so, states could easily invoke the right of self-defence against criminal organizations in particular, by referring to the cumulative effects doctrine. The difficult question that still lacks authoritative clarification concerns the conditions for such an attribution of private criminal acts to the state to be deemed admissible: that is, what kind or degree of control or co-operation is necessary.¹⁴¹ Those who advocate a broad interpretation usually do not ask how far such a standpoint could be (ab)used by states to justify military means against non-state entities other than terrorist organizations on foreign territory.

All this shows that international law governing the use of force can become relevant in the context of organized crime and gang violence. In this respect, many questions still need to be raised and answered.

International humanitarian law

In exceptional circumstances, the armed violence of gangs and criminal organizations can fall within the scope of IHL. As a rule, however, this body of law is not applicable in efforts to combat these non-state entities.

The applicability of IHL presupposes the existence of an armed conflict. According to the widely recognized definition by the International Criminal Tribunal for the former Yugoslavia (ICTY)¹⁴² such a situation exists ‘whenever

138 For an overview of the discussion, as well as references, see S. Hobe, above note 134, pp. 341ff.; Carsten Stahn, ‘International law at a crossroads? The impact of September 11’, in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 62, 2002, pp. 183ff.

139 Matthias Herdegen, *Völkerrecht*, Beck, Munich, 2006, p. 240; See also Peter Malanczuk, ‘Countermeasures and self-defence as circumstances precluding wrongfulness in the International Law Commission’s Articles on State Responsibility’, in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 43, 1983, p. 797.

140 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports 2004, pp. 136ff., para. 139.

141 See Joachim Wolf, ‘Terrorismusbekämpfung unter Beweisnot: völkerrechtliche Informationsanforderungen im bewaffneten Konflikt’, in *Humanitäres Völkerrecht-Informationsschriften*, Vol. 14, No. 4, 2001, pp. 210ff.; S. Hobe, above note 134, pp. 341f.

142 Christopher Greenwood, ‘The development of international humanitarian law by the International Criminal Tribunal for the former Yugoslavia’, in *Max Planck Yearbook of United Nations Law*, Vol. 2, 1998, p. 114; Robert Heinsch, *Die Weiterentwicklung des humanitären Völkerrechts durch die*

there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State'.¹⁴³ As many main cities and regions are plagued by the armed violence of organized criminal groups, for instance in Rio de Janeiro or parts of Mexico,¹⁴⁴ it may be asked whether such disquieting situations suffice to trigger the applicability of the law of non-international¹⁴⁵ armed conflict. Answering this question always presupposes a comprehensive factual assessment.¹⁴⁶ The following explanation can therefore only indicate some general elements whose presence needs to be established in each specific case.

Intensity requirement

Even if criminal collectives have machine guns, grenades, mines, or anti-tank rockets that enable them to defend certain territories against law enforcement operations by state security forces or against rival groups, far more complex considerations are needed to determine whether the intensity criterion (protracted armed violence) is satisfied.¹⁴⁷ Indicative factors that must be examined are:

the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material destruction; and the number of civilians fleeing combat zones. The involvement of the UN Security Council may also be a reflection of the intensity of a conflict.¹⁴⁸

Not all these factors need to be present.¹⁴⁹ The problem lies in their interpretation. Various quantitative indicators (number and duration of individual

Strafgerichtshöfe für das ehemalige Jugoslawien und Ruanda, Berliner Wissenschafts-Verlag, Berlin, 2007, p. 92. See also Rome Statute of the International Criminal Court, Art. 8(2)(f).

143 International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Tadić*, Decision on the Defence Motion to Interlocutory Appeal on Jurisdiction (Appeals Chamber), Case No. IT-94-1-AR72, 2 October 1995, para. 70.

144 With regard to Rio de Janeiro, see S. Peterke, above note 20, pp. 6–22; for the situation in parts of Mexico, see Karl-Dieter Hoffmann, 'Regierung contra Kartelle: der Drogenkrieg in Mexiko', in *Internationale Politik und Gesellschaft*, No. 2, 2009, pp. 56–77.

145 Other, in particular transnational, constellations will not be examined here. For a brief discussion of armed conflicts and transnational armed groups, see e.g. Dieter Fleck, 'The law of non-international armed conflicts', in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, Oxford University Press, Oxford, 2008, margin note 1201.

146 International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Rutaganda*, Judgement (Trial Chamber), 6 December 1999, para. 91.

147 Whether and how exactly the element of 'protracted armed violence' has to be interpreted is controversial, but cannot be discussed here. See e.g. Derek Jinks, 'September 11 and the laws of war', in *Yale Journal of International Law*, Vol. 28, No. 1, 2003, p. 28; Kai Ambos, *Internationales Strafrecht: Strafanwendungsrecht: Völkerstrafrecht: Europäisches Strafrecht*, Beck, Munich, pp. 235–237.

148 ICTY, *Prosecutor v. Ramush Haradinaj et al.*, Judgement (Trial Chamber), Case No. IT-04-84, 3 April 2008, para. 49.

149 *Ibid.*: 'Trial Chambers have relied on indicative factors relevant for assessing the "intensity" criterion, none of which are, in themselves, essential to establish that the criterion is satisfied.'

confrontations, weapon calibre, extent of material destruction, etc.) give a very broad idea of the elements involved. Simply referring to a high number of casualties caused by weapons that are also used by the armed forces is not enough. Careful analysis of the international tribunals' case law on the respective criterion, as well as teleological and comparative considerations, seem indispensable to reach a more coherent conclusion.

If it is assumed that the intensity criterion is primarily meant to identify situations amounting to a severe public emergency, which in turn justifies the application of a legal regime that profoundly changes the rules and principles governing the modern constitutional state in peacetime, at least two important observations can be made.

The first is that the violence of organized crime and gangs, although worrying, is non-ideological and principally clandestine in nature and therefore does not usually destabilize a country in a way that would justify rating the situation as a public emergency. It might claim many lives and cause considerable material destruction, yet the full involvement of armed forces is rarely needed. An armed conflict, however, is a severe emergency situation that requires their large-scale and longer-term participation.

Second, the vagueness of the said indicators enables the intensity criterion to be very broadly interpreted, which might have unwanted and unforeseeable legal consequences. As IHL applies, with regard to the right to life, as *lex specialis* to international human rights law,¹⁵⁰ the state concerned no longer has to strictly abide by the constitutional state's 'law enforcement model' and can target the 'criminals' – as fighters directly participating in hostilities – in accordance with IHL.¹⁵¹ Especially in urban violence, the simultaneous application of both legal regimes may water down the presumption of innocence, the right to a fair trial, and the state's obligation to punish human rights violations committed by its security forces. This might generate an atmosphere of impunity that, in turn, often exacerbates situations of violence. While the complex relationship of the two legal regimes raises other difficult questions that make a narrower interpretation appear desirable,¹⁵² the possibility that the violence of criminal organizations and gangs might in certain circumstances reach the intensity threshold cannot be categorically excluded.

150 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para. 25; ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para. 106; Human Rights Committee, General Comment No. 31, 'The nature of the general legal obligations imposed on States Parties to the Covenant', UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 11.

151 David Kretzmer, 'Targeted killing of suspected terrorists: extra-judicial executions or legitimate means of defence?', in *European Journal of International Law*, Vol. 16, No. 2, 2005, p. 178; Tom Hadden and Colin J. Harvey, 'The law of internal crisis and conflict', in *International Review of the Red Cross*, Vol. 81, No. 833, 1999, p. 119.

152 For detailed discussion, see Heike Krieger, 'A conflict of norms: the relationship between humanitarian law and human rights law in the ICRC Customary Law Study', in *Journal of Conflict and Security Law*, Vol. 11, No. 2, 2006, pp. 265–291; Noam Lubell, 'Challenges in applying human rights law to armed conflict', in *International Review of the Red Cross*, Vol. 87, No. 860, 2005, pp. 737–754.

Organizational requirement

However, only proving that a violent conflict has reached a certain intensity is insufficient to trigger the applicability of IHL. In addition, it has to be demonstrated that the criminal organization or gang constitutes an ‘organized armed group’. According to the ICTY, such an entity is characterized by

the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords.¹⁵³

Many of these elements stem from Article 1(1) of Additional Protocol II to the Geneva Conventions.¹⁵⁴ However, the special regime of Additional Protocol II is based on a far narrower notion of internal armed conflict than that of Article 3 common to the Geneva Conventions, as it presupposes compliance with all criteria laid down by its Article 1. In order to qualify as an ‘organized armed group’ under IHL, an armed organized criminal group has to show some structural similarities with armed forces. Its armed members must be co-ordinated to a certain degree by superiors, so that they are theoretically capable of controlling territory. However, ‘some degree of organization’ suffices;¹⁵⁵ a hierarchical system of military organization is not needed.¹⁵⁶ Nonetheless, it is hardly thinkable that clandestine criminal groups can define a military strategy and co-ordinate and carry out military operations. In Rio de Janeiro, for instance, where the drug factions defend their ‘turf’ with considerable success against the state, their ‘soldiers’ are frequently subordinated to a ‘security manager’, who in turn is subordinated to a ‘general manager’, who again is responsible to the local drug baron.¹⁵⁷ They also have access to military weapons and training.¹⁵⁸ Yet these fighters primarily react to acts of repression by the state and apply guerrilla-style hide-and-seek tactics, and

153 ICTY, *Prosecutor v. Ramush Haradinaj et al.*, above note 148, para. 60.

154 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (1977), 1125 UNTS 609 (entered into force 7 December 1978).

155 ICTY, *Prosecutor v. Limaj et al.*, Judgement (Trial Chamber), Case No. IT–03–66–T, 30 November 2005, para. 89.

156 ICTR, *Prosecutor v. Alfred Musema*, Judgement and Sentence (Trial Chamber), Case No. ICTR–96–13–IT, 27 January 2000, para. 257.

157 L. Dowdney, above note 22, pp. 47ff.; S. Peterke, above note 20, pp. 8f.

158 S. Peterke, above note 20, p. 10; Eugênio J.G. de Aragão, *Strategien zur Durchsetzung der völkerrechtlichen Verpflichtung zur Strafverfolgung der Folter am Beispiel Brasiliens: eine Untersuchung zum Verhältnis zwischen Völkerstrafrecht und Staatenverantwortlichkeit*, Berliner Wissenschafts-Verlag, Berlin, 2007, p. 43.

sometimes even terrorist methods. This still seems an inadequate basis for deducing that they have the ability to plan, co-ordinate, and carry out military operations.

As their violence is not driven by an ideology or legitimate political intentions, the criminal organizations not only have no interest in confronting the government and assuming its powers and responsibility, they also have no interest in imposing disciplinary rules and mechanisms to guarantee respect for IHL.¹⁵⁹ This, however, is a crucial point, although compliance with IHL is not needed.¹⁶⁰ While the qualification as an organized armed group is based on objective criteria in order to avoid the application of subjective elements such as the group's motivation, the law is not completely 'blind' in that respect. For instance, the organizational criterion, by demanding an objectively verifiable military strategy or capacity to carry out military operations, rules out entities that rely exclusively on terrorist, guerrilla, and other perfidious methods: that is, groups whose 'business' is to assert their egoistic interests through cruel and arbitrary practices. It does not criminalize or delegitimize armed collectives in general, but it does exclude them from having the status of a party to conflict. Often organized criminal groups do not even act identifiably. This is another reason why it is difficult to treat them as groups possessing international legal personality and require them to assume duties under international law.¹⁶¹

It must also be borne in mind that such groups are not static phenomena, but are often in a process of transformation.¹⁶² They might become politicized, thus gaining legitimacy, strength, and support from larger segments of society that enable them to openly attack the armed forces. Some organized criminal groups therefore have the potential to develop into organized armed groups (and vice versa).¹⁶³ This would, however, primarily create international obligations. It does

159 For a discussion of the level of organization required by IHL, see Anne-Marie La Rosa and Carolin Wuerzner, 'Armed groups, sanctions and the implementation of international law', in *International Review of the Red Cross*, Vol. 90, No. 870, 2008, pp. 329–330; Christian Schaller, *Humanitäres Völkerrecht und nichtstaatliche Akteure: neue Regeln für asymmetrische bewaffnete Konflikte*, SWP-Studie, Berlin, 2007, pp. 20f.

160 Toni Pfanner, 'David gegen Goliath oder asymmetrische Kriegsführung', in *Humanitäres Völkerrecht-Informationsschriften*, Vol. 18, No. 3, 2005, p. 171; Helen Duffy, *The 'War on Terror' and the International Framework of International Law*, Cambridge University Press, New York, 2005, p. 222.

161 Gabor Rona, 'Interesting times for international humanitarian law: challenges from the "war on terror"', in *Fletcher Forum of World Affairs*, Vol. 27, No. 2, 2003, p. 60; Marco Sassöli, *Transnational Armed Groups and International Humanitarian Law*, Harvard University, Occasional Papers Series, No. 6, Winter 2006, p. 11.

162 Phil Williams, 'Terrorist financing and organized crime: nexus, appropriation, or transformation?', in Thomas J. Bierstecker and Sue E. Eckert (eds), *Countering the Financing of Terrorism*, Routledge, London and New York, 2008, p. 134.

163 Organized criminal groups often pose serious threats to fundamental human rights too. International human rights law usually comes into play if the state does not fulfil its duty to protect individuals against such non-state entities. The premises that trigger state responsibility will not be explained here. See e.g. W. Kälin and J. Künzli, above note 61, pp. 107–113. Evidently, weak and failed states are often unable to effectively investigate powerful criminal collectives, hold their members responsible, and protect their victims and those who defend them. Yet holding organized criminal groups directly responsible for human rights violations is still considered difficult to reconcile with the traditional notion of human rights, i.e. as guarantees against the state, although the theoretical bases to justify the horizontal effect of human rights already exist. See e.g. Javier Mijangos y González, 'The doctrine of the in *Drittwirkung der*

not prevent states from punishing these groups for their criminal acts and, if necessary, having recourse to the international framework designed to promote co-operation in criminal matters, in particular the Palermo Convention.

International criminal law

As certain organized criminal groups may qualify as organized armed groups, they may be held responsible for committing international crimes. Therefore, although proposals to establish an international tribunal for the prosecution of terrorism and drug trafficking did not succeed,¹⁶⁴ their conduct may come within the scope of international criminal law and in particular the Rome Statute.

Organized crime and gang violence as subject matter of the Rome Statute

On the face of it, and like terrorism,¹⁶⁵ organized crime or gang conduct do not in themselves usually amount to the crime of genocide according to Article 6 of the Rome Statute, unless they take place with the specific ('genocidal') 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group'.¹⁶⁶ For instance, in remote places such as the Amazon rainforest where criminal collectives engage in all kinds of illicit trafficking activities, they may deliberately expel or eliminate groups such as indigenous peoples defending their territory against the intruders.

According to Article 7(1) of the Rome Statute, to constitute a crime against humanity 'the following acts [must be] committed as part of a widespread or systematic attack directed against any civilian population'. The acts listed include several crimes typically also committed by criminal organizations: murder, extermination, enslavement, deprivation of physical liberty, torture, rape, and so forth. Interestingly, in light of the international fight against human trafficking outlined above, the term 'enslavement' is defined by the Rome Statute as 'the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children'.¹⁶⁷ Its Article 7(2) states that, for the purpose of paragraph 1, an

'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against

Grundrechte in the case law of the Inter-American Court of Human Rights', in *InDret*, Vol. 1, 2008, pp. 1–25, available at: <http://www.ssrn.com/abstract=1371114> (last visited 25 February 2010).

164 See K. Ambos, above note 147, p. 99.

165 See, with special reference to that subject, Claus Kress, 'Völkerstrafrecht der dritten Generation gegen transnationale Gewalt Privater?', in Gerd Hankel (ed.), *Die Macht und das Recht: Beiträge zum Völkerrecht und Völkerstrafrecht zu Beginn des 21. Jahrhunderts*, Hamburger Edition, Hamburg 2008, pp. 323ff.

166 For further analysis, see Kai Ambos, 'What does "intent to destroy" in genocide mean?', in *International Review of the Red Cross*, Vol. 91, No. 876, 2009, p. 833–858.

167 Rome Statute, Art. 7(2)(c).

any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

The provision clarifies that crimes against humanity can be committed by non-state entities.¹⁶⁸ However, what can be understood as an ‘organization’ under Article 7(2) is very controversial. One tendency is not to import the criteria that apply to ‘armed organized groups’ but to use different ones, such as power and use of force comparable to those of state institutions.¹⁶⁹ Although the details of that complex provision cannot be analysed here, it is evident that organized criminal groups only exceptionally meet this requirement.

Under Article 8(2)(f) of the Rome Statute, other serious violations of the laws and customs applicable to armed conflicts not of an international character, which are committed in the territory of a state when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups, constitute war crimes.¹⁷⁰ The requirements for the status of a party to an armed conflict¹⁷¹ have already been discussed above.

The ‘next generation’ of international criminal law

As explained above, international criminal law may in exceptional circumstances apply to conduct by organized criminal groups as being crimes that can be tried before the International Criminal Court or other national or international tribunals. It is interesting to note that, nowadays, there is even a third way in which organized crime is within the reach of international criminal law. In the wake of the Yugoslav wars of the 1990s and despite the ICTY’s ongoing jurisdiction, the international community took steps both to recover and to extend international judicial authority in nation-states after periods of transition. Thus, for example, the Court of Bosnia and Herzegovina was founded in 2002 and mainly has jurisdiction over war crimes, but also – and very decisively for the present analysis – over organized crime.¹⁷² This new mechanism clearly shows the close link between international criminal law and the establishment of new judicial competences relating to organized crime. Indeed, violence by private gangs or any other organized group conduct incurs individual criminal responsibility by virtue of national jurisdiction, but triggered essentially by international criminal law.

168 See also ICTY, *Prosecutor v. Tadić*, above note 143, paras. 654–655.

169 See Cherif M. Bassiouni, *Crimes against Humanity in International Law*, Kluwer International, The Hague, 1999, p. 275; Alicia Gil Gil, ‘Die Tatbestände der Verbrechen gegen die Menschlichkeit und des Völkermordes im Römischen Statut des Internationalen Strafgerichtshofs’, in *Zeitschrift für die gesamte Strafrechtswissenschaft*, Vol. 112, No. 2, 2000, pp. 391–393; K. Ambos, above note 147, p. 215.

170 See Gerhard Werle, *Principles of International Criminal Law*, Oxford University Press, Oxford 2009, margin note 982.

171 Whether Article 8(2)(f) of the Rome Statute establishes a threshold that differs from that of Article 3 common to the four 1949 Geneva Conventions has been subject to discussion in legal literature. See D. Fleck, above note 145, p. 610. That discussion is of no relevance for the purposes of the present analysis.

172 For further details, see the court’s website, available at: <http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=3&id=3&jezik=e> (last visited 30 March 2010).

Within this framework of an ‘international criminal law of a *new generation*’,¹⁷³ combating organized crime is also a matter of constituting the appropriate judicial authority and competence at the national level, mindful of the prerequisites for any criminalization of gang violence or organized criminal conduct in public international law: due allowance must be made for a framework of normative boundaries set by IHL, the law of peace and armed conflict, the protection of human rights, and the rule of law.¹⁷⁴

Conclusion

Dealing with organized crime and gang violence is a practical and also a theoretical challenge involving highly complex and dynamic phenomena. While national legislators have reacted in very different ways according to the peculiarities that they (believe they) identify, the fight against organized crime, gangs, and gang violence has increasingly become the subject of international regulation. It focuses on the transnational dimensions of organized crime and expresses the will of states to co-operate more effectively and to harmonize national laws. A complex international framework has been established, but it still lacks universal acceptance and full implementation. According to the prevailing doctrine, international law governing the use of force can become relevant only insofar as the criminal acts in question can be attributed to a state. In exceptional circumstances, however, organized crime and gang violence may fall within the scope of IHL and international criminal law; in general, this requires that the criminal collectives have developed into organizations possessing powers and/or structures similar to those of states.

173 Freely adapted from C. Kress, above note 165, pp. 323ff., who speaks of an ‘international criminal law of the *third generation*’ (emphasis added); for further details, see Kai Ambos, ‘International criminal law at the crossroads: from ad hoc imposition to treaty-based universal jurisdiction’, in Carsten Stahn and Larissa van den Herik (eds), *Future Perspectives on International Criminal Justice*, TMC Asser Press/Cambridge University Press, The Hague, 2010, pp. 161–177.

174 See C. Kress, above note 165, p. 411.

Military operations in urban areas

Alexandre Vautravers*

Alexandre Vautravers has been Head of the International Relations Department, Webster University, Geneva, since 2006. He is a Lieutenant-Colonel GS in the Swiss Army and commander of the 17th tank battalion. He is also editor-in-chief of the *Revue militaire suisse*.

Abstract

Armies have traditionally avoided cities and siege operations. Fighting for and in cities is costly, slow, and often inconclusive. But sometimes they are unavoidable, either because they are located on main road or rail junctions or because of their value as political and/or economic prizes. Urban expansion in both north and south has made cities today the main theatres of military and humanitarian operations.

Armies' structures, equipment, and doctrines are undergoing a process of adaptation. Manoeuvre has given way to fire power and protection for the troops as the decisive elements of military power. While heavy fire power does considerable damage and causes civilians to flee their homes, operations using protection techniques are only suitable for stabilization. Moreover, their success depends essentially on the willingness of troops to make sacrifices, and on support from the public.



Throughout history, armies have been reluctant to fight in cities and conduct siege operations. Fighting in such conditions is generally devastating and costly. Struggles of attrition frequently ensue, and the outcome tends to be less than conclusive. Centralized command and technical superiority face serious limitations.

* Dr. Vautravers's research includes a thesis on contemporary history at the University Lumière Lyon II and one on economic history at the University of Geneva. He has worked on the impact of technology on the conduct of war, and on the history of the Swiss arms industry from 1850 to the present.

Yet the proliferation of dense urban sprawl, alongside the infrastructure and way of life that go with it, is forcing armies to return to the drawing board. In 1900, 29% of the world's population lived in cities. By 1950, the proportion had reached 49%, according to the United Nations' (UN) conservative estimates.¹ In 2010, 75% of the world's inhabitants live in urban areas.² It is therefore no longer realistic for armed forces to avoid cities. Because of the complexity of the urban environment, fighting in cities calls for adaptations in military doctrine, structures, training, and equipment.

In this article, we shall begin by focusing on the city, its importance and characteristics as a military environment, and the concomitant risks. We shall then go on to examine the military consequences, both technical and tactical, of fighting in and around cities. Finally, we shall try to distil some conclusions for military combat, stabilization, and peace-keeping operations today.

The city from a military viewpoint

Cities have often played key roles in armed conflicts, but more so in political than military terms. Starting in the late fifteenth century with the end of the Hundred Years' War, siege warfare gave way to clashes between armies in open country. Field battles were generally fought several kilometres from the cities from which they took their names. During World War I, the front and most of the heavy fighting were on rough ground in rural areas. Most inhabited areas affected by fighting were evacuated or declared open cities.³

World War II marked a turning point in terms of urban combat. At the start of the conflict, armies tried to move quickly, using motorized columns. Although some cities (for example Warsaw, Amsterdam, and Sedan) were bombed, field armies generally avoided built-up areas, so as not to get bogged down. Unfortunately, however, this phase was short-lived.

The Germans had the advantage in terms of tanks and tactical aviation, and the Allies soon realized that they would not be able to hold their ground in open country. In addition, from 3 July 1941 onwards, the Soviets implemented a scorched-earth strategy. While it is true that major cities were targets of symbolic value, both the Germans and the Allies carried out strategic bombing raids on cities mainly because of the high concentrations of industrial capacity they contained. Finally, as the armies on both sides found themselves increasingly dependent on motor vehicles, avoiding cities – with their major road and rail junctions – became more and more difficult, particularly when it came to supplying forward units.

1 UN, Department of Economic and Social Affairs, Population Division, *World Urbanization Prospects: The 2005 Revision*, available at: <http://www.un.org/esa/population/publications/WUP2005/2005wup.htm> (last visited 14 March 2010).

2 Antonin Tisseron, *Guerres urbaines: nouveaux métiers, nouveaux soldats*, Economica, Paris, 2007, p. 3.

3 Daniel Postec, 'Vers une nouvelle approche doctrinale des actions dans les zones urbanisées', in *Doctrines*, No. 3, June 2004.

From 1942 onwards, cities in the East and subsequently also in the West gradually became fully fledged targets and the theatres of decisive battles: for example Stalingrad, Kharkov, Caen, Arnhem, Aachen, Budapest, and Berlin.

During the cold war years, the challenge of co-ordinating operations in a maze of streets – compounded by heavy casualties, massive destruction, and the appalling toll on the inhabitants – led to a tacit consensus that fighting in cities should be avoided. Urban communication nodes and decision-making centres were, in any case, largely considered as possible targets of atomic weapons. As a result, troops tended to be stationed in the countryside.

The majority of clashes in urban areas in the second half of the twentieth century were associated with stabilization operations (Suez, Northern Ireland) or restoring and upholding law and order (Budapest, Prague, Tiananmen), rather than with high-intensity battles. But from the 1980s onwards, rapid urbanization in developing countries changed this state of affairs. On several occasions, Saigon was the theatre of bloody armed engagements. United States (US) operations in Beirut (1983), Grenada (Urgent Fury, 1983), Panama (Just Cause, 1989), and Mogadishu (Restore Hope, 1993) attest to the growing need to prepare for military operations in urban areas. The operations in southern Lebanon (1982, 2006), Gaza (2009), the Balkans (1994–1999), Chechnya (1994–1996 and 1999–2000), and Iraq (since 2003) show that, in both north and south, it is no longer possible to shun cities.

Urban areas

In military terms, a city can be one or more of the following:

- a target for political, symbolic, propaganda, economic, or logistical reasons;
- a passage that cannot be avoided on the way to somewhere else;
- a communication node or a road/rail junction.

In principle, a city is a geographical entity, as it is generally built on a particular spot chosen for a crossroads, for access to water or other resources, or for a dominant or defensive location. However, over the past two centuries, cities have tended to develop concentrically, beyond their original boundaries. Since the 1970s, urban sprawl has created a network of increasingly interconnected built-up areas. The proliferation of key centres of attraction (stations, airports, government and business districts, etc.) has caused cities to develop around a number of centres.

A city may give the impression of a single mass, but in fact it can be broken down into different geographical areas, each with its own characteristics. These areas are divided into three types:

1. The old inner city, which is often built on one or more hills (with elevations of between 100 and 200 metres) overlooking the outlying districts. The streets are often narrow and built of stone or brick, and visibility is limited to short distances (50 to 300 metres). For historical and practical reasons, few city

centres have a diameter larger than seven kilometres. Population density is generally higher than 150 inhabitants per square kilometre.

2. The periphery – beyond the old fortifications, which were frequently pulled down in the mid-nineteenth century and transformed into boulevards – generally contains high buildings (three to six storeys), built in stone or brick after the 1880s and around steel or concrete frames from the 1920s onwards. Residential and business districts are generally interspersed with large wooded parks occupying a good few acres. This part of a city often contains infrastructure and other features of urban life that have been ‘overtaken’ by the expanding city: passenger or goods stations, airports, markets, commercial and industrial centres, firms and factories, and cemeteries. Major utilities, communication and transport facilities such as avenues, parking lots, railways, telephone exchanges, and power stations tend to be concentrated here. The periphery is frequently separated from the outermost band of urban development by motorways or outer ring roads, which sometimes pass under or above ground to save space and avoid creating obstructions. This band is characterized by observation and firing distances of between a few dozen metres and several kilometres. It is often overlooked by the old town centre, which is generally on higher ground, and also by surrounding hills, which generally limit its expansion to a radius of between seven and fifteen kilometres. Population density is generally higher than 100 inhabitants per square kilometre.
3. City approaches and suburbs are generally found within a radius of thirty to forty-five kilometres of the centre. This band is generally not circular but spread along both sides of the main road and rail routes that serve commuter flows. These areas tend to be open, but they may engulf older towns and villages. The buildings they contain are usually large and made of steel. Industrial estates and shopping centres, blocks of rented flats, and low-rent housing estates are found here, alongside residential suburbs. Most of these estates cover a number of acres. Large parks and agricultural land are also found in this band. The firing distances are generally greater than 300 metres. Shanty towns and slums, where they exist, are also generally found here. Population density varies from one district to another but on average it is between 50 and 100 inhabitants per square kilometre.

What these features mean for fighting forces

Before embarking on a military operation in an urban area, it is vital to analyse the terrain. In open country or in mountain areas, the main factors to be considered are cover, the relief of the terrain, and lines of communication. In cities, however, other factors may be critical. First of all, the size and surface area of the city will determine the number of troops needed: it is generally estimated that a combat formation of between 1,000 and 1,500 troops can guard or defend a town with

100,000 inhabitants. An offensive will require a detailed analysis of the terrain, precise intelligence on military positions, and a superiority for the attacker of at least five to one. This number is twice as high as the ratio generally agreed upon for an attack in open country.

Any analysis of the terrain must take into account the three-dimensional geography of the town or city. High buildings can provide posts for observers, fire controllers, and snipers. These objects have to be taken, or at the very least the enemy must be prevented from gaining access to them. The upper floors of buildings can serve as positions for dominating a sector, while basements, cellars, and sewers can provide cover for the troops who control them, enabling them to move and regroup rapidly and effectively.⁴ Over several years of intense fighting and systematic destruction operations, the Russian army never succeeded in destroying or entirely clearing the underground passages of the Chechen capital.

The type of construction, too, plays an important role. Buildings in the centre are generally solid and provide effective protection against small arms and shrapnel. A house with thick masonry walls, a basement, and several storeys can be transformed into a genuine fortress in only a few hours by a group of between four and ten men with suitable equipment. It will take five to ten times as many soldiers to get them out.

Recent constructions, however, particularly office buildings, transport sheds, warehouses, and factories built of corrugated iron or prefabricated walls, provide only very limited protection from impacts. Their main asset is the possibility of dissimulation. Generally, troops are advised to use the lower and upper floors, as the middle floors have few advantages and expose the soldiers to too many risks, particularly that of ceilings or walls collapsing.

Although the periphery affords favourable terrain for mechanized forces, historic town centres and inner cities are not compatible with heavy vehicles. The fighting force must therefore constantly adapt its structure. At the very least, soldiers and vehicles move in pairs (France) but, in most armies, personnel form squads of four soldiers each. These squads are organized in platoons of sixteen to twenty soldiers, generally backed up by three to five armoured vehicles. If troops are to be split up and regrouped in response to circumstances, and combined inter-arm groupings are to be set up below platoon level, suitable preparation and training are needed. This will slow down operations and, even once the troops are operational, the question of co-ordination remains.

There are also logistical challenges, as units may consume two or three times the quantity of supplies needed to fight in open country. A typical infantry unit – from a squad to a company – will run out of ammunition in just thirty to sixty minutes of fire fight, and will need to be resupplied or relieved, often under

4 Tanguy Struye de Swielande (ed.), *Les interventions militaires en zones urbaines: paradigmes, stratégies et enjeux*, Bruylant, Brussels, 2008, p. 11; Centre de Doctrine d'Emploi des Forces (CDEF), Division Recherche et Retour d'expérience (DREX), 'Géographie et combat en zone urbaine', in *Cahier de la Recherche Doctrinale*, January 2005; Jean Serveille, 'L'agencement de l'espace terrestre', in *Doctrine*, No. 3, June 2004.

fire. Troops need large concentrations of fire to keep the enemy at bay. Also, supplies may be lost and it is very difficult to deliver these to the forward units. Estimates range between thirty and fifty tonnes of supplies per infantry battalion per day of combat. This figure will be double in the case of motorized units.

Medical care is particularly challenging in view of the high casualties. Logistics units have to work without the benefit of centralized facilities and also simultaneously need to take the needs of civilians into account.

Finally, the most salient feature of a city is its population. All operations must take that into account. The population may be supportive or hostile, supply intelligence to one or both sides, or even take part in the fighting. Specific rules of engagement/behaviour (ROE/ROB) and guidelines for information dissemination and psychological warfare are required to avoid alienating the populations. Armed forces must take into account the vulnerability and expectations of the civilians at all stages of their planning, communication, intelligence, and logistics operations.⁵

Doctrines

During World War II, lack of experience and political circumstances caused widely varied tactics to emerge for defending or taking urban centres. For the sake of simplicity, we can divide them into two categories: concentric attacks and clean-up operations. An example of the first type is the Battle of Berlin, where the Soviet Marshals Zhukov and Konev frantically raced each other on opposite sides of the river Spree. Zhukov and his army took the north of Berlin while Konev took the south. Attacks were conducted simultaneously throughout the city. But this exceptional situation was only possible because of political necessity and the crushing superiority of the Soviet troops: 2.5 million soldiers, 6,250 tanks, 7,500 aircraft, and 41,600 artillery pieces.⁶

In principle, an attack on a city follows the traditional siege doctrine, which consists of encirclement, establishment of a bridgehead, then systematic clean-up district by district. Pockets of resistance are isolated and eliminated one by one. US doctrine for *Military Operations in Urban Terrain* comprises four phases:

1. Air, ground, and human reconnaissance (scouts, special forces, snipers, human intelligence (HUMINT) agents) are used to map the terrain in detail and in three dimensions, identifying the enemy's military positions, its equipment, and its intentions. The state and opinion of the population are of particular interest. Psychological operations begin at this stage.

5 Sébastien Segarra, 'La logistique', in *Doctrine*, No. 3, June 2004.

6 Earl Ziemke, *The Battle for Berlin: End of the Third Reich*, Macdonald & Co., London, 1969, p. 71; Williamson Murray and Allan Millet, *A War to be Won: Fighting the Second World War*, Harvard University Press, Cambridge, MA, 2000, p. 482.

2. In urban terrain, the combat area should be encircled and isolated swiftly. Mechanized formations are generally needed because they can move fast and hit hard. Thanks to their mobility and ability to bring large numbers of troops to bear, they can also consolidate peripheral areas already taken if there is a counter-attack from inside or outside. The lack of an impermeable cordon around Grozny in 1995 had disastrous consequences for the Russian army: international combatants joined the defenders, who were able to have contact with the media and receive intelligence from informers and external sources. The defenders were also able to get out of the firing line and even rotate their combatants. Depending on the size of the town or city, this phase may last several days or even weeks. Siege warfare tactics again come into their own. The resulting time is used to test the adversary's defences, to plan in detail, and to organize rehearsals for assault troops. Cordoning off a city allows psychological operations to encourage the population to come out, be checked, and receive relief. Enemy combatants who wish to surrender must be guaranteed an honourable way out. During this phase, operations are carried out to intimidate the adversary and demonstrate force. For example, fighter aircraft or attack helicopters may over-fly the area or limited offensives may be carried out.
3. A combined arms attack, generally along a penetration axis, enables the troops to gain a foothold in the city and establish a bridgehead. The targets may be bridges, junctions, passages, vantage or key points, or political centres. This operation also aims to tie down the adversary's troops and encourage civilians to leave the area by means of corridors set up for the purpose. This is generally the most destructive phase, as it involves heavy combat. Diversionary operations are also necessary, generally in the form of artillery fire, in order to prevent the defender from adapting his plans and concentrating his forces.
4. Finally, combined arms units enter the city and systematically clean up the districts. Their advance is synchronized and 'marked' by smoke bombs or phase lines clearly visible on the ground, to enable the land units operating in close proximity to co-ordinate their actions or to enable fire support to be used. The example of Grozny shows the difficulties of advancing in a pincer movement because of the high risk of friendly fire.⁷

To these four phases, one can add a last stage of disarmament, demobilization, and reintegration (DDR), to use the UN's terminology. At this point, civil-military co-operation, both on the ground and in terms of psychological and law-and-order operations, gradually replaces military combat operations proper.

7 Training and Doctrine Command (TRADOC), Department of the Army, *Field Manual FM90-10, Military Operations on Urbanized Terrain (MOUT)*, Washington, DC, 1979.

Lessons learned

In a special issue of the magazine *Raids*, Jean-Louis Promé and Erich Micheletti give accounts of recent conflicts in urban areas: Beirut 1982, Mogadishu 1993, Los Angeles 1992, and Grozny 1995.⁸ Further examples are provided by experiences in Iraq, particularly in Baghdad and Fallujah.⁹ Without going into detail, we shall attempt here to extract the most significant lessons from these engagements.

Combined arms engagements

It takes time to set up combined arms battlegroups; however, well-organized and timely training can considerably improve their cohesion and their combat value. In the second battle for Grozny, the Russian army rediscovered the merits of this type of combined formation, but it took several days and serious casualties before they were able to constitute consistent and effective units.

Although considerable planning and co-ordination are needed at brigade level, and sizable forces have to be made available at battlegroup level, it is the smaller combat formations – companies, sections, and groups – that see action and take initiatives on the ground. Rotation and debriefing systems must be set up. As the adversary will try to use the weaknesses of each arm or system, each has to provide cover for each other and fight in a co-ordinated way.

Tanks and infantry

Infantry is good at infiltration, but lacks cover. Troops on foot cannot move quickly from attack to defence and have limited autonomy. Tanks, on the other hand, are well protected and have heavy fire power, but they are easy to identify and can be attacked from their blind spots, either from close up (less than ten metres) or from above (more than thirty degrees). Their munitions are generally not suitable for fighting around housing. This has led, traditionally, to the use of artillery guns and howitzers at close range and in direct fire, to destroy reinforced positions or prevent the enemy getting to the upper floors of buildings.

Urban guerrilla warfare and American casualties in Somalia and Iraq have demonstrated the limits of non-armoured or lightly armoured vehicles. As in the Vietnam War, trucks were reinforced with sandbags and corrugated steel to enable a group of infantrymen to fight in porcupine formation. Today, the trend is to deploy armoured vehicles and to put armoured turrets and weapon stations on as many vehicles as possible, including construction machines and supply trucks.¹⁰

8 Jean-Louis Promé, 'Le combat urbain: analyses et perspectives', in *Raids*, Hors-série No. 11, 2003.

9 CDEF, DREX, 'Les fantômes furieux de Falloujah: Opération Al-Fajr/Phantom Fury (juillet–novembre 2004)', *Cahiers du Retex*, April 2006.

10 Alexandre Vautravers, 'Les brigades Stryker', in *Revue Militaire Suisse*, No. 3, 2010.

Statistically, the biggest threats are snipers and artillery projectiles, followed by improvised explosive devices (IED) and booby traps.¹¹ Despite their vulnerability, armoured vehicles help to limit casualties and get munitions and other supplies to forward units. An example is the Merkava main battle tank, whose ammunition racks were removed to enable them to transport four infantrymen or a stretcher.

It is generally held that tanks are not suitable for fighting in urban areas. However, the successful use of tank destroyers by the Wehrmacht to defend cities demonstrated how effective they could be. Moreover, tanks are an indispensable component of any offensive operation. During operation Iraqi Freedom, most of the Iraqi tanks entrenched themselves in towns and cities, where they attempted to spring surprise attacks on the US tanks at distances of between 10 and 200 metres.¹²

The battle of Fallujah, for example, where thirteen US tactical groups from the 1st cavalry and the 2nd infantry divisions, backed up by Iraqi troops, 'cleaned out' the town in December 2004, demonstrated that modern armies can win an engagement in urban territory. Meticulous preparation and psychological operations made it possible to evacuate most of the population. US forces used raids and diversionary operations to isolate groups of fighters, who were then crushed by a methodical, linear progression. The death toll was 71 on the US side against 1,000 on the side of the insurgents.¹³

Mechanized formations lack accompanying infantry. For the same total number of 4,000 men, a Stryker brigade combat team has 2,000 infantrymen, an infantry brigade team 1,060, and a heavy brigade team only 760.¹⁴ Paradoxically, it has been demonstrated that forces lacking infantry call more often for artillery back-up. One example of this was the forces of the Republika Srpska in Bosnia-Herzegovina, whose use of artillery had notorious results.¹⁵

Infantry must advance ahead of the vehicles, at a distance of 100 to 200 metres, so as to prevent the enemy from using short-range anti-tank weapons. The infantry allows the tanks to move forward or calls for their back-up by using radio, field telephones fitted to the vehicles, or hand signals. It can also be used to clear obstacles. In Beirut, the armour on the M113 (ten tons) was not adequate, so the Israeli Defense Force had to develop infantry fighting vehicles and combat-engineer vehicles on up-armoured T-55 (forty tons) or Centurion (fifty tons) tank chassis. Infantry fighting vehicles specially designed for urban terrain and with

11 For more information on grenades, mines, and booby traps, see Lex Perevelli, 'Grenades, mines and boobytraps', available at: <http://www.lexpev.nl/> (last visited 14 March 2010).

12 Robert Burik and Eric Olson, *Thunder Run: The 3rd Infantry Division's Drive to Baghdad*, Concord, Hong Kong, 2005; Alexandre Vautravers, 'Les bataillons lourds américains', in *Revue Militaire Suisse*, No. 1, 2010.

13 Michel Goya, *Irak: les armées du chaos*, Economica, Paris, 2009.

14 Carl Schulze and Ralph Zwillling, *Stryker Interim Armored Vehicle*, Concord, Hong Kong, 2007.

15 Alexandre Vautravers, 'Bosnia Herzegovina 1995: Srebrenica', in Alexandre Vautravers (ed.), *Identity and Conflict: Security Forum 2008 Proceedings*, Webster University Press, Geneva, 2010.

several upwards firing turrets are now available on Merkava or T-80 chassis, for example the Namer and the Russian BMPT.¹⁶

In Grozny, many Russian BMPs served alternately as fire support and as armoured ambulances. The BTR-70 and -80 proved technically quite unreliable, despite their robustness and other qualities. The option of fighting from inside the vehicles was practically never used, as the vehicles were considered ‘death traps’. Infantrymen preferred to sit on the roof to avoid being trapped in the vehicle if it hit a mine. As the BTR’s engine was in the rear, it could not protect the crew. Moreover, the access doors on the sides make entry and exit more difficult than the rear ramp found on Western vehicles such as the Piranha.

Casualties

During the First Battle of Grozny, in January 1995, the Russian tanks revealed major flaws. Some went into battle without their removable reactive armour. Because of manpower shortages, some armoured personnel carriers entered the city without infantrymen on board. Moving in columns without cover, they used crude tactics. Finally, the equipment proved inadequate, as did the co-ordination between the various units and services: land army, special forces, and services attached to the Ministry of the Interior.

As a result, 225 armoured vehicles were rendered permanently unusable, including 62 T-72 and T-80 tanks. Another 217 were repaired by the maintenance units and 404 were repaired in the rear. All in all, 846 of the 2,221 armoured vehicles available were put out of service. Despite systematic use of heavy armaments – aircraft and artillery – and the destruction they wrought, Russian military casualties were terrible. After only three days of fighting, the group formed around the 131st brigade had lost 800 soldiers, 20 out of 26 tanks, 102 out of 120 armoured vehicles, and its 6 ZSU-23-4 air-defence systems. Seventy-four Russian soldiers had been taken prisoner. The 503rd regiment had lost a quarter of its men. The toll of the Battle of Grozny on the Russian side totalled 2,805 dead, 393 soldiers missing in action, 10,319 wounded, and 133 taken prisoner. On the Chechen side, 3,500 combatants were killed and there were 30,000 civilian dead.¹⁷

Communications

VHF radio links are impaired by walls and geographical features such as embankments. A typical tactical communication system such as the SE-235/PR4G, which transmits at 50 watts and has a range of over twenty kilometres on flat ground in fair weather, will at times, in practice, carry only a few hundred metres in towns.

16 Pierre Razoux, ‘Tahal au combat’, in *Raids*, Hors-série No. 24, 2007; Marc-Ariel Zacharia, ‘La famille Merkava, chars de combat israéliens’, in *Revue Militaire Suisse*, No. 1, 2009.

17 Jean-Louis Promé, ‘Les trois batailles de Grozny’, in *Raids*, Hors-série No. 11, 2003.

It is essential that radio communications be coded to maintain the element of surprise. In Grozny, the Russian army learned to use the terrain to maintain its radio links. VHF waves ricochet off walls and, by choosing suitable places for the antennae, it is possible to reach receivers by emitting along main roads or by ricocheting signals off walls and steel buildings, which act like Faraday cages.¹⁸

Adapting armies to urban environments

Hardware

Martin Van Creveld writes of the gap between the 'true war' for which armies prepare and the 'real war' with which they are then confronted.¹⁹ In World War II, armies had to adapt to the terrain, as the hardware in use had not been designed with urban warfare in mind. Sub-machine-guns, automatic rifles, and hand grenades took over from repeating rifles. Precision marksmen, who made their first appearance in the trenches of World War I, again went into action. Anti-tank guns and rockets as well as mortars proved agile and effective in difficult terrain.

In cities, infantry and engineers generally bear the main brunt of the fighting. Fighters on foot can pass through sewers and over walls and roofs and can hold buildings. But without back-up, infantry lacks cover and fire power. Classic artillery is hampered because the artillery observers' sights and the curved trajectories are often obstructed by high buildings. The engagement ranges (generally under 1,000 metres) are incompatible with the safety distances of indirect fire. The best support is therefore provided by mortars and grenade-launchers.

The hardware developed for long-range field warfare is generally poorly suited to fighting in modern cities. Wire-guided anti-tank devices become virtually useless because of the short distances or the fleeting visibility of targets (under ten seconds). World War II hand grenades are considered too powerful today: the explosive charge (380 grams of trotyl) is so strong that the users themselves are exposed to danger in buildings that are increasingly not built of masonry. Modern hand grenades, by contrast, contain only half that amount, or up to 155 grams of RDX/TNT.

Conversely, the improvised explosive devices (IEDs) used by defenders or insurgents contain strong explosive charges and cannot generally be thrown at the enemy. The devices are fashioned from tank or artillery shells that contain between 3 and 30 kg of TNT. To blow up heavily armoured tanks, buried charges of between 100 and 200 kg of explosive are needed. They are of limited effectiveness against a vehicle weighing more than forty tons but can severely shake up its crew or overturn a lighter vehicle.

18 Jean-Marie Wasielewski, 'La télématique', in *Doctrine*, No. 3, June 2004.

19 Martin Van Creveld, *Technology and War: From 2000 BC to the Present*, The Free Press, London, 1989, p. 297.

Tanks and infantry fighting vehicles have been provided with additional protection kits based on passive or explosive-reactive armour. These add 10 tons or so to the combat weight. An 8 × 8 drive M1126 Stryker armoured personnel carrier therefore rises from 11 to 19 tons,²⁰ an M2 Bradley infantry fighting vehicle from 32 to 40 tons and an M1 Abrams main battle tank from 55 to 64 tons.²¹ Moreover, the vehicle crews – often the preferred targets – are protected by armoured shields and roofs.²² This resulting extra weight also has disadvantages, however. The vehicles are so wide and ponderous that they have difficulty passing one another or manoeuvring in narrow streets. Worse still, wheeled vehicles run the risk of sinking under their weight if they leave the road. Even vehicles designed to withstand mines and ambushes²³ are heavy and therefore generally underpowered. Their high silhouette presents a large target to direct-fire weapons and makes them unstable on rough ground, where they can easily roll over.²⁴

Generally speaking, the efficacy of weaponry is hampered by buildings and features such as embankments, which act like field fortifications. A study conducted by the *Bundeswehr* (German army) in the late 1990s revealed that the munitions in service at the time were no longer fit for modern combat conditions. The 20-mm gun on the Marder infantry fighting vehicle lacks penetration power, while the multipurpose (MZ)²⁵ 12-cm hollow-charge shell on the Leopard tank cannot blast a hole big enough (one metre in diameter) to penetrate a building. Old munitions designs found a new life: fragmentation shells (high explosive surrounded by a steel mantel) and CANISTER pre-fragmented (steel shrapnel) shells can be used against personnel and materiel at over and under 500 metres, respectively. The Russian army now equips most of its devices with ‘thermobaric’ munitions that work by overpressure; the round disperses fuel vapours that are ignited by a delay fuse, in order to maximize the anti-personnel and minimize the anti-materiel effects.

In order to protect their forces and enable them to operate in complex environments, NATO’s armies have developed individual combat systems such as the US’s *Land Warrior* deployed in Iraq in 2008 and France’s *Félin*. These are supposed to enhance the efficacy of the infantry. Most fighting vehicles now have weapons that can shoot upwards: for example, the Norwegian Kvaerner RDS remote-controlled turret, armed with a 12.7-mm machine gun or a Mk 19 40-mm automatic grenade launcher. These systems can be linked to sensors that indicate the source of incoming fire. The possibility of programming automatic return fire is under consideration, but this poses some ethical questions.²⁶ Indeed, soldiers need to be aware of their responsibilities, even when the weapons operate in fully automatic mode. Incidents have occurred at sea with the automatic

20 A. Vautravers, above note 10.

21 A. Vautravers, above note 12.

22 Alexandre Vautravers, ‘10 inventions de l’US Army en 2008’, in *Revue Militaire Suisse*, No. 3, 2010.

23 A generation of vehicle has been designed, in 2003–2008, to be ‘mine-resistant, ambush-protected’ (MRAP). Ambushes refer to IEDs or short-range anti-tank grenade attacks.

24 Alexandre Vautravers, ‘MRAP: une fausse bonne idée?’, in *Revue Militaire Suisse*, No. 3, 2010.

25 *Mehrzweck*.

26 Ian Kemp (ed.), *Complete Guide: Urban Warfare*, in *Armada*, Compendium, No. 4, 2008, p. 22.

air-defence Phalanx system;²⁷ since 2009, such a system has been deployed on land in Iraq, to defend against mortar/artillery or missile attacks, renamed the Centurion.

Modern technical developments in Western armies are focusing on robotized remote-control systems, for example for the destruction of explosives. Large amounts of money are also being invested in developing drones and mini-drones for intelligence-gathering and combat.²⁸ However, these are more expensive than armour and do not solve the problem of protecting soldiers.

Training

After years of neglect and denial, most Western armies have now acknowledged the need to train their forces to fight in urban terrain and to develop new doctrines and new hardware accordingly.²⁹ In the United States, the National Training Centre (NTC) at Fort Irwin, California, has been preparing troops for this combat environment since 1980, while the Joint Readiness Training Centre (JRTC) was set up at Fort Polk, Louisiana, in 1993. The Fort Irwin centre trains mechanized units in a 1,600-square-kilometre area of semi-desert, while the Fort Polk facility is used to train light armoured and infantry units in the entire spectrum of operations, in particular in built-up areas. The seven US Stryker brigade combat teams are trained there.³⁰

In June 2005, the French army opened a centre in Sissonnes (CENZUB) to train troops for operations in urban areas. Its mission is to conduct technical and tactical experiments, to draw up doctrine, and to dispense specific instruction. The first groups to use the centre were the 11th parachute brigade and the 1st mechanized brigade – both part of the rapid deployment force – in 2005. Between 2006 and 2008, the centre was used by the 3rd mechanized brigade, the 27th marine infantry brigade, and the 6th light armoured brigade.

French military doctrine provides for the creation of combined arms tactical battlegroups.³¹ These are ad hoc forces made up of a thousand men and capable of controlling a town with a population of 100,000. In principle, they are made up of an armoured squadron, three or four infantry companies reinforced with regimental components – anti-tank, reconnaissance, and command sections – and a company of engineers. Depending on their mission, battlegroups may be given specialized resources: military police, intelligence services, interpreters, special forces, air force liaison officers, snipers, and so forth. The responsibility for

27 Gulf Link, Friendly Fire Incidents, available at: http://www.gulflink.osd.mil/du_ji/du_ji_tabh.htm (last visited 31 May 2010).

28 Ian Kemp (ed.), *Complete Guide: Urban Warfare 2009*, in *Armada*, Compendium, No. 4, 2009, p. 4.

29 See Jean-Marie Veyrat (ed.), 'Armées: faire campagne en ville', in *Doctrine*, No. Spécial 1, 2006; Ministère de la Défense, *Manuel d'emploi des forces terrestres en zone urbaine*, Paris, 22 July 2005.

30 A. Vautravers, above note 10.

31 *Groupements tactiques interarmes* (GTIA).

setting up a combined group will depend on the density of the urban terrain: infantry in confined areas and armoured cavalry in peripheral areas.³²

There are similar facilities in other countries. Switzerland, for example, recently inaugurated two simulators for urban terrain (SIMUG) and house-to-house fighting (SIMKIUG) facilities at the Walenstadt (2009) and Bure (2010) military training grounds. Infantry and tank battalions will train there every two years.³³

The vulnerability of urban populations

Because resources, power, and people are concentrated in and around them, cities are by definition vulnerable entities. The European Union is currently conducting a study on the technological risks engendered by the presence of factories and power stations close to major cities.

In the Middle Ages, cities were regarded as death traps because high-density living and personal mobility exposed their inhabitants to a high risk of epidemics.³⁴ Meanwhile, rural life and poverty have been associated in popular beliefs; on the contrary, however, the most vulnerable population groups are now those living in cities.

Because they are vulnerable to any interruption of utilities (water, electricity, gas) or supplies (food, coal, information), city dwellers are more dependent on and more harshly affected by things beyond their control than people living in the country. The impact of a natural or technical disaster in a city will be more serious both because of the number of people affected and also because of the degree of their dependence and distress.³⁵ Urban populations are also generally harder to reach than rural ones. The situation is made worse by high population density. Large-scale operations to supply urban populations with food, evacuate them, or transfer them elsewhere are major challenges from a humanitarian, logistical, and law-enforcement point of view, as demonstrated by the US military operations in 2005 following hurricane Katrina.

As an official of Médecins du Monde cynically observed on French radio recently, the greatest change we have seen over the past thirty years of humanitarian action has been the shift from delivering food in the African countryside to the delivery of food to today's towns and slums. Jeff Crisp's work has demonstrated that, today, the majority of refugees are from towns and cities, and they find refuge

32 See 'Le combat en zone urbaine', in *Terre Information Magazine*, No. 177, September 2006; Jean-Louis Promé, 'La France et le combat urbain: une perspective incontournable', in *Raids*, Hors-série No. 11, 2003; Frank Nicol, 'La formation aux actions en zone urbaine', in *Doctrine*, No. 3, 2004; Alexandre Vautravers, 'L'armée française et les zones urbaines', in *Revue Militaire Suisse*, No. 5, 2007.

33 Hervé de Weck, 'Nouveau centre d'instruction au combat sur la place d'armes de Bure', in *Revue Militaire Suisse*, No. 6, 2009.

34 Philippe Arriès, *Essai sur l'histoire de la mort en Occident: du Moyen-Age à nos jours*, Seuil, Paris, 1977, p. 38.

35 T. Struye de Swielande, above note 4, p. 135.

in other towns and cities, a fact that causes a number of challenges for the UN High Commissioner for Refugees.³⁶ Humanitarian operations, from the Berlin airlift to operations in Afghanistan and Haiti, have therefore increasingly focused on cities.

Our thinking in the fields of international relations, politics, security, and civil defence needs to factor in the development of large-scale urban expanses and concomitant factors such as concentration and globalization, economic and social influence, and growing vulnerability. Peace-keeping operations are by nature essentially city-based.³⁷ In Bosnia-Herzegovina, for example, half of the United Nations Protection Force (UNPROFOR) troops were stationed in the Sarajevo enclave.

Conclusions

In open country, tactical manoeuvring usually determines the outcome of a battle. In cities, however, fighting forces put most of their efforts into fire power and troop protection.³⁸ Examples of the fire-power scenario are the operations by Russian forces in Chechnya and the Israeli armed forces in southern Lebanon and Gaza. Military victory is possible, but the cost is generally a high casualty toll on both sides, as well as a devastating impact on the civilian population, which is considered *a priori* to be hostile. This type of fighting is hardly compatible with international humanitarian law. Furthermore, unilateral use of such force generally proves counterproductive for the subsequent course of operations: mobility is hampered, logistics channels are hard pressed, and the security situation worsened because of the hostility of the population.

The second option, practised for example by the US and British forces in Iraq, relies heavily on protection for the troops to enable them to resist the insurgents' initial fire. Effort is mainly put into developing heavy protection systems and effective integrated intelligence-gathering based on the use of sophisticated technologies – drones and robots. More finely targeted responses are then possible. Danger areas can be cordoned off to allow the civilian population to dissociate itself from the insurgents or be evacuated, a tactic that has an impact on the morale of both the troops and the public.³⁹ But the effectiveness of such tactics may only yield rewards after several years. It is perhaps too early to say whether they will fulfil the hopes vested in them.

In the longer term, the question arises whether modern armies can fight efficiently and win engagements in cities. Today, for most conventional forces and

36 Jeff Crisp, 'Access to urban refugees', in Alexandre Vautravers (ed.), *Access to Resources: 15th International Humanitarian Conference Proceedings*, Webster University, Geneva, forthcoming 2011.

37 Patrick Bazin, 'Le chemin de la paix passe par les villes', in *Doctrine*, No. 3, 2004.

38 Alexandre Vautravers, 'Strategy at a crossroads', in Gyula Csurgai (ed.), *Methods in Geopolitics*, L'Âge d'Homme, Genève, 2008, p. 100.

39 Christophe Barthélémy, 'Le degré d'acceptabilité collective de la mort distingue les sociétés', in *Revue Militaire Suisse*, No. 3, 2010.

armed groups, defensive fighting in urban terrain is a given. The future will tell whether stabilization operations are possible in metropolises without considerable collateral destruction and whether casualties can be kept at acceptable levels. At the same time, it is clear that, for modern Western armies, taking a city by sheer fire power, as armies did in World War II or the Russian army attempted to do with its assaults on Grozny, is no longer a viable option.

Military involvement in law enforcement

Dale Stephens*

Captain, Royal Australian Navy

Abstract

Law enforcement is not a task usually undertaken by military forces, at least within domestic legal contexts. Conversely, maintaining or restoring security within dysfunctional or 'post-conflict' areas of operation is a role commonly undertaken by them. Within these latter operations, the skill sets and highly calibrated application of force that are commonly associated with police forces in their law enforcement role are in fact manifested in a decisively military context. This article reviews the experiences and legal frameworks associated with military participation in two separate types of mission, namely UN-sponsored peace operations and unilateral/multilateral stabilization and counter-insurgency operations. It argues that these contexts have demanded a revised interpretative approach to the applicable law, one that is much more sensitive to social and political effect.

⋮⋮⋮⋮⋮⋮

The conduct of contemporary military operations takes place in a highly complex and contested terrain of legal and social norms. Whether a military force is engaged in conventional armed conflict, counter-insurgency, anti-terrorism, peacekeeping/enforcement, stability operations, or law enforcement, there is a convergence of a dense mixture of law, doctrine and policy that guides military decision-making. Within this highly pluralist environment, the synchronization of law and policy on the one hand, and of formalism and social effect on the other, needs to be constantly reconciled.¹ Military involvement in law enforcement (broadly defined) has become a key feature of operational planning and execution. Law enforcement as referred to in this article relates to the 'broad range of activities to protect the

* The views expressed in this article are those of the author and do not necessarily reflect the position of the Australian Government or the Australian Defence Force.

civilian populace, provide interim policing and crowd control, and secure critical infrastructure'.² It is to be contrasted with conventional war-fighting and often takes place in a context of overlapping legal frameworks. The application of force in law-enforcement-type activities is sometimes determined by peacetime criminal law regimes, sometimes by elements of the law of armed conflict, and sometimes by both. The consequences of non-compliance with the relevant rule, norm, or standard within this highly calibrated and synergetic legal framework can be devastating. The impacts can be measured in terms of personal liability and mission accomplishment goals, as well as broader socio-political registers of legitimacy.³

The purpose of this article is to examine the legal frameworks applicable to military involvement in law-enforcement-type activities. While law enforcement has not been a traditional core skill of military training, military forces on deployment are nonetheless undertaking such duties. The basic objective of such involvement is to preserve or restore security, invariably in post-conflict societies. My analysis will focus on two important types of operation in which security/law enforcement activities are prominent, namely United Nations (UN) peace operations and unilateral/multilateral stabilization or counter-insurgency operations. In each of these contexts, highly nuanced and regulated legal regimes dictate permissible levels of force. They also represent different sides of the same coin. In UN peace operations there is invariably an institutional policy directive regarding the limited use of force, notwithstanding that the factual context for such deployments and the threats encountered would probably support the application of the law of armed conflict. Accordingly, UN peacekeeping forces usually navigate a highly circumscribed legal regime when performing their mission. Conversely, in stabilization/counter-insurgency operations the law of armed conflict does normally apply, but recent military doctrine stipulates that the use of force is to take place in a highly surgical and sparing manner. Concomitantly, the law of armed conflict is interpreted in a highly contextualized manner.

It has been recognized that restoring security has become a critical factor for ensuring broader social and political development within societies emerging from conflict. At the same time, the social effect of legal interpretation with respect to the application of force has been better understood and integrated into operational doctrine. The success of the US 'surge' in Iraq in 2007 was partially attributable to a radical new approach to understanding the socio-political impacts of force under the law. This, in turn, has influenced legal interpretative methods. Such changes mark a profound shift in perspective, yet echo the interpretative approach of the US legal-realist school of the early to mid-twentieth century.

In the first part of this article, I will examine the characteristics of UN peace operations as well as stabilization/counter-insurgency operations and outline

1 See in general David Kennedy, 'One, two, three, many legal orders: legal pluralism and the cosmopolitan dream', in *New York University Review of Law and Social Change*, Vol. 31, 2006–2007, p. 642.

2 *The US Army Stability Operations Field Manual 3–07 (The Stability Ops Manual)*, University of Michigan Press, Ann Arbor, 2009, para. 3–22.

3 David Kennedy, *Of War and Law*, Princeton University Press, Princeton, 2006, p. 159.

their basic contours. These types of operation require a highly calibrated and nuanced application of force to achieve mission outcomes. The constrained application of force that is applied within the operations is consistent with the parameters of force usually applicable in law-enforcement-type actions. The second part of the article will provide a deeper analysis of the assimilation of legal frameworks and seek to reveal the fine line that must be traversed by military forces when acting according to law to achieve mandated social, political, and military outcomes. It is becoming increasingly clear that, whether for action under the law of armed conflict or in domestic and/or international regimes of self-defence and criminal law, the social effect of legal interpretation is fast being recognized as a key indicator of both military success and legitimacy in guiding military decision-making.

Military involvement in law enforcement

Domestic law enforcement

Law enforcement is not a traditional military skill. Rather, police forces are usually entrusted with enforcing domestic criminal law under highly prescribed legislative regimes that ensure appropriate ‘due process’. In fact, in the United States in particular, army or air force involvement in internal law enforcement is generally prohibited under the *Posse Comitatus* Act.⁴ In addition, regulations similarly prohibit the US navy and marine corps from directly participating in civilian law enforcement activities.⁵ While other nations may not have similar legislative restraints, there has been a general political reluctance to utilize military means for law enforcement, especially in domestic contexts. Particularly in liberal democratic societies, this is a reflection of the principle of the primacy of the civil government. Counter-terrorism in domestic societies is usually an exception to the resistance to use of military means to resolve law enforcement issues.⁶ Even in those situations, however, the legislative regime for transferring responsibility from the civil power to the military is highly complex.⁷ Such legislative structures likewise reflect an

4 Act of 18 June 1878 (codified in 18 US Code § 1385 (1994)): ‘Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a *posse comitatus* or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both’.

5 *The Commander’s Handbook on the Law of Naval Operations*, US Navy, NWP 1–14M, July 2007, para. 3.11.3.1.

6 Another standard, though exceptional, occasion when the military are used in a law enforcement role is in relief and reconstruction efforts after natural disasters. See Evan Carlin, ‘Australian Defence Force experience with non-government organizations in humanitarian assistance and disaster relief operations’, in Michael Carsten (ed.), *Global Legal Challenges: Command of the Commons, Strategic Communications and Natural Disasters*, US Naval War College International Law Studies Series, Vol. 83, 2007, p. 267.

7 Simon Bronitt and Dale Stephens, ‘“Flying under the radar”: the use of lethal force against hijacked aircraft: recent Australian developments’, in *Oxford University Commonwealth Law Journal*, Vol. 7, No. 2, 2007, p. 265.

implicit acknowledgement that a criminal matter has metamorphosed into a national security issue.

Operations with security responsibility

Despite the historical resistance to authorizing internal law enforcement functions by the military, military deployments in operations short of conventional armed conflict have been increasingly characterized by the assumption of significant security functions. Such functions reflect law-enforcement-type duties and require close observance of both domestic and international legal obligations and responsibilities. There have been two major areas that are useful to this analysis where military forces have assumed security responsibility that requires law-enforcement-type activity and the associated legal calibration, namely within UN authorized peace operations and within unilateral or multinational stabilization operations.

UN-authorized peace operations

The 1990s saw a rapid expansion of peace operations authorized by the UN Security Council. While the exuberance for authorizing such missions has lessened in more recent times, the high ambitions for them remain relatively unchanged. For UN peacekeeping forces (PKFs), often deployed in post-conflict or dysfunctional societal environments, a central duty is invariably to restore and maintain security. Most assessments of operational effectiveness and ‘lessons learned’ highlight the central need for security before other development programmes can be effectively implemented. In the adoption of Security Council resolutions, there has tended to be an expansion of mandates likely to anticipate the application of force at the tactical level. The PKF is usually charged with providing security in numerous contexts, including delivering humanitarian supplies,⁸ effecting disarmament,⁹ and enabling the opportunity for, and participation in, elections in war-prone areas.¹⁰ Where there is a UN civilian police presence, the peacekeeping force will co-ordinate law enforcement activities with the relevant police authorities. In such contexts, however, the line between law enforcement and armed conflict can be blurred. Indeed, one of the factors that serves to determine whether an armed conflict exists is the capacity of police to deal with the threat posed.¹¹ Within a PKF-mandate area, there is often ongoing internecine violence committed for mixed criminal and political ends by non-state entities. A determination

8 UN Security Council (UNSC) Resolution 776 (1992), 14 September 1992, para. 2.

9 UNSC Resolution 1270 (1999), 22 October 1999, para. 8(b).

10 UNSC Resolution 766 (1992), 21 July 1992, para. 4.

11 Gerald Draper, ‘The Geneva Conventions of 1949’, in *Académie de Droit International, Recueil des Cours*, Vol. 1, 1965, p. 89; see also the ICRC commentary on Article 3 common to the 1949 Geneva Conventions, available at <http://www.icrc.org/IHL.nsf/COM/365-570006?OpenDocument> (last visited 2 May 2010), at p. 49, which states that a factor relevant to determining the existence of an armed conflict is whether ‘the legal Government is obliged to have recourse to the regular military forces against insurgents’.

will normally then be made as to whether the nature and continuity of the violence can be contained with civilian police resources and controls or whether PKF intervention is necessary. Even where military means are necessary to make an 'arrest', rebels engaged in non-international armed conflict are still subject to prosecution under domestic criminal law for their actions.

UNTAET and East Timor

The experience of the United Nations Transitional Administration in East Timor (UNTAET)¹² PKF in 2000–2001 is a good example for demonstrating the assimilated legal framework that was applied to deal with the threat posed.

In 1999, in a UN-sponsored plebiscite, the East Timorese population voted overwhelmingly for independence from Indonesia. This unleashed a fury of violence by pro-Indonesian militia forces resident in East Timor that resulted in mass destruction, killings, forced migration, and the breakdown of normal societal processes. Pursuant to a resolution adopted under Chapter VII of the United Nations Charter, a UN-authorized/commanded military force charged with restoring security was deployed. A UN Transitional Administration was also created to oversee the assumption of statehood by East Timor. The activities of the pro-Indonesian militia in opposing this transition were essentially military: they used tactics, techniques, and procedures that were military both in style and in substance. Numerous incidents of armed contact between the PKF and the militias occurred, causing deaths on both sides. There was also constant intimidation of the East Timorese population. At the same time a nascent detainee management procedure was created by the PKF (under the authority of the Security Council resolution) to apply the basic elements of 'due process' to militia members captured or otherwise detained.¹³

As security was slowly restored to the country, a local court system was launched and UN civilian police mentored the new East Timorese police force. The transition from security protection to law enforcement was patchy, incremental, and always subject to compromise. When dealing with incidents, UN-authorized rules of engagement to deal boldly with security threats had to be reconciled with the need to recognize the evidentiary and due process requirements that were in operation. Militia members captured during PKF operations were held in the immediate aftermath of an engagement and interrogated for information of military significance. Such members had also committed criminal offences under the domestic law then in force in East Timor and were required to be handed over to UN civilian police, who were subject to their own procedures for charging and prosecuting such members. This necessarily raised the difficult question of whether

12 UNSC Resolution 1272 (1999), 25 October 1999.

13 Michael J. Kelly, Timothy L. H. McCormack, Paul Muggleton, and Bruce M. Oswald, 'Legal aspects of Australia's involvement in the International Force in East Timor', in *International Review of the Red Cross*, Vol. 83, No. 841, March 2001, p. 101.

the PKF role should be characterized as military or constabulary. In the event, a workable solution was created between the PKF and the UN civilian police whereby the military were permitted to interrogate detainees for twenty-four hours following a contact incident; the detainees were subsequently transferred to the police for questioning.¹⁴ While such a situation was less than ideal from a military point of view, it also carried risks at the evidentiary level. Assessments were constantly being made as to priority: that is, whether obtaining tactically relevant information that could be acted upon to preserve PKF and civilian lives outweighed the risk that any subsequent prosecution of the individual would be undermined for lack of ‘due process’ rights under a civilian prosecution regime.

Stabilization operations

The experience of UN-sponsored peace operations under Chapter VII has its substantive counterpoint in unilateral and/or multilateral post-conflict military operations. These stabilization (or stability) operations are phased to take place after conventional armed conflict, and have come to be a significant part of the US operational doctrinal firmament.¹⁵ It is a doctrine that has recently emerged from a major rethinking of the military purpose and strategic goals of deployments in Afghanistan and Iraq, where military forces have acted in a mixed environment of peace and armed conflict. It has also been accorded a high priority and is recognized as being a key factor for military strategic success.

There is an interrelationship between stability-operations doctrine and counter-insurgency doctrine, especially in terms of assessing the social cost of the use of force. Stability-operations doctrine expresses an aversion to kinetic operations and is focused more on broader capacity-building; indeed, it expects the application of force to be very judicious and sparing, and draws a direct parallel between the discriminate use of force and legitimacy.¹⁶ The function of the military in such an operation is akin to adopting a heightened law enforcement role. However, as with peace operations, the crossover point with armed conflict is difficult to identify and synchronize. Stability operations are defined within US joint doctrine as follows:

[Stability operations encompass] various military missions tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief.¹⁷

14 Michael G. Smith and Moreen Dee, *Peacekeeping in East Timor: The Path to Independence*, Lynne Rienner Publishers, Boulder, CO, 2003, p. 83.

15 *The Stability Ops Manual*, above note 2.

16 *Ibid.*, para. 4–47.

17 *Ibid.*, p. viii.

It turns out that, despite the considerable training effort devoted to hard-war-fighting skills and preparation for conventional armed conflict, the vast majority of operations conducted by US forces are, in fact, stability operations.¹⁸ Moreover, this experience is shared by all modern militaries, especially those that have participated in UN peace operations. While the stability-operations doctrine originated from US reassessment during the course of its operations within Afghanistan and Iraq, the essential doctrinal content could easily be applied in the type of UN-sponsored peace operations described above.

The institutional design that underlies stability operations is the creation, in a post-conflict state, of an environment that facilitates reconciliation, establishes the development of political, legal, social, and economic institutions, and supports transition to a legitimate civil authority operating under the rule of law.¹⁹ While dismissed as utopian by some,²⁰ stability-operations doctrine and its integral capacity-building elements have been strongly identified by counter-insurgency experts as being a key factor in effectively combating an insurgency.²¹

The rule-of-law component of a stability operation acts as an institutional reference point for mission progress and ultimate success. The doctrine provides that a successful rule-of-law line of operation will result in a number of outcomes. These include the following: the state monopolizes the use of force; individuals are secure; the state itself is bound by law and does not act arbitrarily; the law can be determined and is stable enough for individuals to plan their affairs; individuals have access to an effective and impartial legal system; human rights and fundamental freedoms are protected by the state; and individuals are able to rely on the existence of legal institutions and the content of the law in the conduct of their lives.²²

The content and character of these indicia reflect the criteria identified by the influential naturalist legal philosopher Lon Fuller as being essential for an effective legal system.²³ They have something of a universal quality about them; however, they can conflict with more pressing security-related priorities during the course of a mission. In his account of the rule-of-law aspect of stability operations,

18 *Ibid.*, para. 1–9: ‘In the decade after the fall of the Berlin Wall, the Army led or participated in more than 15 stability operations’.

19 US Department of Defense (DoD) Directive 3000.05 of 28 November 2005, at para. 4.2, expressly states DoD policy regarding stability operations as follows: ‘Stability operations are conducted to help establish order that advances US interests and values. The immediate goal often is to provide the local populace with security, restore essential services, and meet humanitarian needs. The long-term goal is to help develop indigenous capacity for securing essential services, a viable market economy, rule of law, democratic institutions, and a robust civil society’.

20 William Easterly, ‘J’accuse: the US Army development delusion’, *Aid Watch*, 18 June 2009, available at <http://aidwatchers.com/2009/06/j%2E%80%99accuse-the-us-army%2E%80%99s-development-delusions/> (last visited 7 May 2010), where the author states ‘The 2009 US Army Stability Operations Field Manual is remarkably full of utopian dreams of transforming other societies into oases of prosperity, peace, and democracy through the coordinated use of military force, foreign aid, and expert knowledge’.

21 David Kilcullen, *The Accidental Guerrilla*, Oxford University Press, New York, 2009, pp. 129 and 143.

22 Taken from Dick Pregent, *Rule of Law Capacity Building in Iraq*, forthcoming in Vol. 86 of the US Naval War College International Law Studies Series.

23 See generally Lon L. Fuller, *The Morality of the Law*, revised edition, Yale University Press, 1969.

Colonel Dick Pregent deftly acknowledges the tension of seeking to establish a rule-of-law regime within a contentious security environment. He notes:

There will be instances in which security and the types of protections associated with the rule of law will come into tension. In those cases senior leaders will have to make the strategic decision to improve security that some may criticize as compromising the rule of law. There will be times during an active counterinsurgency when the long-term goals of the rule of law mission will of necessity be a lower priority than establishing and maintaining security.²⁴

This conflict of aims and goals replicates the chameleon nature of military response to threats under the ‘law enforcement’ and ‘armed conflict’ models. It is an uneasy accommodation, a means–ends rationality that is constantly being weighed in determining the right policy response to a threat. Moreover, along with doctrinal tension, there is also the legal conflict of authorities and restraints, which will be discussed more fully in the following section.

Assimilation and reconciliation of the legal framework for law enforcement

UN peace operations

There is usually a great disparity between the strategic ambitions of a Security Council mandate and the various forms of tactical authority granted to the peacekeeping force via UN or nationally issued rules of engagement. The influential ‘Brahimi Report’ in 2000 reconfirmed that the limited use of force by peacekeepers, confined essentially to self-defence only, was one of three pillars that underpinned all peacekeeping operations.²⁵ Peace operations are often broadly authorized under Chapter VII of the UN Charter and permit recourse ‘to all necessary means’ to give effect to the goals of the relevant resolution. Authors such as Hitoshi Nasu have condemned the imprecision of such resolutions and have critiqued the policy constraints imposed by limiting the capacity to use force to self-defence alone. Nasu argues that such a policy stipulation derives from historical happenstance that actually predates the Charter regime.²⁶ Hence, while there is a formal distinction between Article 40 (provisional measures) and Article 42 (enforcement action) of the UN Charter, the Security Council routinely fails to spell out which specific legal authority it is relying upon when authorizing a peace operation, yet strictly imposes a number of policy constraints concerning the use of force, which are applied more through institutional habit than any considered rationale.²⁷ This,

24 D. Pregent, above note 22.

25 Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305 – S/2000/809, para. 48.

26 Hitoshi Nasu, *International Law on Peacekeeping: A Study of Article 40 of the UN Charter*, Martinus Nijhoff Publishers, Leiden, 2009, pp. 17–27.

27 *Ibid.*, pp. 27–35.

accordingly, has necessitated constructive interpretation on the ground by commanders and soldiers seeking to give effect to the Security Council's will, a need that always threatens to undermine the political/legal limits anticipated by the relevant constituencies aligned to give effect to the resolution. Such 'legal ambiguity and uncertainty', Nasu contends, 'may well form unnecessary barriers to making [political] commitment for the purpose of preventing aggravation of armed conflict'.²⁸

The reality is that, even on peace missions where the Security Council grants wide strategic legal authority, peacekeeping forces are generally granted only the capacity to act in tactical self-defence. While the definition of self-defence within UN canons of interpretation may sometimes be broadened,²⁹ it nonetheless clearly authorizes less force than is permitted under a classic law of armed conflict paradigm. Hence, the right of self-defence generally extends only to the use of lethal force by peacekeeping troops to defend themselves or others whom they are charged to protect, and then only in the face of a (tactically significant) hostile act or demonstration of hostile intent. This can prove to be problematic when confronting organized opponents or 'spoilers' during a mission who use classic military-style tactics and high levels of force. The existence of an armed conflict is a matter of fact and, in terms of a non-international armed conflict, depends objectively upon the scale, intensity, and scope of the armed force employed. Indeed, the UN Secretary-General's Bulletin of 1999³⁰ stipulates the principles of the law of armed conflict that will apply (at least as a matter of policy) to peacekeeping forces when engaged in an armed conflict during a peace operation. While reflecting fundamental precepts of the law applicable to armed conflict, the Bulletin is particularly significant in acknowledging that an armed conflict may arise out of action otherwise based upon tactical-level self-defence.³¹ Notwithstanding this recognition, there seems to be no acknowledged instance since 1999 where a peacekeeping force has transitioned (even for a short time) from a 'self-defence' framework to a law of armed conflict one as regards the permitted application of force.

Moreover, there has yet to be a contemporary instance of a UN peace operation for which the application of the law of armed conflict to regulate force is consciously recognized, *a priori*, in a Security Council resolution. In keeping with the Council's doctrinal tradition, all authorized force in all contemporary peace missions is restricted to self-defence only. This reluctance by the Department of

28 *Ibid.*, p. 15.

29 *Ibid.*, pp. 184–188.

30 UN Secretary-General's Bulletin, 'Observance by United Nations forces of international humanitarian law', UN Doc. ST/SGB/1999/13, 6 August 1999, available at <http://www1.umn.edu/humanrts/instree/unobservance1999.pdf> (last visited 1 June 2010).

31 *Ibid.*, Section 1.1: 'The fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence'.

Peacekeeping Operations to recognize the existence of an armed conflict (international or non-international) is not surprising. Domestic courts, more often than not, avoid confirming the existence of an armed conflict or otherwise avoid decisions that too radically undermine executive views on combatant or prisoner-of-war status, given the highly political significance of such recognition.³² As with domestic courts, there is an understandable deference by the Department of Peacekeeping Operations to the sovereign discretions of participating states in peace operations with regard to the (non-)existence of armed conflict within an area of operations. Nonetheless, this has stark consequences for peacekeeping forces when acting in highly volatile and violent contexts.

The distinction between self-defence and the more extensive use of force permitted under the law of armed conflict is significant. When seeking to disarm or otherwise arrest violent members of rebel groups or militias, PKF troops are restricted to reactionary force only, and their actions will be judged by domestic legal standards of reasonableness and proportionality. As Ken Watkin has pointed out in his analysis of this issue, proportionality in law enforcement is a strikingly different concept from its meaning and function under the law of armed conflict.³³ Proportionality in the former requires strict scrutiny of whether force, especially lethal force, was warranted at all,³⁴ a determination that force was excessive could lead to criminal charges being laid against the soldier. Proportionality under the law of armed conflict³⁵ is related to assessment of the extent of unintended but expected civilian loss when targeting combatants or persons taking an active or direct part in hostilities. It involves a range of considerations entirely different from those required for the use of force to achieve mission goals. The fact that Security Council mandates may authorize expansive action as a matter of international law does not absolve soldiers of responsibility under their own domestic law and UN-issued rules of engagement to restrict their use of force to self-defence.

During the UNTAET mission in the early 2000s, it was the duty of the PKF to disarm and detain members of the militia groups who were seeking to stymie the would-be transition to East Timorese independence. Such groups were openly displaying weapons, including semi-automatic/automatic weapons and grenades,

32 See for example *Mohamed Ali et al. v. Public Prosecutor* (1968), [1969] AC 430.

33 Kenneth Watkin, 'Controlling the use of force: a role for human rights norms in contemporary armed conflict', in *American Journal of International Law*, Vol. 98, January 2004, pp. 17–22.

34 See European Court of Human Rights, *McCann and others v. The United Kingdom*, Series A, No. 324, Application 18984/91 (1995), in which a majority of the European Court of Human Rights determined that there had been a breach of Article 2-2 of the European Convention on Human Rights by the failure of British authorities to arrest suspected IRA terrorists before the point in time where the application of lethal force became inevitable.

35 The principle of proportionality is outlined in Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, in which Article 51(5)(b), under the heading 'Protection of the civilian population', prohibits indiscriminate attacks as, *inter alia*, 'an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'.

and conducting tactical patrols within East Timor. They were exploiting the UN rules of engagement and had fired upon PKF troops without warning, attacked PKF positions, ambushed PKF patrols, and responded to verbal challenges issued by PKF troops by opening fire. After the PKF had experienced a number of casualties, the Department of Peacekeeping Operations ultimately authorized an addition to the rules of engagement that deemed certain tactical behaviour by militia groups as threatening for the purposes of activating a heightened right of self-defence. This in turn gave an individual soldier the capacity to act according to a subjective belief that he or she was threatened when faced with such behaviour and to employ lethal force in self-defence.³⁶ It was not an ideal compromise and still exposed the individual soldier to potential prosecution, but it met with enormous approval by the East Timorese population and had an immediate positive effect on the security situation. It demonstrates, however, the highly discordant nature of tactical legal constraint and the strategic ambition of the Security Council when mandating peace operations.

Stabilization and counter-insurgency operations

Unlike the dilemmas that often arise during UN-sponsored peace operations, the case is generally reversed when undertaking unilateral or multilateral stabilization operations: the law of armed conflict is more readily drawn on when undertaking such operations, especially in the context of counter-insurgency and anti-terrorism activities within post-conflict societies. The decision that dominates military legal thinking is whether to restrict the positive freedoms to use force contained in the law of armed conflict (i.e. targeting persons taking a direct or active part in hostilities) in order to promote a different socio-legal agenda. In seeking to build adherence to a rule-of-law programme, for example, should multinational forces forego rights under the law of armed conflict and tolerate greater risks of their own casualties in order to promote the tenets of that broader programme? The arrest of insurgents pursuant to warrants issued by a court of law would demonstrate this position. The alternative, with a considerably lower risk of own-force casualties, is simply to target insurgents identified as taking a direct or active part in hostilities.³⁷

In resolving this dichotomy of adhering to a rule-of-law programme versus achieving short-term security advantages, Colonel Dick Pregent identifies the conundrum faced by US forces in Iraq in 2008. At that time, the 'Awakening' Councils took a significant stand against the insurgency. They first came into being in the country's Al Anbar province in 2007–2008, when Sunni tribal leaders began

36 See generally Dale Stephens, *The Use of Force in Peacekeeping Operations: The East Timor Experience*, Asia Pacific Centre for Military Law, Melbourne, 2005.

37 Protocol I, above note 35, Art. 51(3); Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Art. 13(3); Article 3 common to the four Geneva Conventions of 12 August 1949.

to oppose al-Qaeda manipulation by forming ‘Sons of Iraq’ paramilitary-type forces. A number of participants in the ‘Sons of Iraq’ movement were actually former insurgents against whom arrest warrants had been issued by Iraqi courts. Adherence to the rule-of-law paradigm by using US forces to carry out such arrests would have undermined the strategic political gains achieved with the Awakening movement. In wrestling with this issue, Pregent notes that ‘[i]n fact, there was no choice in the matter; the realities on the ground dictated that security be maintained and the warrants not executed’.³⁸ This experience shows the highly nuanced judgement required to determine the correct policy approach to the application of force under the law, especially when the military must grapple with its role as either a security or constabulary force. It was a particularly bold decision, given the emergence and basic functioning of an independent Iraqi judicial system at a tenuous time of its development. It did, however, recognize the goal of implementing a durable security so that other development programmes could flourish.

The invocation of legal rights under formalist frames of interpretation of the law of armed conflict has come under increasing pressure in recent times, and there is a growing literature on understanding the social context of the law’s implementation.³⁹ Military experiences in dealing with counter-insurgency, particularly those of the US in Iraq, have required a serious recalibration of the approach to engaging in warfare under the law. Pragmatic interpretative measures are applied to provide better guidance for military decision-making than traditional linguistic techniques. The soft positivist method of interpretation advanced by legal philosophers such as Hart⁴⁰ has in fact been supplemented by techniques usually identified with the US legal realist movement of the 1930s and 1940s.⁴¹ Significantly, these approaches have proved effective in securing the safety of populations and resisting insurgent movements. As the ‘new stream’ legal scholar David Kennedy has identified when reviewing the role of the law of armed conflict, legitimacy and social effect rather than formal validity have become key measures of interpretative guidance.⁴² This new phenomenon portends significant changes to the way the law is interpreted and applied. It also breaks down the cognitive perceptions of ‘law enforcement’ and ‘war-fighting’. When the application of force under the law is assessed in terms of social effect, functional distinctions as to formal role are of less consequence.

38 D. Pregent, above note 22.

39 See generally David Kaye, ‘Complexity in the law of war’, in Russell A. Miller and Rebecca M. Bratspies (eds), *Progress in International Law*, Martinus Nijhoff Publishers/Brill Academic, Leiden, 2008, p. 681; Nathaniel Berman, ‘Privileging combat? Contemporary conflict and the legal construction of war’, in *Columbia Journal of Transnational Law*, Vol. 43, No. 1, 2004–2005, in which the author contends that the law of armed conflict is a discourse of construction, contestation, and strategic instrumentalization; Chris Jochnick and Roger Normand, ‘The legitimization of violence: a critical analysis of the Gulf War’, in *Harvard International Law Journal*, Vol. 35, No. 2, 1994, p. 387.

40 Herbert Lionel Adolphus Hart, *The Concept of Law*, 2nd edn, Oxford University Press, Oxford, 1997.

41 Neil Duxbury, *Patterns of American Jurisprudence*, Clarendon Press, Oxford, 1997, pp. 65–161.

42 D. Kennedy, above note 1, p. 166.

Counter-insurgency and law enforcement

The law of armed conflict generally takes a ‘Cartesian’ approach to regulating warfare.⁴³ It separates combatants from civilians and permits force to be applied only against the former. An exception to the prohibition on force is made, in both international and non-international armed conflict, with regard to those civilians who take a direct or active part in hostilities. The approach taken is loosely modelled upon one of attrition. There is a simple binary opposition of action/non-action under the law, based upon status and/or function. In determining the risk that military forces will assume, many states have expressly declared that the lives of their soldiers will be factored into the equation of determining military advantage.⁴⁴

An insurgency is fundamentally a political conflict. The centre of gravity is the population itself, who remain ‘the deciding factor in the struggle’.⁴⁵ To provoke overreaction in the use of force by counter-insurgent forces is a key political goal. A counter-intuitive approach to legal interpretation is therefore needed to grapple with this strategic aim. Rather than relying upon the blunt and somewhat indeterminate rights under the law of armed conflict, the use of force has to be more instrumentally applied. In short, an approach modelled on law enforcement, in terms of calibrated application and anticipated effect, is likely to be strategically more productive than relying upon traditional rights (and methodologies) under the law of armed conflict. In fact, the *U.S. Army/Marine Corps Counter-Insurgency Field Manual* lists a number of counter-insurgency paradoxes, which revise traditional thinking and expressly require that greater risk to the security of counter-insurgent lives must be accepted. The more prominent and legally relevant paradoxes include the following:

- ‘Sometimes, the more you protect your force, the less secure you may be.’⁴⁶
- ‘Some of the best weapons for counterinsurgents do not shoot.’⁴⁷
- ‘Sometimes, the more force is used, the less effective it is.’⁴⁸
- ‘The more successful the counterinsurgency is, the less force can be used and the more risk must be accepted.’⁴⁹

43 Lieutenant General Sir John Kiszely, ‘Post-modern challenges for modern warriors’, in *Australian Army Journal*, Vol. 5, No. 2, 2008, p. 182.

44 For example, when ratifying Additional Protocol I, New Zealand declared: ‘In relation to paragraph 5(b) of Article 51 and to paragraph 2(a)(iii) of Article 57 ... the term “military advantage” involves a variety of considerations, including the security of attacking forces’. A similar declaration was made by Australia. While not a party to Additional Protocol I, the United States has included in *The Commander’s Handbook on the Law of Naval Operations* the following commentary: ‘Military advantage may involve a variety of considerations, including the security of the attacking Force’.

45 *The U.S. Army/Marine Corps Counterinsurgency Field Manual 3-24/3-33.5 (COIN Manual)*, University of Chicago Press, Chicago, 2007, p. xxv.

46 *Ibid.*, para. 1–149.

47 *Ibid.*, para. 1–153.

48 *Ibid.*, para. 1–150.

49 *Ibid.*, para 1–151.

These paradoxes mark a decisive change from the usual legal prescriptions. They also represent a decisive divergence from prevailing views as to Western liberal tolerance for own-force casualty loss.⁵⁰ Most significantly, they have worked in Iraq. The ‘surge’ of 2007 in Iraq was not merely an expansion in the numbers of soldiers but rather a flood of new ideas about the application of force under the law. New approaches to insurgent-targeting under the principle of distinction were both required and demanded to address a deteriorating security situation in Iraq. Similarly, assessments of collateral/incidental damage/injury under the principle of proportionality were revised. According to an orthodox legal interpretation of the law of armed conflict, as indicated above, targeting in a non-international armed conflict requires a determination of whether the person is taking a direct or active part in hostilities. If that person is doing so, then he or she is lawfully targetable. The recent interpretative guidance of the International Committee of the Red Cross on this question highlights (from an ICRC perspective) who may be targeted under this formula, relying principally on a test of individual conduct or membership associated with a combat function.⁵¹

The starting point for targeting in counter-insurgency operations is likewise the conventional determination of whether a person is taking a direct or active part in hostilities. The counter-insurgency doctrine then introduces the concept of ‘reconcilability’. Hence, a decision-maker must further assess the prospect of reconcilability before taking action.⁵² If a person is considered reconcilable, then targeting should not occur or should cease, and a law enforcement arrest procedure should be considered. The counter-insurgency doctrine does not provide detailed guidance to determine who may be reconcilable, but this does intrinsically require assessment of numerous socio-political factors. In this regard, David Kilcullen identifies a class of such potentially reconcilable persons as ‘accidental guerrillas’,⁵³ that is, individuals who find themselves manipulated into insurgent activity.

Similarly, with respect to the principle of proportionality, the counter-insurgency doctrine sets out a self-conscious variation on the manner in which the formula is to be applied, in accordance with its stated paradoxes. Thus the manual specifies:

In conventional operations, proportionality is usually calculated in simple utilitarian terms: civilian lives and property lost versus enemy destroyed and

50 Edward Luttwak, ‘A post-heroic military policy’, in *Foreign Affairs*, Vol. 75, No. 4, 1996, p. 33.

51 ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Law*, Geneva, 2009, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/direct-participation-report_res/\\$File/direct-participation-guidance-2009-icrc.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/direct-participation-report_res/$File/direct-participation-guidance-2009-icrc.pdf) (last visited 10 May 2010).

52 Multi-National Force–Iraq (MNF-I) Guidelines as contained in Thomas Ricks, *The Gamble*, Penguin Press, New York, 2009, Appendix D, p. 369, provides: ‘We cannot kill our way out of this endeavor. We and our Iraqi partners must identify and separate the “reconcilable” from the “irreconcilables” through engagement, population control measures, information operations and political activities. We must strive to make reconcilables a part of the solution, even as we identify, pursue, and kill, capture or drive out the irreconcilables’.

53 D. Kilcullen, above note 21, p. 38.

military advantage gained. In COIN operations, [military] advantage is best calculated not in terms of how many insurgents are killed or detained, but rather which enemies are killed or detained ... In COIN environments, the number of civilian lives lost and property destroyed needs to be measured against how much harm the targeted insurgent could do if allowed to escape.⁵⁴

The commentary subsequently outlines an additional socio-political determination that should take place, observing that ‘Fires that cause unnecessary harm or death to noncombatants may create more resistance and increase the insurgency’s appeal – especially if the populace perceives a lack of discrimination in their use’.⁵⁵

Thus, the counter-insurgency doctrine expressly requires assessment of military advantage in terms of the risk of social or political alienation. As the Harvard academic and contributor to the counter-insurgency manual Sarah Sewall emphasizes:

In this context, killing the civilian is no longer just collateral damage. The harm cannot be easily dismissed as unintended. Civilian casualties tangibly undermine the counterinsurgent’s goals ... The fact or perception of civilian deaths by their nominal protectors can change popular attitudes from neutrality to anger and active opposition.⁵⁶

The minimization of incidental civilian injury has become so critical to mission success that in July 2009 the Commanding General in Afghanistan issued a directive detailing very limited circumstances under which close air support and indirect fire can be undertaken in residential areas.⁵⁷

Legal realism and counter-insurgency

The counter-insurgency doctrine draws on the interpretive style and techniques of the US legal realist school of the early and mid-twentieth century. Such an approach relies more fully upon the social sciences to guide legal interpretation; consideration of the social sciences has become a key tool for achieving military success in post-modern warfare. Indeed, the introduction of concepts such as reconcilability when interpreting the principle of distinction and assessing the second- and third-order effects of the proportionality equation in terms of psychological response is certainly new. Even the conception of what constitutes military success and how it is to be defined has been transformed. Instead of focusing on the attrition logic inherent in the structure of the law of armed conflict, greater emphasis is placed on assessing the social effect of the application of force.

54 *COIN Manual*, above note 45, para. 7–32.

55 *Ibid.*, para. 7–37.

56 *Ibid.*, p. xxv.

57 NATO/ISAF Tactical Directive, 6 July 2009, available at http://www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf (last visited 10 May 2010).

As mentioned above, the success of the ‘surge’ in Iraq relied heavily on instrumentalized assessments of the application of force under the law.⁵⁸ The decisive change of approach that resulted from this fundamental course correction is evident to anyone who served in the Iraqi area of operations. Recognizing the socio-political consequences of the application of force necessarily entails a psychological connection that invariably restrains unnecessary force. It adds to the deontological framing of the moral underpinnings of the law. The famous ‘clear, hold, build’ strategy initially devised by Colonel McMasters in Tal Afar in Iraq in 2006⁵⁹ graphically demonstrates the attitudinal changes made by soldiers to protect resident populations that follow from such conclusions.⁶⁰ The establishment of psychological connections with populations whom military forces are charged with protecting, especially within nearby residential urban areas, personalizes the use of violence and necessarily curbs its application. Psychological studies have amply shown the reinforcing effect of the sense of protecting an ‘identifiable, determinate individual and not a mere statistical someone’.⁶¹ This observed effect plainly adds texture to any assessment of proportionality or distinction in a manner that resembles (in terms of effect) the law enforcement paradigm on the application of force.

Conclusion

The close correlation between the application of force and the strategic social effect has been a lesson painfully learned in the contemporary military environment. The trying experience of Coalition forces in Iraq in 2007 generated a major reassessment of the instrumental application of military force. This reassessment has proved extremely effective in quelling violence and creating the necessary conditions for development. While law enforcement *per se* is not a core military task, the restoration and maintenance of security certainly is. Whether in the course of a stabilization operation or a UN-authorized peace operation, military action takes place within a highly complex and contested arena of social, political, and legal norms. While this has always been the case, it has now been consciously recognized and more fully documented in military doctrine. The careful navigation between these norms has led to a revised approach to legal interpretation. When legitimacy and validity go hand in hand, it augers well for a restrained and constructive role for military forces, whether acting within a law enforcement or indeed any other type of legal framework.

58 D. Kilcullen, above note 21, pp. 128–154.

59 T. Ricks, above note 52, pp. 50–51.

60 *Ibid.*, pp. 200–227.

61 Joshua D. Greene, ‘The secret joke of Kant’s soul’, in Walter Sinnott-Armstrong (ed.), *Moral Psychology*, Vol. 3, *The Neuroscience of Morality, Emotion, Disease and Development*, MIT Press, Cambridge, MA, 2007, pp. 35–48.

Regulating the conduct of urban warfare: lessons from contemporary asymmetric armed conflicts

Michael John-Hopkins

Michael John-Hopkins is a Tutor in Law and Ph.D. candidate at the Department of Law and Criminology, Aberystwyth University, Wales, United Kingdom.

Abstract

A survey of contemporary armed conflicts indicates that major military powers are increasingly facing militarily weaker adversaries and being drawn into unconventional engagements in cities, towns, and villages. Given the asymmetry of military capabilities in such conflicts, it is submitted that higher standards of reasonableness be imposed upon military commanders of major military powers to ensure constant care for civilian populations, and furthermore that civilian populations be spared more effectively from the effects of urban warfare by applying customary law ab initio, in order to avoid gaps in protection that may arise from the premature classification of armed conflicts.



The dialectics of asymmetric urban warfare

Modern history has often borne witness to what can be described as conventional international armed conflicts between two or more sovereign states that are similarly matched in terms of high-intensity air, sea, and land capabilities.¹ Illustrations

of such symmetrical inter-state conflicts include both World Wars, the Iran–Iraq War, the Falklands War, and the Persian Gulf War. Parties to these conventional inter-state symmetrical conflicts sought to ‘weaken the military forces of the enemy’ by disabling ‘the greatest possible number of men’² on the battlefield, typically located away from urban centres. In other words, the goal was to create an asymmetric state of affairs through a material trial of strength, in order to force the adversary to capitulate. Although this model of conflict cannot be ruled out as the shape of conflict to come, the potentially devastating consequences of any form of symmetrical inter-state conflict render it unlikely. Instead, disparities in military power resulting from technological development continue to create the material conditions for a wide spectrum of asymmetric conflicts that are internal in character (i.e. between states and non-state entities or between non-state entities alone), as well as those that are international in character (i.e. between states themselves or between states fighting by proxy).

The twenty-first century has also borne witness to an explosion in the size of urban populations. The United Nations (UN) Department of Economic and Social Affairs has highlighted the growing urbanization in both developed and developing countries. For example, in 1950 only 86 cities had a population of more than one million, whereas by 2002 their number had risen to approximately 400.³ A 2003 UN–HABITAT Working Paper indicates that in many conflict-afflicted countries a significant percentage of the urban population live in slum conditions, characterized by ‘overcrowding, poor or informal housing, inadequate access to safe water and sanitation, and insecurity of tenure’.⁴ Notably, the *World Development Indicators* report published by the World Bank in 2002 estimated that the urban population accounted for 22% of the total population in Afghanistan, 77% in Iraq, and 52% in the then Federal Republic of Yugoslavia⁵ – all countries that have sustained major United States air offensives.

When military asymmetry combines with urbanization, the result is asymmetric urban warfare in which militarily weak parties do not directly engage militarily strong adversaries by using the conventional means and methods typical of inter-state wars. Modern conflicts in Vietnam, Chechnya, Gaza, the West Bank, Afghanistan, and Iraq are prime examples of this type of conflict, characterized by a major imbalance *ab initio* of the opposing armed forces’ military capabilities. In such conflicts, militarily strong parties may apply direct offensive strategies, using

- 1 Brian Steed, *Piercing the Fog of War: Recognizing Change on the Battlefield*, Zenith Press, Minneapolis, 2009, ch. 2.
- 2 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, St Petersburg, 29 November/11 December 1868, paras. 2 and 3.
- 3 UN Department for Economic and Social Affairs, Population Division, *World Urbanization Prospects, 2001 Revision*, New York, 2002; Mike Davies, *Planet of the Slums*, Verso, London, 2007, pp. 1–3.
- 4 M. Davies, above note 3, p. 23; UN–HABITAT, *The Challenge of the Slums: Global Report on Human Settlements 2003*, London, 2003, p. 3; UN–HABITAT, *Slums of the World: The Face of Urban Poverty in the New Millennium?*, Working Paper, Nairobi, 2003, Annex 3.
- 5 World Bank, *World Development Indicators 2002*, Table 3.10, available at: www.worldbank.org/data/wdi2002/pdfs/table%203–10.pdf (last visited 9 May 2010).

conventional means and methods of warfare such as infantry, armour, and air-power to capture, destroy, or neutralize military objectives and thus destroy the opponent's physical capacity to resist.⁶ They may also apply indirect offensive strategies such as 'barbarism', a term that Arreguín-Toft defines as the deliberate and systematic harm of non-combatants in order to destroy a weaker opponent's will and capacity to fight; examples he gives of this include the bombing of civilian infrastructure, as well as the internment in concentration camps, murder, torture, and rape of non-combatants.⁷ For militarily weak parties, defeat would invariably be the outcome of fighting on the stronger party's conventional terms, for instance on the open battlefield.⁸ They may therefore employ indirect offensive and defensive strategies such as guerrilla warfare, concealing themselves among supportive civilian populations in cities, towns, and villages, which provide both cover for them to launch attacks and also protection from counter-attack.⁹

In its report to Congress entitled 'Conduct of the Persian Gulf War', the United States Department of Defense stated that 'to engage in military operations in urban terrain' is 'a form of fighting that is costly to attacker, defender, innocent civilians, and civilian objects'.¹⁰ This assertion is supported by Herold's finding that the majority of civilian deaths that occurred in the 2001 US military operations in Afghanistan were recorded in areas of high population density.¹¹ In this respect it can be said that asymmetric urban armed conflict exposes the militarily superior side's political vulnerabilities, for, in the process of attacking and counter-attacking its weaker opponent, the militarily superior side will face a major challenge. On the one hand, it may perceive that full compliance with international humanitarian law (IHL) lessens its ability to quickly and decisively achieve strategic objectives such as a ceasefire, surrender, regime change, restoration of international peace, security, and the rule of law. On the other hand, it may find that, in trying to achieve its strategic objectives, the presence of military objectives within densely populated urban areas makes it difficult to stay within lawful parameters. This is to the weaker side's strategic advantage, for it can then seek to exploit any direct or indirect attacks upon civilians through media coverage, well aware that the stronger side is subject to international and domestic political pressure to achieve a quick and decisive military victory at a minimum cost of human lives and material resources.

Clausewitz once stated that 'war is a mere continuation of policy by other means'.¹² This still holds true for contemporary armed conflicts, but with the added

6 Ivan Arreguín-Toft, *How the Weak Win Wars: A Theory of Asymmetric Conflict*, Cambridge University Press, Cambridge, 2008, p. 4.

7 *Ibid.*, pp. 31–32, 34, and 43.

8 *Ibid.*, pp. 34 and 204–205.

9 *Ibid.*, p. 33.

10 US Department of Defense, 'Report to Congress on the conduct of the Persian Gulf War', ILM, 1992 (3), p. 721.

11 Marc W. Herold (ed.), *A Dossier on Civilian Victims of the United States' Aerial Bombing of Afghanistan: A Comprehensive Accounting*, March 2002, available at: <http://cursor.org/stories/appendix5.htm> (last visited 10 May 2010), Appendix 5: 'The spatial distribution of Afghan civilian casualties caused by the US air war, October 7 – December 6th'.

12 Carl von Clausewitz, *On War*, N. Trübner, London, 1873, Book 1, ch. 1, para. 24.

proviso that humanitarian law may serve as a continuation of war by other means. In other words, militarily stronger parties to a conflict can either adopt and employ IHL-compliant military strategies as a prerequisite for both military and political success, or risk sacrificing ‘victory in peace for victory in war’.¹³ The latter has been described as a poor policy, because forms of direct or indirect ‘barbarism’ generally promote and stimulate militarily weak adversaries rather than deter them.¹⁴ Also, it results in protracted and costly conflicts that either do not attain the desired political objective, as in Vietnam, or are otherwise not conducive to a stable political outcome, as in Iraq and Afghanistan.¹⁵

The scope *ratione materiae* of treaty-based IHL

The practical challenge of classifying armed hostilities

The discretion of military and political decision-makers to classify an armed conflict as either international or non-international is limited by the ability of courts of law to make *ex post facto* determinations to this effect.¹⁶ Nonetheless, in the absence of any capable and recognized determining body, such preliminary self-classification and self-regulation by parties to a conflict is unavoidable. The application of this binary classification system poses an acute practical challenge for decision-makers on the ground, in that they may face complex factual situations that are oscillating, changing, or mixed in character.¹⁷ In this respect, and despite all the good will in the world, a major difficulty that will often arise for warring parties during the constraints of hostilities, especially in the initial phase, is in identifying where a given situation that may be in constant flux is to be placed on the sliding scale ranging from internal tensions and disturbances to internal and international armed conflicts.¹⁸ The rationale of the following discussion and critique of treaty-based IHL is to stress the importance of applying customary IHL to urban armed conflicts *ab initio*.

Classifying international armed conflicts

The Trial Chamber in *The Prosecutor v. Dusko Tadić (Tadić)* set the threshold for the existence of an international armed conflict at a relatively low level, namely ‘whenever there is a resort to armed force between States’.¹⁹ The detailed

13 I. Arreguín-Toft, above note 6, p. 225.

14 *Ibid.*, p. 224.

15 *Ibid.*, p. 213.

16 International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (Trial Chamber), 2 September 1998, para. 603.

17 International Criminal Tribunal for the former Yugoslavia (ICTY), *The Prosecutor v. Dusko Tadić*, Case No. IT-94-1-AR72, Merits (Appeals Chamber), 2 October 1995, para. 72.

18 Andrew J. Carswell, ‘Classifying the conflict: a soldier’s dilemma’, in *International Review of the Red Cross*, Vol. 91, No. 873, March 2009, p. 4.

19 ICTY, *Tadić*, above note 17, para. 70.

humanitarian protections contained in the Fourth Geneva Convention²⁰ and Additional Protocol I²¹ will not apply where one or both parties to a conflict do not qualify, or indeed are not recognized, as a contracting state within the meaning of Article 2 common to the Geneva Conventions and Article 1(1) of Protocol I or as a national liberation movement within the meaning of the latter's Article 1(4).²² These limitations are problematic, given that states such as India, Israel, and the United States of America have not ratified Protocol I,²³ and that movements such as Hezbollah and Hamas have not generally been recognized as state entities, despite their status as *de facto* authorities that perform quasi-state functions.²⁴ The main exception to the said limitations is where the conduct of a non-state entity can be attributed to a foreign state, and the test for this is whether the latter has 'overall control' over the former.²⁵ For a conflict to become internationalized in this way, there must be 'extensive and compelling evidence' pointing to the foreign state's role in organizing, directing, co-ordinating, or planning the military actions of the non-state entity, in addition to evidence pointing to other forms of control, including financing, training, and equipping or providing operational support.²⁶ Even though this approach may extend the humanitarian protections of the Fourth Geneva Convention and Protocol I to civilians caught up in proxy wars – that is, international armed conflicts between states fought indirectly through third parties (states or non-state entities) as substitutes – this evidential burden creates the risk of under-classification, especially during the initial stages of armed hostilities, when adequate intelligence is likely to be at a premium.

Classifying non-international armed conflicts

The Appeals Chamber in *Tadić* ruled that the minimum threshold for the application of Article 3 common to the Geneva Conventions is 'protracted armed violence between governmental authorities and organized armed groups or between such groups within a State',²⁷ as opposed to lesser forms of armed violence such as 'banditry, unorganized and short-lived insurrections, or terrorist activities', which are covered by municipal criminal law and applicable international human

20 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Art. 2(1).

21 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

22 Nils Melzer, *Targeting Killing in International Law*, Oxford University Press, Oxford, 2009, p. 248.

23 See International Committee of the Red Cross, Treaty Ratification Table, available at: [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/israel-event-ihl-040509/\\$File/Treaty-Ratification-Table-IL-competition-2009.xls](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/israel-event-ihl-040509/$File/Treaty-Ratification-Table-IL-competition-2009.xls) (last visited 9 May 2010).

24 Ekaterina Stepanova, *Terrorism in Asymmetrical Conflict: Ideological and Structural Aspects*, Stockholm International Peace Research Report No. 23, Oxford University Press, Oxford, 2010, pp. 114–115.

25 ICTY, *The Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment (Appeals Chamber), 15 July 1999, paras. 84–141.

26 *Ibid.*

27 ICTY, *Tadić*, above note 17, para. 70.

rights norms.²⁸ Such a distinction is to be made on a case-by-case basis and involves an evaluation of whether the parties have a sufficient level of organization, and whether the hostilities are of a sufficient intensity.²⁹ In both these regards, the Trial Chamber in *The Prosecutor v. Boškoski (Boškoski)* set out a number of ‘indicative factors’ that serve as ‘useful practical guidance to an evaluation’³⁰ of whether or not a factual situation of armed hostilities can be classified as a non-international armed conflict. First, factors to consider in evaluating whether the hostilities are of a sufficient intensity to qualify as an armed conflict include whether the attacks can be considered sufficiently serious and whether there has been an increase and a spread of armed clashes over territory and over a period of time.³¹ Secondly, factors to consider in evaluating whether an armed group possesses the requisite level of organization include, *inter alia*, the existence of a command structure;³² the ability to carry out military operations in an organized fashion and control territory;³³ logistics and communications capabilities;³⁴ the level of discipline and the ability to implement common Article 3;³⁵ and the ability to ‘speak with one voice’ in the course of political negotiations in order to negotiate and conclude agreements such as ceasefire or peace accords.³⁶ Although common Article 3 is *prima facie* limited to armed conflicts ‘not of an international character’ that occur ‘in the territory of one of the High Contracting Parties’, contemporary jurisprudence and academic discourse indicate that it applies to armed conflicts with a ‘transnational’ dimension: in other words, to conflicts that involve cross-border hostilities, either between state and non-state entities or between non-state entities.³⁷

The *Commentary* by the International Committee of the Red Cross (ICRC) points out that the threshold of applicability of Additional Protocol II is set at a higher level than that of common Article 3.³⁸ It explicitly does not apply to internal disturbances, a term that the ICRC interprets as serious acts of violence

28 ICTY, *The Prosecutor v. Tadić*, Case No. IT-94-1, Judgment (Trial Chamber), 7 May 1997, para. 562.

29 *Ibid.*

30 ICTY, *The Prosecutor v. Boškoski*, Case No. IT-04-82-T, Judgment (Trial Chamber II), 10 July 2008, para. 193.

31 *Ibid.*, para. 177.

32 *Ibid.*, para. 199.

33 *Ibid.*, para. 200.

34 *Ibid.*, para. 201.

35 *Ibid.*, para. 202.

36 *Ibid.*, para. 203.

37 International Court of Justice (ICJ), *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, ICJ Reports 1986, para. 218; Supreme Court of the United States, *Hamdan v. Rumsfeld, Secretary of Defense, et al.*, No. 05-184, Judgment, June 29, 2006, p. 67; ICTY, *Tadić*, above note 17, para. 102; N. Melzer, above note 22, p. 258; Andreas Paulus and Mindia Vashakmadze, ‘Asymmetrical war and the notion of armed conflict: a tentative conceptualization’, in *International Review of the Red Cross*, Vol. 91, No. 873, March 2009, p. 119.

38 See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Art. 1(1); Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff Publishers, Geneva/Dordrecht, 1987 (hereinafter *Commentary*), Protocol II, paras. 4447ff.

that are carried out by ‘more or less organized groups’ and that ‘call upon extensive police forces, or even armed forces, to restore internal order’.³⁹ The Trial Chamber in *The Prosecutor v. Akayesu* has interpreted Protocol II’s requirement that non-state entities must have the ability ‘to carry out sustained and concerted military operations’ as meaning that ‘operations must be continuous and planned’,⁴⁰ as opposed to common Article 3’s criterion of ‘protracted’ armed conflict, a standard that may include sporadic violence. Protocol II in addition requires non-state groups to be able to exercise ‘control over a part of [the] territory’ of the state in question. The Trial Chamber further elucidated this criterion as ‘usually that which has eluded the control of the government forces’ to the extent that a non-state entity is able to ‘dominate a sufficient part of the territory’ and ‘impose discipline in the name of a *de facto* authority’.⁴¹ The Trial Chamber in *Boškoski* set out a number of ‘indicative factors’ of territorial control, such as the establishment of alternative structures of authority and liberated territories, zones, cities, and even villages.⁴² Protocol II is limited in that it is not applicable where a state is engaged in hostilities against non-state parties in the territory of a foreign state, or where a conflict is taking place on the territory of a state that has not ratified it. In the context of asymmetric conflicts, the elements of organization and control of territory are likely to be highly contentious and difficult to determine in practice. One of the main reasons for this is that, if a weaker party does adopt conventional forms of territorial control, organization, and military engagement, this is likely to result in its swift isolation, suppression, and destruction. The dynamics of asymmetric conflict force weaker adversaries into a counter-strategy of ‘organic organizational adaptation’ whereby they adopt horizontal, clandestine, and hybrid systems and networks of command and control, as well as ‘defenceless defence’ in order to promote their survivability.⁴³ Such tactics of asymmetric warfare render it extremely difficult for military analysts and decision-makers to identify the material conditions necessary to make appropriate legal classifications.⁴⁴ Again, where adequate intelligence is at a premium, there is the risk of under-classification.

Customary IHL obligations relating to the conduct of urban warfare

According to the estimates made in the Geneva Declaration’s report *Global Burden of Armed Violence*, in the period 2005–2007 civilian deaths in armed conflicts far

39 *Commentary*, above note 38, Protocol II, paras. 4475–4477.

40 ICTR, *Akayesu*, above note 16, para. 626.

41 *Ibid.*

42 ICTY, *Boškoski*, above note 30, paras. 242–249.

43 E. Stepanova, above note 24, p. 105; Rupert Smith, *The Utility of Force: The Art of War in the Modern World*, Penguin Books, London, 2006, p. 329; B. Steed, above note 1, ch. 9.

44 E. Stepanova, above note 24, pp. 104–134; I. Arreguin-Toft, above note 6, p. 33.

exceeded combatant fatality rates,⁴⁵ and three-quarters of all direct conflict deaths that occurred during that period were concentrated in ten conflict-affected countries, including Iraq, Afghanistan, Sri Lanka, India, Somalia, and Pakistan.⁴⁶ The report also found that the significant increase in the global number of direct conflict deaths witnessed during that period was primarily due to the armed conflicts in these countries,⁴⁷ and it is noteworthy that most of the major conflicts referred to in the report involved states, including the United States of America and Israel, that are not signatories to either Protocol I or Protocol II.⁴⁸ In addition to the reports and studies cited above, this report further demonstrates the importance of customary IHL. In comparison with civilians caught up in armed conflicts classified as non-international, Protocol I provides civilians caught up in international armed conflicts with a broader and more detailed framework of humanitarian protection, which is arguably better suited to regulating urban armed conflicts than Protocol II and common Article 3, because it includes rules on, *inter alia*, distinction, proportionality, and precautionary measures.⁴⁹ Be that as it may, it is suggested that reliable evaluations of the precise dynamics of an armed conflict can only be made from the vantage point of hindsight.⁵⁰ In view of the enduring humanitarian quandary of classification lagging behind the actual situation, the inherent substantive limitations of Protocol II and common Article 3, the non-applicability of treaty-based IHL to a range of contemporary asymmetric conflicts, and the grave risks posed by insufficiently regulated urban conflict, application of the ‘corpus of customary international law’ relating to precautions in attack, proportionality, and humanitarian assistance is warranted ‘whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State’.⁵¹ This body of customary law is ‘applicable to all armed conflicts irrespective of their characterization as international or non-international’⁵² and thus avoids any substantive gaps in humanitarian protection that may precede a reliable evaluation and concomitant application of treaty-based IHL, especially where there is likely to be disagreement, doubt, or divergence as to the precise legal character of the hostilities in question *inter* and *intra* parties to a conflict.⁵³ As discussed above, this is

45 The Geneva Declaration on Armed Violence and Development, *Global Burden of Armed Violence*, Geneva Declaration Secretariat, September 2008, p. 11, available at: <http://www.unhcr.org/refworld/docid/494a455d2.html> (last visited 1 July 2010).

46 *Ibid.*, p. 22.

47 *Ibid.*, p. 9.

48 See ICRC Ratification Table, above note 23.

49 Protocol I, above note 21, Art. 48, 51(1)–(5), 52, and 57.

50 A. J. Carswell, above note 18, p. 151.

51 ICTY, *Tadić*, above note 17, para. 70; ICTY, *The Prosecutor v. Milan Martić*, Case No. IT-95-11-I, Rule 61 Decision, 8 March 1996, para. 11; Statute of the International Court of Justice, Art. 38(b); James G. Stewart, ‘Towards a single definition of armed conflict in international humanitarian law: a critique of internationalized armed conflict’, in *International Review of the Red Cross*, Vol. 85, No. 850, June 2003, p. 346.

52 ICTY, *Martić*, above note 51, para. 11.

53 ICTY, *Boškoski*, above note 30, para. 245.

especially so in relation to situations such as proxy wars and ‘low-intensity conflicts’ whose precise character can be hard to gauge as events unfold on the ground.⁵⁴ The advantage of applying the body of customary IHL when such uncertainty prevails is that it avoids parties to a conflict under-classifying a situation and subsequently being found to have violated a particular legal framework applied by a court of law on an *ex post facto* basis.⁵⁵ Furthermore, it is in the strategic interests of parties to an armed conflict (major military powers in particular) to incorporate customary obligations into their military doctrine and practice when using military force in urban areas, as this can enhance the utility of force in contemporary asymmetric armed conflicts.⁵⁶

Precautions in attacking military objectives situated within urban areas

The concealment of military objectives within urban areas makes it difficult – if not impossible – to distinguish, as required by treaty-based and customary IHL, between the civilian population and combatants and between civilian objects and military objectives.⁵⁷ Within both legal frameworks, military objectives are defined as ‘those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage’.⁵⁸ In asymmetric armed conflict, the weaker side will often deem concealment within urban areas to be a necessity to survive any onslaught by its militarily superior adversary. While the presence of military objectives among civilian populations in urban areas does not deprive the latter of their civilian character,⁵⁹ the presence of protected persons does not necessarily render the area in which such objectives are located immune from attack *per se*.⁶⁰ Whether or not the weaker side is merely benefiting from ‘the presence or movements of the civilian population or individual civilians’,⁶¹ or is violating international law by using them or directing their movements so as to create shields from attack or cover for military operations, Article 60(5) of the Vienna Convention on the Law of

54 Robin Geiss, ‘Armed violence in fragile states: low-intensity conflicts, spillover conflicts, and sporadic law enforcement operations by third parties’, in *International Review of the Red Cross*, Vol. 91, No. 873, March 2009, p. 136.

55 A. J. Carswell, above note 18, pp. 154–159.

56 *Ibid.*, p. 159; I. Arreguín-Toft, above note 6, pp. 151–164; R. Smith, above note 43, p. 330–331.

57 Protocol I, above note 21, Art. 48; Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I, ICRC and Cambridge University Press, Cambridge, 2005, (hereinafter *Customary IHL Study*), Rule 7.

58 Protocol I, above note 21, Art. 52(2); *Customary IHL Study*, above note 57, Rule 8; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 10 October 1980, Art. 2(6); Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999, Art. 1(f).

59 Protocol I, above note 21, Art. 50(3).

60 *Ibid.*, Art. 51(7); GC IV, Art. 28.

61 Protocol I, above note 21, Art. 51(7).

Treaties does not allow the militarily stronger adversary to suspend the operation of IHL.⁶² On the contrary, it is still legally bound by those treaty-based obligations, of which some, according to the ICRC, ‘now bear the stamp of customary law’.⁶³

Customary IHL thus stipulates that ‘constant care shall be taken to spare the civilian population, civilians and civilian objects’ and that ‘all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects’.⁶⁴ Compliance with this customary obligation must be assessed according to the precautionary measures that were ‘feasible’ in the circumstances prevailing at the time.⁶⁵ Increasingly, non-governmental organizations, international governmental organizations, and international criminal tribunals have a major role in scrutinizing the legality of attacks. This involves an examination of capabilities and capacities in terms of intelligence, surveillance, and reconnaissance (ISR) and operational planning. Military superiority will often mean that, as capabilities render more precautions feasible in practice, higher standards of reasonableness become attainable and are thus expected, especially in urban areas, where the effects of hostilities are more acutely felt by the civilian population because such areas are usually the most densely populated.⁶⁶

Customary IHL obligations to verify military objectives, take all feasible precautions in the choice of means and methods of attack, and carry out ex ante proportionality assessments

Recent conflicts in Gaza, Chechnya, Iraq, and Afghanistan have seen major military powers employing means and methods of high-intensity conventional warfare against weaker adversaries concealed among civilian populations in urban areas, rather than on the open battlefield. As pointed out above, the impact that these conflicts have had on civilian populations and civilian objects calls for a reappraisal of the customary rule that parties to a conflict must ‘take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects’,⁶⁷ as well as the rule that parties to an armed conflict are prohibited from ‘[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated’.⁶⁸ Assessing compliance with this obligation calls for an examination of the capabilities and circumstances prevailing at the material time.

62 See also *ibid.*, Art. 51(8).

63 *Commentary*, above note 38, Protocol I, para. 1989.

64 *Customary IHL Study*, above note 57, Rule 15.

65 Protocol I, above note 21, Art. 57(2).

66 See *Commentary*, above note 38, Protocol I, para. 2190.

67 *Customary IHL Study*, above note 57, Rule 17.

68 *Ibid.*, Rule 14.

A vital aspect of the principle of distinction is the obligation to do everything feasible to verify that prospective targets are indeed military objectives.⁶⁹ Military planners and decision-makers must exercise great care, vigilance, and precision at the planning stage to ensure that they are fully cognizant of all the facts and circumstances prevailing within their field of operations.⁷⁰ To do this, they must verify military objectives in good time⁷¹ and carefully evaluate the accuracy and reliability of target information.⁷² In particular, they must make careful and detailed assessments of the number and location of both civilians and civilian objects surrounding prospective military objectives. The element of feasibility indicates that the ability to carry out an accurate and timely identification of military objectives is an obligation of means, which depends to a large extent upon the ISR capabilities available in the circumstances. In other words, the reasonableness of the precautionary measures taken is entirely context-dependent. Essentially, parties can be expected to satisfy different standards of care according to their capabilities, their perception of the urgency of the situation, and the military constraints upon them.⁷³ This does not amount to an obligation to actively acquire and employ state-of-the-art ISR technologies, but merely to employ the full range of feasible means in order to gather the most accurate intelligence possible and ensure that the object of attack is a military one. Where this is even in the slightest doubt, it is the responsibility of military planners and decision-makers to issue orders for additional information or the gathering of further intelligence. A failure to exercise due diligence and reasonableness in that regard, or a failure to carry out a serious evaluation of the accuracy of information, will amount to a violation of this precautionary rule.⁷⁴

The prohibition of indiscriminate attacks, defined in customary IHL, *inter alia*, as attacks ‘which employ a method or means of combat which cannot be directed at a specific military objective; or ... the effects of which cannot be limited as required by international humanitarian law’,⁷⁵ is accentuated in situations of urban armed conflict, as military objectives will often be in close proximity to protected persons and objects. A core aspect of this prohibition is the obligation to avoid or minimize incidental loss by taking all feasible precautions in the choice of means and methods of attack.⁷⁶ This general requirement is to be applied on a case-by-case basis and does not amount to a prohibition of specific means or methods of warfare, or an obligation to actively acquire the most discriminating means of warfare.

As with the obligation to verify military objectives to the best of one’s means, this obligation is entirely context-dependent and looks to what was feasible

69 *Ibid.*, Rule 16.

70 *Commentary*, above note 38, Protocol I, paras. 2194 and 2195.

71 *Ibid.*, para. 2198.

72 *Ibid.*, para. 2195.

73 *Ibid.*, para. 2199.

74 *Ibid.*, para. 2195.

75 *Customary IHL Study*, above note 57, Rule 12(b) and (c).

76 Protocol I, above note 21, Art. 57(2)(a)(ii); *Customary IHL Study*, above note 57, Rule 17.

for the military decision-makers in their particular circumstances. Again, the feasibility element serves to modulate the underlying principle that IHL applies equally to parties to a conflict by varying the precautionary standards according to means and circumstances. This customary rule will be deemed violated where it can be demonstrated that, in the particular circumstances, it was feasible for a party to choose certain means and methods of attack over others that could have avoided or minimized incidental loss, and there was an omission in this regard.⁷⁷ In such circumstances, it would be unlawful not only to choose weapons that are by their nature indiscriminate when used against military objectives concealed among civilian populations in urban areas, but also wilfully or recklessly to create the conditions in which their use becomes inevitable under the stress and pressure of combat – or, in other words, to include certain conventional means of warfare within the operational arsenals of units deployed in urban areas to the exclusion of feasible alternatives that are more appropriate. The types of inappropriate weapon referred to here are those that have wide fatal and destructive impact zones and includes mortars, flechettes, artillery shells, and shells containing hazardous materials that may remain in the urban environment after the cessation of hostilities, such as depleted uranium and white phosphorous. Although these weapons are not currently subject to specific treaty-based prohibitions, it must be assumed that a decision to choose such weapons over feasible and more discriminating alternatives in such circumstances is a reckless violation of this obligation.⁷⁸ Those alternatives may include weapons of various lethality and destructiveness, including precision weaponry and non-lethal weaponry that is designed to incapacitate rather than destroy combatants and matériel. However, although there is no legal obligation to acquire and use such forms of weaponry *per se*, their use reduces the risk of violating the customary rule of proportionality.⁷⁹ This will be discussed in more detail below.

Ex ante proportionality assessments by those who plan or decide upon an attack are an integral feature of precautionary measures and must persist right up to the point at which an attack is launched.⁸⁰ Furthermore, an attack must be cancelled or suspended if it becomes apparent that the attack would be, *inter alia*, disproportionate.⁸¹ One of the main issues with the principle of proportionality is that it requires military planners and decision-makers to strike a balance between military and humanitarian considerations in good faith. This involves a subjective

77 For some examples see *Commentary*, above note 38, Protocol I, para. 2200; *Customary IHL Study*, above note 57, Rule 17.

78 United Nations Human Rights Council (UNHRC), *Human Rights in Palestine and Other Occupied Territories: Report of the United Nations Fact Finding Mission on the Gaza Conflict*, UN Doc. A/HRC/12/48, 15 September 2009, paras. 698–699.

79 Michael N. Schmitt, *War, Technology, and International Humanitarian Law*, Program on Humanitarian Policy and Conflict Research, Harvard University Occasional Paper Series No. 4, Summer 2005, p. 23; Danielle L. Infeld, 'Precision-guided munitions demonstrated their pinpoint accuracy in Desert Storm: but is a country obligated to use precision technology to minimize collateral civilian injury and damage?', in *George Washington Journal of International Law and Economics*, Vol. 26, 1992, p. 109.

80 See Protocol I, above note 21, Art. 57(2)(a)(iii); *Customary IHL Study*, above note 57, Rule 18.

81 Protocol I, above note 21, Art. 57(2)(b); *Customary IHL Study*, above note 57, Rule 19.

evaluation of whether the attack may be expected to cause incidental loss that is excessive in relation to the anticipated military advantage.⁸² The ICRC *Commentary* notes that *ex ante* proportionality assessments should take into account factors such as the location of civilians and civilian objects in relation to the military objective; the accuracy of the weapons; the nature of the military objectives, including whether they can release dangerous forces; and the stability of the terrain, especially with regard to the risk of floods and landslides.⁸³ Wilfully launching an indiscriminate attack in the knowledge that it will cause disproportionate incidental loss constitutes a serious violation of treaty-based and customary IHL applicable to conflicts of both an international and a non-international character and may attract criminal sanction.⁸⁴ Where courts of law or political inquiries come to assess whether constant care has been taken to spare the civilian population from the effects of attacks, detailed examinations of the particular ISR, targeting, and weapons capabilities and capacities will be made. In this sense, parties to a conflict will be judged according to the extent of their own means, and the greater the feasible means, the less scope there is for plausible deniability.⁸⁵

A higher standard of due diligence is likely to apply in relation to attacks upon 'planned' targets where there is time for the application of rigorous precautionary measures. The joint targeting doctrine of the United States Joint Chiefs of Staff describes 'planned targets' as those that have been identified within an operational theatre and are then pursued in accordance with operational plans and schedules or attacked whenever the circumstances permit.⁸⁶ In contrast, the joint targeting doctrine categorizes 'immediate' targets as those that are known in advance but not operationalized or those targets of which there is simply no prior knowledge.⁸⁷ This doctrine has major implications for regulating the conduct of urban warfare, as the respective categories of 'planned', 'on-call', 'unplanned', and 'unanticipated' targets may be designated as 'time-sensitive', because they pose an immediate threat or because they constitute high value but 'fleeting' military objectives that may be lost if not immediately attacked.⁸⁸ The dynamics of asymmetric conflict may lead to a prevalence of 'unplanned' and 'unanticipated' military objectives because, in the face of their opponent's overwhelming and insurmountable military capabilities, the weaker side may have no option but to employ unconventional methods, such as 'defenceless defence' (whereby rather than defending specific objectives they are organized into small and highly manoeuvrable units that can disperse to another location immediately upon launching an attack) and 'concealment warfare' (which makes it difficult or

82 *Commentary*, above note 38, Protocol I, para. 2208.

83 *Ibid.*, para. 2212.

84 Protocol I, above note 21, Art. 85(3)(b); *Customary IHL Study*, above note 57, Rule 155.

85 Jean-François Quéguiner, 'Precautions under the law governing the conduct of hostilities', in *International Review of the Red Cross*, Vol. 88, No. 864, December 2006, p. 978.

86 Michael N. Schmitt, 'Precision attack and international humanitarian law', in *International Review of the Red Cross*, Vol. 87, No. 859, September 2005, p. 450.

87 *Ibid.*

88 *Ibid.*

impossible for the stronger side to distinguish between combatants and civilians until the former suddenly emerge to execute an attack).⁸⁹ In response, there is the increased risk that the militarily superior side will classify most military objectives as ‘immediate targets’ and subject them to truncated precautionary measures or take no precautionary measures whatsoever. Such an approach may be justified on the grounds that the application of diligent precautionary measures is not feasible in the circumstances. Although this does not necessarily violate rules on precaution, the results of such attacks may still be disproportionate and thus amount to indiscriminate forms of attack. That said, for parties to a conflict with advanced ISR capabilities, rapidly launching attacks upon purportedly ‘time-sensitive’, ‘unplanned’, and ‘unanticipated’ targets within urban areas may nevertheless be difficult to justify from tactical and legal viewpoints.

In asymmetric armed conflicts, unconventional tactics such as emerging, attacking, and disappearing in a fleeting moment may mean that rapid responses directed at the *location* of an attack from within an urban area are as ineffectual as a delayed response, and there is the further risk that responding to such provocative tactics increases the likelihood of violations of IHL. This argument has been made by Human Rights Watch, which claims that rapid responses directed at ‘immediate’ targets by US forces in Iraq have resulted in excessive incidental loss.⁹⁰ The general principle of proportionality will be discussed in greater detail below, but at this stage of the discussion it is suggested that incidental loss caused by attacks upon ‘immediate’ targets that emerge among civilian populations within urban areas is likely to be indicative of a failure to take adequate precautionary measures.⁹¹ This, as noted above, constitutes a serious violation of customary IHL. As an alternative, and where feasible, advanced ISR capabilities should increasingly be used to identify, pursue, verify, and destroy military objectives in real time, so as to ascertain the military objective and choose the most reasonable means, methods, and locations of attack in order to avoid or minimize collateral damage.

Effective warnings

Customary IHL requires that: ‘Each party to the conflict must give effective advance warning of attacks which may affect the civilian population’.⁹² This particular obligation applies insofar as the circumstances permit, and parties therefore have considerable latitude to derogate from it. Derogation may, for instance, be made purely on grounds of convenience, the most obvious example being where the element of surprise is deemed to be a necessary condition for the success of an attack.⁹³ In other words, if military planners or decision-makers expect an attack

89 B. Steed, above note 1, ch. 9.

90 Human Rights Watch, *Off Target: The Conduct of the War and Civilian Casualties in Iraq*, New York, 2003, pp. 20, 23, and 38; R. Geiss, above note 54, pp. 798–799.

91 See J.-F. Quéguiner, above note 85, p. 799.

92 *Customary IHL Study*, above note 57, Rule 20; Protocol I, above note 21, Art. 57(2)(c).

93 *Commentary*, above note 38, Protocol I, para. 2223.

that may affect the civilian population to be proportionate, they are in principle required to give a warning, unless to do so would undermine the success of the attack or otherwise render the attack useless. Adherence to the precautionary measures outlined above means that attacks on military objectives concealed among civilian populations in urban areas can be perfectly proportionate even though no warning, or no effective warning, has been given. Considering that precautionary measures, such as giving an effective warning, are of 'greatest importance in urban areas because such areas are most densely populated'⁹⁴ and there is thus an increased risk of incidental loss or damage, it is suggested that in circumstances where there is a significant inequality of arms between parties to an urban armed conflict, the stronger attacking side's discretion to derogate from this obligation should be limited by careful scrutiny of any justifications for non-compliance, as part of any *ex post facto* judicial or political inquiries.

Indeed, the ICRC *Commentary* suggests that the possibilities of giving warning are increased where an attacking side has complete air supremacy over an urban area concealing a weaker side that has either no air defences or only very basic capabilities, such as rocket-propelled grenade launchers or surface-to-air missiles.⁹⁵ Even so, where these basic capabilities exist, they may be negated by the superior side's own defensive capabilities. These considerations are extremely important in asymmetric urban armed conflicts, as one aspect of taking constant care of civilians is ensuring that they are given the chance to protect themselves.⁹⁶ Examples given by the ICRC of measures to facilitate this include giving notice by radio or pamphlets that particular objectives or categories of objective will be subject to attack.⁹⁷

More recently, the Report of the UN Fact Finding Mission on the Gaza Conflict elucidates in greater detail the practical means of warning civilians, and the form and degree of specificity required for warnings to be considered effective.⁹⁸ First, warnings can be issued through various media, such as announcements on television, radio, or public address systems, automated telephone calls, and leaflets. Essentially, effective warnings are those that actually reach the civilians likely to be exposed to the attack. Secondly, warnings should be as clear as possible. They should specify the particular individuals or groups to whom the warning is addressed and, 'unless the circumstances do not permit', the warning should state the location and the approximate time of the impending attack. In this regard, general information about an upcoming attack will not normally constitute an effective warning, as civilians should not be left guessing its meaning.⁹⁹ Moreover, warning shots from light weapons can not be considered as effective advance warnings, as it is unclear whether they constitute a warning of an impending attack or the actual attack itself, and civilians cannot reasonably be expected to evacuate an area that

94 *Ibid.*, para. 2190.

95 *Ibid.*, para. 2224.

96 *Ibid.*, para. 2225.

97 *Ibid.*, paras. 2224–2225.

98 UNHRC, above note 78, paras. 528–532.

99 *Ibid.*

they perceive to be already under attack. Thirdly, warnings should give civilians sufficient time to react. Fourthly, warnings should advise civilians on the steps they need to take to avoid harm. In particular, they should inform the persons concerned where they can and should seek safety, so that the civilian population does not in fact flee in terror and confusion to areas that may be considered similarly unsafe. Where armed forces are capable of making detailed advance plans, the warnings will need to be part of comprehensive and joined-up contingency measures to evacuate the civilian population to areas that can be considered or have been designated by both sides as safe. Such a warning must include the location of emergency shelters and safe areas, as well as safe routes to get to them and the necessary precautions to take. Finally, the warnings should be credible: that is, civilians must be in no doubt that they are intended to be acted upon.¹⁰⁰

The UN Secretary-General has made the important point that modern technology can enable a major military power to exercise effective control over a territory even though it has no military presence on the ground.¹⁰¹ While this does not necessarily amount to a form of occupation,¹⁰² it is submitted that the greater the means of an attacker, the more it must do to comply with the obligation to give advance warning, as suggested above, when confronted with an insurgency or resistance within and across urban areas that are under its effective control;¹⁰³ for, in such circumstances, inequality of arms and the availability of advanced ISR and weapons technologies have generally reduced the importance of the element of surprise as a necessity of war. Also, given that the risk of incidental loss or damage in densely populated urban areas is greater, the militarily superior side should in such circumstances operate on the basis that not giving an effective advance warning is likely to violate that precautionary rule of customary law, because civilians in close proximity to military objectives are then not given the chance to protect themselves.

Proportionality in urban warfare

The customary IHL principles of precaution and proportionality are closely interrelated and are of fundamental importance in situations of armed conflict in densely populated urban areas. Generally speaking, the normative functions underlying these rules are that parties to a conflict must keep civilians out of harm's way as far as possible¹⁰⁴ or otherwise that the danger and harm to which civilian populations are exposed must be 'reduced to a minimum'.¹⁰⁵ As will now be

¹⁰⁰ *Ibid.*

¹⁰¹ Note by the UN Secretary-General, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/61/470, 27 September 2006, para. 7; see also Sylvain Vité, 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations', in *International Review of the Red Cross*, Vol. 91, No. 873, March 2009, pp. 83–85.

¹⁰² S. Vité, above note 101, pp. 83–85.

¹⁰³ N. Melzer, above note 22, pp. 365–366.

¹⁰⁴ *Commentary*, above note 38, Protocol I, para. 1923.

¹⁰⁵ *Ibid.*, para. 1935.

explored, the practical application of these rules comes under great strain in situations of asymmetric urban armed conflict.

Customary IHL requires *ex ante* proportionality assessments¹⁰⁶ to be carried out, not only as part of the obligation to take all feasible precautions in attack, but furthermore because, even if all other conditions for a legitimate attack are fulfilled, ‘incidental civilian losses and damages must not be excessive’.¹⁰⁷ In this respect customary IHL prohibits the actual launching of an attack ‘which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated’.¹⁰⁸ Launching such a disproportionate attack is to be considered as a form of indiscriminate attack,¹⁰⁹ and may constitute a war crime.¹¹⁰ In this context, one of the key challenges to fixing the ‘technical limits at which the necessities of war ought to yield to the requirements of humanity’¹¹¹ is that the test of proportionality is designed to be made *ex ante*, while its practical application will be assessed *ex post facto*. In particular, for an indiscriminate attack to constitute a war crime, the prosecution must prove ‘that the attack was launched wilfully and in knowledge of circumstances giving rise to the expectation of excessive civilian casualties’.¹¹² Thus, because proportionality is to be assessed according to a subjective *mens rea* standard, there is nothing *prima facie* that the law can do to prevent normative relativism, or, in other words, the phenomenon of military planners and decision-makers assigning particularistic values to relative terms such as ‘excessive’ and ‘military advantage’ that are entirely in keeping with their own idiosyncratic military, social, cultural, and historical perspectives and imperatives. The challenge this creates with regard to ensuring the general protection of civilians, especially those caught up in urban armed conflicts, is that the practical application of this aspect of IHL requires not only ‘complete good faith on the part of belligerents’ but also ‘the desire to conform with the general principle of respect for the civilian population’.¹¹³ These are qualities that may be in short supply in asymmetric conflicts, where pushing the rules of IHL to their vanishing points – or indeed their outright violation – is deemed to be justified by military necessity.

Calculating proportionality

Military objectives are defined in customary law as ‘those objects which by their nature, location, purpose or use make an effective contribution to military action

106 *Customary IHL Study*, above note 57, Rule 18.

107 *Commentary*, above note 38, Protocol I, para. 1979.

108 *Customary IHL Study*, above note 57, Rule 14; Protocol I, above note 21, Art. 51(5)(b).

109 Protocol I, above note 21, Art. 51(5)(b); *Commentary*, above note 38, Protocol I, para. 1967.

110 See, for instance, Rome Statute of the International Criminal Court, 17 July 1998, Art. 8(2)(b)(iv).

111 St. Petersburg Declaration, above note 2, Preamble.

112 ICTY, *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgment (Trial Chamber I), 5 December 2003, para. 59; Protocol I, above note 21, Art. 85(3)(b); *Customary IHL Study*, above note 57, Rule 156.

113 *Commentary*, above note 38, Protocol I, para. 1978.

and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage'.¹¹⁴ Military planners and decision-makers are responsible for assessing whether the expected incidental loss, injury, or damage will be excessive in relation to the military advantage anticipated. As there is no accepted standard of comparison in this regard, there is a wide margin of discretion to assign greater weight or importance to the advantages anticipated by the destruction or neutralization of particular military objectives than to the humanitarian consequences.¹¹⁵ The 'difficult constraints of battle',¹¹⁶ as well as political and military indoctrination, may serve to skew this "balancing" or "equation" between the necessities of war and the requirements of humanity',¹¹⁷ with the result that military commanders can easily refute claims of excessiveness in view of seemingly extensive, widespread, and systematic collateral damage. State practice, as evidenced from reservations entered on ratifying Additional Protocol I, indicates that an attack can be considered at a tactical or even a theatre level rather than at an operational level.¹¹⁸ The consequences of such diverging interpretations are, first, that incidental damage resulting from an individual operation or 'isolated attack' may be balanced against the military advantage from an attack consisting of a number of discrete operations considered as a whole; and, secondly, that states have adjusted their legal obligations to varying levels, with the concomitant increased risk of humanitarian law being applied inconsistently.

This cumulative approach to calculating proportionality, whereby a number of discrete attacks are valued together to form an aggregate military advantage that is then balanced against net incidental loss, is one that can be distorted and used to conceal and justify isolated attacks that arguably – from the perspective of 'public consciousness' and 'humanity' as opposed to purely legal and military perspectives – result in unacceptable levels of collateral damage. In such situations and on the basis of such an approach, the censure of such acts is unlikely because the military planners and decision-makers responsible for applying the proportionality principle are to be judged solely according to 'the information reasonably available to them at the relevant time' and not according to 'information that has subsequently come to light'.¹¹⁹ The principle of proportionality is designed to be applied *ex ante* and is concerned exclusively with a military commander's subjective appreciation of the quantum of risk and the military advantage at the time of making a decision.

114 *Customary IHL Study*, above note 57, Rule 8; see also Protocol I, above note 21, Art. 52(2).

115 Antonio Cassese, *The Human Dimension of International Law*, Oxford University Press, Oxford, 2008, p. 246.

116 *Commentary*, above note 38, Protocol I, para. 1981.

117 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports, 1996, Dissenting Opinion of Judge Higgins, para. 20.

118 See United Kingdom, Reservation of 28 January 2002, available at: <http://www.icrc.org/ihl.nsf/NORM/0A9E03F0F2EE757CC1256402003FB6D2?OpenDocument> (last visited 15 June 2010): 'the military advantage anticipated from the attack is intended to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack'.

119 See Canada, Reservation of 20 November 1990, available at: <http://www.icrc.org/ihl.nsf/NORM/172FFEC04ADC80F2C1256402003FB314?OpenDocument> (last visited 15 June 2010).

The spatial and temporal scope of the proportionality principle

The concept of a military objective is broad in scope and means that 'dual-use' infrastructure, such as electric power stations, may lose immunity from attack because they supply power for both civilian and military uses and can thus be deemed to be making an effective contribution to military action. The approach of assessing the 'concrete and direct' military advantage anticipated from the attack as a whole does not similarly take into account any indirect incidental loss and damage caused 'as a whole', but merely the immediate and direct incidental loss caused by blast or fragmentation. Thus one of the limitations of the *lex lata* is that the 'cascading effects'¹²⁰ of attacks may be discounted from proportionality assessments: that is, even though attacks upon objectives such as electric power stations may be justified on the basis that they make an effective contribution to military action by powering military communications and weapons systems, attacking them may cause civilian mortality rates to rise over time because they are also necessary for civilian health and survival by powering hospitals, sewerage, and water treatment systems.

It may be argued that, from the point of view of military planners and decision-makers, such information on the 'cascading effects' of attacks is generally not available within the 'fog' of battle and is thus outside their scope of appreciation. Hence, judging commanders upon the information available to them at the time of an attack can only serve to limit the timeframe within which incidental loss can be calculated. The effect of such a restrictive interpretation is to render the rule of proportionality less effective as a protective measure. However, modern technology combined with advanced scientific knowledge and techniques allows the likely impact of destroying key dual-use infrastructure to be reasonably foreseeable. For instance, the declassified Defense Intelligence Agency memorandum on 'Iraq water treatment vulnerabilities' identified already in 1991 that a failure to secure supplies for water treatment 'could lead to increased incidences, if not epidemics, of disease and to certain pure-water-dependent industries becoming incapacitated, including ... pharmaceuticals, food processing ...'.¹²¹ It is submitted that, where such predictions are possible and reasonably available, they should be taken into account as part of detailed advance target analysis and operational planning, as well as in *ex post facto* assessments of proportionality. As will now be discussed, recent moves to strengthen the proportionality principle by forging an objective approach indicate that plausible deniability on the part of military and political decision-makers of superior military forces is increasingly untenable.

120 M. N. Schmitt, above note 86, p. 452.

121 Defense Intelligence Agency, 'Water treatment vulnerabilities', Washington DC, available at: http://www.gulflink.osd.mil/declassdocs/dia/19950901/950901_511rept_91.html (last visited 10 May 2010); Joy Gordon, 'When intent makes all the difference in the world: economic sanctions on Iraq and the accusation of genocide', in *Yale Human Rights and Development Law Journal*, Vol. 5, 2002, pp. 70–74.

The development of an objective approach to proportionality

The ‘Final report to the prosecutor by the committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia’¹²² shows signs that the general approach to the principle of proportionality is changing in character. Such a change makes IHL stronger and able to protect civilians more effectively from the use of conventional high-intensity means and methods of warfare against forces concealed within urban areas. In seeking to further substantiate the concept of ‘military advantage’, the Committee considered a number of questions. The first was: (a) what are the relative values to be assigned to the military advantage gained, the injury to non-combatants, and the damage to civilian objects, and (b) what is included or excluded in totalling the sums? Unlike the relative values assigned to chess pieces, the Committee noted that in reality these issues cannot be definitively answered *in abstracto*. To date there exists no universal quantitative or qualitative standard of comparison, although in many cases a quantitative approach to comparing humanitarian and military considerations will be the most obvious and practical one for assessing excessiveness. The second question was: what is the standard of measurement in time or space? On the basis of the discussion above, it is suggested that, if military advantages can be defined very broadly, then the timescales for calculating the incidental damage should be construed in a similarly broad manner, rather than being limited to the immediate and direct effects of isolated attacks – especially in a paradigm where this can be reliably predicted and thus factored into projections. Thirdly, the Committee asked: to what extent is a military commander obligated to expose his own forces to danger in order to limit civilian casualties or damage to civilian objects? It is suggested that limiting the risk to which matériel and combatants are exposed constitutes a concrete and definite military advantage, but within the emerging paradigm of unmanned surveillance systems and precision-weapon platforms, this issue should become obsolete as technological innovations lead to a greater coincidence of military and humanitarian interests.¹²³

The crux of this discussion is the Committee’s statement that ‘there will be many cases where reasonable military commanders will agree that the injury to non-combatants or the damage to civilian objects was clearly disproportionate to the military advantage gained’.¹²⁴ The approach of reasonableness in balancing the necessities of war with the requirements of humanity has been affirmed in *Galić*, where it was held that

In determining whether an attack was proportionate it is necessary to examine whether a reasonably well-informed person in the circumstances of the actual

122 ICTY, *Final report to the prosecutor by the committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia*, June 2000, 29 ILM 1257.

123 *Ibid.*, paras. 48–50.

124 *Ibid.*, para. 50.

perpetrator, making reasonable use of the information available to him or her, could have expected excessive civilian casualties to result from the attack.¹²⁵

This is a legal breakthrough, as it marks the development of a much-needed objective approach to proportionality that can determine on a case-by-case basis whether an attack was excessive in view of the evidence indicating the actual circumstances and consequences, rather than just the military planner's subjective appreciation. The ruling in *Galić* means that attacks that cause an apparently excessive level of loss, injury, or damage, or a combination thereof, 'may give rise to the inference that civilians were actually the object of attack'.¹²⁶ Looking into the circumstances of the actual perpetrators and examining their ISR capabilities may allow for higher objective standards of reasonableness to be imposed, on the basis that excessive incidental loss will generally be foreseeable and thus intended.

Obligations to ensure the survival of civilians and the civilian population in urban conflict

Even though parties may claim that hardship, suffering, and loss among the civilian population are inevitable consequences of urban armed conflict,¹²⁷ it does not relieve them of their customary obligations to provide at all times for the safety and needs of the civilian population by ensuring the protection of objects indispensable to its survival, ensuring protection and care for wounded civilians, and ensuring humanitarian relief for civilians in need.

Access to emergency medical services in urban conflicts

It is inevitable that, despite the most diligent precautions taken, civilians will often be severely injured in urban warfare. Nevertheless, customary IHL requires that 'The wounded ... must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition'.¹²⁸ This has been interpreted as an 'obligation of means', meaning that armed forces must use their best efforts to provide protection and care for the wounded, including humanitarian organizations to provide for their protection and care.¹²⁹ Organizations such as the International Committee of the Red Cross, *Médecins Sans Frontières*, and the World Health Organization will often also play a major role in searching for, evacuating, and providing protection and care for wounded civilians. Although in practice humanitarian organizations such as these need permission from the party in control of a particular area in order to operate, they cannot arbitrarily be denied such permission.¹³⁰ As with many of the customary

125 ICTY, *Galić*, above note 112, para. 58.

126 *Ibid.*, para. 60.

127 UNHRC, above note 78, para. 1313.

128 *Customary IHL Study*, above note 57, Rule 110.

129 *Ibid.*, Rule 110.

130 *Ibid.*

rules discussed above, alleged violations of this rule require a detailed investigation into the circumstances of each particular case. Typical examples include unnecessarily and arbitrarily preventing or delaying ambulances from reaching wounded civilians or taking them to hospital, and even knowingly directing attacks against personnel and units using the distinctive emblems of the Geneva Conventions in conformity with international law. This obligation requires that soldiers in control of checkpoints be adequately briefed as to when and where combat operations will be taking place, so that permission is denied only when absolutely necessary.¹³¹ Inspections must take place without undue delay and, to avoid violating the above-mentioned provisions of customary IHL, reasonable commanders of armed forces engaged in asymmetric urban warfare should arrange for a daily unilateral suspension of military operations, during which access to emergency medical services and supplies can take place.¹³²

The passage of humanitarian relief in urban conflicts

In situations of asymmetric urban conflict, the militarily superior side will often be able to lay siege to urban areas that conceal the weaker adversary or at least impose severe restrictions on them, such as embargoes and blockades. Military necessity may be argued in an attempt to justify the suffering and hardship caused to the civilian population by such measures, which have indeed been used as a method of war in order to isolate, suppress, and destroy the enemy, but which can also be designed to create the type of intolerable conditions in which a civilian population is effectively coerced into withdrawing support from armed forces hiding in urban areas. In the face of such measures, it is the right of a civilian population to receive impartial humanitarian relief delivered in accordance with IHL. Customary IHL requires that parties ‘allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control’.¹³³ Organizations do require the consent of the parties to a conflict before they can deliver humanitarian relief, and the content and delivery thereof can be monitored by means of searches and supervision, but relief must not be deliberately withheld.¹³⁴ Such conduct can be construed as using starvation of the civilian population as a method of warfare, in violation of international treaty-based¹³⁵ and customary IHL.¹³⁶ To avoid violating the above-mentioned obligations of customary IHL, reasonable commanders of armed forces engaged in asymmetric urban conflict should arrange for a daily unilateral suspension of military operations, during which co-ordinated humanitarian assistance can be delivered to ensure that facilities, services, and

131 See *ibid.*, Rules 25, 28, 29, 109, and 110.

132 *Ibid.*, Rule 109.

133 *Customary IHL Study*, above note 57, Rule 55.

134 Protocol I, above note 21, Art. 70(3).

135 *Ibid.*, Art. 54(1); Protocol II, above note 38, Art. 14; Rome Statute, above note 110, Art. 8(2)(b)(xxv).

136 *Customary IHL Study*, above note 57, Rule 53.

installations indispensable to the survival of the civilian population continue to function and that the population's basic needs are met.

Objects indispensable to the survival of the civilian population

During urban armed conflicts, objects indispensable to the survival of the civilian population are often under serious threat. To attack such objects will generally constitute a violation of the cardinal customary principle of distinction, which prohibits attacks against civilian objects.¹³⁷ Thus customary IHL generally prohibits 'attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population'.¹³⁸ A list of such objects is to be found in Protocols I and II and includes foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works.¹³⁹ In spelling out the concept of 'objects indispensable to the survival of the civilian population', the use of the words 'such as' introducing that list shows that it is non-exhaustive and can thus include dual-use facilities that support drinking water installations, such as electric power stations. The challenge in situations of asymmetric urban warfare is that the dual-use function of such objects (i.e. that while serving civilian purposes they are also being used 'in direct support of military action') may be cited as justification for attacks upon them.¹⁴⁰ Regardless of claims that the attack was carried out for a specific purpose other than denying sustenance to the civilian population, where attacks on dual-use infrastructure 'may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement',¹⁴¹ they will not be permissible.

By recognizing that 'starvation' does not only mean death due to deprivation of water and food but also due to malnutrition, sickness, and disease resulting from deprivation of essential foodstuffs, medicines, and commodities, the Preparatory Commission for the International Criminal Court made it clear that the scope of this customary rule is not as narrow as it would otherwise first appear.¹⁴² In any case, when it comes to targeting decisions in asymmetric urban armed conflict, greater military capabilities and capacities will lead to higher standards of reasonableness vis-à-vis the obligation to choose military objectives that may be expected to cause the least danger to civilian lives,¹⁴³ as well as the most proportionate means and methods of attacking those objectives. Indeed, for

137 *Ibid.*, Rule 7.

138 *Ibid.*, Rule 54.

139 Protocol I, above note 21, Art. 54 (2); Protocol II, above note 38, Art. 14.

140 Protocol I, above note 21, Art. 54(3)(b).

141 *Ibid.*

142 Knut Dörmann, 'Preparatory Commission for the International Criminal Court: the elements of war crimes – part II: other serious violations of the laws and customs applicable in international and non-international armed conflicts', in *International Review of the Red Cross*, Vol. 83, No. 842, 2001, pp. 475–476.

143 *Customary IHL Study*, above note 57, Rule 21.

many modern armed forces that have the wherewithal to be discriminating, precautionary, and proportionate in achieving their military objectives at operational and theatre levels, it must be considered unreasonable to have recourse to forms of wholesale destruction that are unacceptably detrimental to food security and public health.¹⁴⁴ As the effects of a widespread and systematic destruction of objects indispensable to the survival of a civilian population are likely to be multiplied where humanitarian aid is unreasonably denied or delayed,¹⁴⁵ such acts strongly indicate a policy of collective punishment of that population.

Conclusion

The ‘progress of civilization’ compels an adaptive interplay between the changing character of conflict and parties to it, advancing technologies and progressive ‘usages established among civilized peoples’, ‘laws of humanity’ and ‘dictates of the public conscience’.¹⁴⁶ Emerging from this dialectical process are higher standards of reasonableness. This ought to foster a greater coincidence of military and humanitarian interests, which in turn ought to lead to a population-centric approach to the modern scourge of asymmetric urban warfare prevalent in all categories of armed conflict. A defining feature of this form of war is that only where their weaker opponent fights on their terms are conventional armed forces most likely to prevail, through their superior capabilities, at the operational and theatre levels. This can be seen from the empirical survey by Arreguín-Toft of 202 asymmetric conflicts that took place between 1816 and 2003. It shows that where asymmetric adversaries use diametrically opposed military strategies – for instance, where a weaker side adopts the means and methods of guerrilla warfare as a counter-strategy to a militarily superior side’s conventional offensive – the weaker side is almost three times more likely to prevail over the stronger side than if it were to fight using the same means and methods of warfare as the stronger opponent.¹⁴⁷ The survey also shows that, in the period 1950–1999, militarily strong adversaries were defeated in 51.2% of all asymmetric conflicts.¹⁴⁸ Arreguín-Toft’s findings suggest that weaker adversaries generally prevail in asymmetric conflicts because they adopt unconventional counter-strategies that transform the hostilities into protracted wars of attrition, which become politically costly and unsustainable for the stronger side. In such situations, a stronger side may attempt to employ similarly unconventional and indirect strategies to defeat its weaker opponent. However, the historical case studies analysed by Arreguín-Toft, such as the Battle of Algiers in 1957 and Operation Rolling Thunder during the 1965–1973 Vietnam

144 UNHRC, above note 78, paras. 1324–1325.

145 *Ibid.*

146 Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Preamble.

147 I. Arreguín-Toft, above note 6, p. 205.

148 *Ibid.*, p. 4.

War, indicate that ‘barbarism’ is a self-defeating strategy, especially if the long-term goals are to achieve a political outcome such as peace and security or regime change, because it serves to increase political and military resistance.¹⁴⁹ Moreover, as argued by Walzer, the strategic pitfall for militarily stronger sides is that asymmetric conflicts have a tendency to escalate into wars not only among but also against entire civilian populations – in this sense, there is a danger that ‘barbarism’ may become an inevitable outcome of asymmetric urban armed conflict.¹⁵⁰ International and internal asymmetric urban armed conflicts are ‘a mere continuation of policy by other means’,¹⁵¹ and for this reason, until the frameworks of international humanitarian and human rights law are further developed or reformed to ensure the universal application of satisfactory humanitarian protections, it is a strategic imperative that customary IHL be integrated into basic military doctrine and practice, which must in turn become part of a broader political and economic strategy towards achieving legitimate aims. What the Lieber Code, the first modern codification of the laws of war, told the armies of the United States of 1863 was as wise praxis then as it is now: ‘Military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult’.¹⁵² Thus, as been outlined above, a failure to be reasonable does not create the conditions in which the use of superior force can be beneficial at the strategic level, namely to facilitate peace, justice, and security; on the contrary, it may create and intensify internal and internationalized armed conflicts as adversaries are forced into adopting more and more unconventional means and methods of warfare in order to counter conventional military superiority. If there is anything to be learned from the hostilities in cities, towns, and villages in Vietnam, Chechnya, Lebanon, Iraq, Afghanistan, the West Bank, and Gaza, it is that asymmetric urban warfare is seldom decisive, and furthermore that failure to adopt a population-centric approach to urban warfare can undermine the utility of force by making the return to peace unnecessarily difficult. The application of customary IHL can but serve to increase the utility of force in modern conflicts when viewed from a strategic perspective, in that, aside from ideological differences, all parties to any armed conflict have a fundamental interest in peace, justice, and security and that unbridled military force alone cannot achieve these ends.¹⁵³

149 *Ibid.*, pp. 211–213, 220–227.

150 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd edn, Basic Books, New York, p. 187.

151 C. von Clausewitz, above note 12, Book 1, ch. 1, para. 24.

152 Instructions for the Government of Armies of the United States in the Field (Lieber Code), 24 April 1863, Art. 16.

153 R. Smith, above note 43, part III.

A synopsis of urban violence in South Africa

David Abrahams

David Abrahams is a lecturer in the Faculty of Law at the Nelson Mandela Metropolitan University in South Africa. He holds an LL.M. from the Geneva Academy of International Humanitarian Law and Human Rights

Abstract

On 27 April 1994, all South Africans were permitted to vote for the first time, signalling the birth of a democratic state built on a constitutional democracy. Yet the wrath of gang-related activities in townships and other urban areas was clearly visible, as was the xenophobic violence that shocked the world. Very often the vast majority of victims have been innocent civilians, and especially women and children. This article gives an overview of the various forms of violence in South Africa and also briefly considers the state's responses to them within the various legal frameworks.



Institutional violence in South Africa prior to 1994

Violence in South Africa manifests in different ways. For the purposes of this section, the focus will be placed on political violence as a form of collective violence. The term 'collective violence' has been defined by the World Health Organization (WHO) as

the instrumental use of violence by people who identify themselves as members of a group – whether this group is transitory or has a more permanent identity – against another group or set of individuals, in order to achieve political, economic or social objectives.¹

This definition, according to Duncan, may include physical force or power that may be threatened or actual, and that is exercised with the objective of privileging an in-group at the expense of an out-group.² It is in this context that political violence in South Africa is discussed below. In 1990, at the opening of the South African Parliament, the erstwhile President F. W. de Klerk made a startling announcement that the African National Congress and other liberation movements were to cease to be banned.³ The release of arguably one of the world's most celebrated political prisoners, Mr Nelson Rolihlahla Mandela, was imminent. This radical step by the National Party government meant that South Africa was moving in a direction fundamentally different from its apartheid⁴ laws that it had followed for over seventy years.⁵

The policy of apartheid had vested power and privilege in the white minority for decades. This in turn embodied one of the most damaging contemporary systems of political violence. Racial classification, as formalized by apartheid, split the South African population into four major groups: white, coloured, Indian, and African.⁶ Furthermore, the National Party government, under its policy of separate development, created tribal homelands for each African group, which became the *lex domicilii* for each one.⁷

Jenkins describes apartheid as a system comprising two ideological themes of white supremacy that attempted to guarantee racial peace and maintain a pure white race.⁸ The first theme was segregation as a means of domination.⁹ The second was segregation as trusteeship, which allowed Africans to express themselves

1 Etienne G. Krug, *et al.* (eds.), *World Report on Violence and Health*, WHO, Geneva, 2002, p. 215.

2 Norman Duncan, 'Understanding collective violence in apartheid and post-apartheid South Africa', in *African Safety Promotion: A Journal of Injury and Violence Prevention*, Vol. 3, No. 1, 2005, p. 7. In a South African context, the term 'in-group' refers to the white minority population.

3 Address by State President F. W. de Klerk at the opening of the Second Session of the Ninth Parliament of the Republic of South Africa, 2 February 1990. The liberation movements included the Pan-African Congress and the South African Communist Party.

4 Apartheid was a comprehensive system of racial segregation enforced by the National Party government in South Africa during the period from 1948 to 26 April 1994. This system was used by the white minority to exercise domination over a non-white majority inclusive of Africans, coloureds, and Indians.

5 Although the concept of apartheid was developed and implemented by the ruling National Party after gaining power in 1948, white domination had been a key feature of South Africa since its creation as a state in 1910. White rule and African disenfranchisement thus remained unchanged and were seemingly the pre-conditions for, and not the results of, apartheid. The particular contribution of the Nationalists post-1948 was the formalization, consolidation, and extension of the inconsistent and often *ad hoc* racist laws, customs, and practices that they inherited, and the elevation of white domination to an official ideology.

6 The term 'white' included all persons of Afrikaner or English origin, Germans, and Portuguese. Coloureds were referred to as 'mixed race'. 'Indian' referred to descendants of indentured servants brought from the Indian subcontinent by the British to work in the sugar plantations in Natal. 'African' referred to persons solely of African ancestry. The Africans were later divided into ten ethnically based 'national units': Tswana, North Sotho, Zulu, South Sotho, Swazi, Xhosa (the Xhosa people were divided into two groups), Ndebele, Venda, and Tsonga.

7 Homelands, ten in all, were assigned to each of the tribal groups, namely Lebowa, Qwa-Qwa, Bophuthatswana, KwaZulu, KaNgwane, Gazankulu, Venda, Ciskei, Transkei, and KwaNdebele.

8 Daisy Jenkins, 'From apartheid to majority rule: a glimpse into South Africa's journey towards democracy', in *Arizona Journal of International and Comparative Law*, Vol. 13, No. 3, Fall 1996, p. 471.

9 *Ibid.* Apartheid marginalized Africans, keeping them from participating freely in society.

completely within their own communities.¹⁰ Apartheid may thus be seen as a system of institutionalized violence, in that its success could only be achieved by repressive means of law enforcement.¹¹ Generally speaking, institutional violence stems from the establishment of explicit rules within a particular society where such rules may inculcate a culture of racism and separatism, as was the case in South Africa. During the wrath of apartheid, the distinction between political and criminal conduct was often blurred. ‘Freedom fighters’ justified their conduct as a legitimate weapon against a racist regime. Various laws enacted by the state entrenched political violence across racial barriers.¹²

Early forms of violence prior to 1948 appeared at the mines in Johannesburg during the 1920s.¹³ As a result of the continued influx of African migrant labourers, violence in that region escalated to an unprecedented intensity. The harsh discriminatory laws created by the apartheid government merely intensified and perpetuated the violence. However, the Soweto uprising in 1976 marked an incipient change in the perception by both Africans and whites that Africans were powerless.¹⁴ The year 1983 saw the inception of the tri-cameral parliamentary system.¹⁵ The fact that Africans were excluded from representation in this system spawned further violence, commonly referred to as the ‘African revolt of 1984’. This revolt did not lead to an overthrow of the National Party government, but by the late 1980s many had been persuaded that African power had to be taken seriously and needed to be accommodated.

Duncan states that in 1983 an estimated 3.5 million people had been affected because of forced removals.¹⁶ Many Africans were subjected to widespread malnutrition, poor health and education systems, overcrowded schools, poor social

10 *Ibid.*, p. 472.

11 *Ibid.* The state granted its law enforcement agencies powers that were not subject to the rule of law. The law enforcement agencies also disregarded the procedural directives of the due process of law.

12 Some of those laws were the Population Registration Act of 1950 (which formed the basis for the social, political, and economic repression of all people who were not classified as white); the Reservation of Separate Amenities Act of 1953 (which granted whites exclusive use of the best public amenities); the Group Areas Act No. 41 of 1950 (arguably a form of collective punishment, whereby people were banished from their homes to ghettos and homelands); the Prohibition of Mixed Marriages Act No 55 of 1949; and the Extension of University Education Act No. 45 of 1959 (which prevented Africans from attending national universities).

13 The city of Johannesburg was founded in 1886. It was a thriving mining city that, by 1920, had an estimated 200,000 African migrant workers.

14 African students in Soweto (South Western Townships) protested against the Afrikaans Medium Decree of 1974, which forced all African schools to use Afrikaans and English as a medium of instruction. This form of education was described by many as a kind of ‘gutter education’.

15 This parliamentary system was introduced by the then President P. W. Botha. Through a constitutional amendment, it granted Indians and coloureds a greater level of (powerless) political participation in matters such as education and health; the amendment, however, did not allow for the inclusion of a Bill of Rights. It was argued that such an inclusion would have meant that repressive laws such as the 1972 Internal Security Act had to be revoked. The Internal Security Act gave police powers to detain and arrest people without trial for a renewable period of ninety days. The parliamentary system included the House of Assembly (white representatives), the House of Representatives (coloured representatives), and the House of Delegates (Indian representatives). No representation was available to Africans, as it was argued that Africans already had political rights in their respective homelands (see note 7 above).

16 N. Duncan, above note 2, p. 10.

security, and high levels of unemployment. It is therefore not surprising that apartheid is regarded as the largest contributing factor to the political violence that prevailed in South Africa for decades. The political agenda of the National Party government, as well as the actions of the South African security forces, is often seen as having fostered the creation of an environment conducive to gang activity.

The Truth and Reconciliation Commission as a response to institutional violence

Immediately after the 1994 national elections, the post-apartheid Government of National Unity proposed that a mechanism be put in place to address the political violence that had haunted South Africa for so many years, namely a Truth and Reconciliation Commission (TRC)¹⁷ chaired by Archbishop Desmond Tutu. As a form of transitional justice, the TRC was tasked with providing a full picture of the nature, causes, and extent of gross human rights violations committed during apartheid. Between 1960 and 1994, 2,500 people had been hanged for political crimes, while about 80,000 people had been detained without trial.¹⁸ The TRC's mandate was limited to atrocities committed during that period. In this regard, Duncan comments that:

[First,] some of the worst acts of political violence committed by the apartheid state effectively fell beyond the scrutiny of this institution. In the process, therefore, a sufficiently comprehensive examination and analysis of the extent and impact of the various forms of political violence engendered by apartheid, for all intents and purposes, were precluded. ... Secondly ... the narrow definition of gross human rights violations as 'the killing, abduction, torture or severe ill-treatment of any person or any attempt, conspiracy, incitement, instigation, command or procurement to commit an act of killing, abduction, torture or severe ill-treatment', precluded not only the examination of all the variants of political violence spawned by apartheid, but also of the system of apartheid itself as a crime against humanity.¹⁹

Amnesty provisions in terms of transitional justice

It is submitted that true reconciliation was never achieved by the Truth and Reconciliation Commission; rather than being unveiled, the past was buried deeper. The question of criminal accountability was, however, raised during the negotiation process and, while a general amnesty was found to be counter-productive, a

17 The TRC was established by means of the Promotion of National Unity and Reconciliation Act 34 of 1995.

18 *Truth and Reconciliation Commission Report*, Vol. 1, 'Executive Summary', available at: <http://www.justice.gov.za/trc/report/index.htm> (last visited 24 June 2010).

19 N. Duncan, above note 2, p. 16.

concession was made and the final chapter of the Interim Constitution included the following text:

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.²⁰

Despite these amnesty provisions, which may conflict with international law, the TRC was not in a position to address the post-1994 political violence; this criticism was echoed around the world. True conciliation can only be achieved by a genuine willingness of South Africans to acknowledge and deal with one of the most violent periods of the country's history.²¹ While in essence the TRC was intended as a vehicle for many South Africans to unravel the past, in reality it fostered an ever-growing amnesia developed by South Africans in order to forget that violent past.

It is submitted that South Africa has a legal obligation, in terms of both national and international law, to continue to prosecute persons who have committed politically motivated gross human rights violations. Bubenzer draws attention to the legal framework for establishing criminal accountability.²² The constitutional law obligations include the obligation of the state to respect, promote, and fulfil the Bill of Rights.²³ Bubenzer affirms that the prosecution authorities' obligations apply to violations of rights that occurred after the Constitution came into force, as well as offences committed beforehand.²⁴ Stating that the National Prosecuting Authority (NPA) had presented only a few cases before the courts between 2003 and 2008, he therefore contends that:

The NPA is, to a certain degree, simply refraining from investigating and prosecuting cases, thereby, to a certain extent, creating a state of de facto indemnity. The government contributes significantly to this state of impunity by not giving the NPA the support it would need to go further. Instead, it has ... attempted to restrict prosecutions from progressing further.²⁵

20 Interim Constitution of the Republic of South Africa, Act 200 of 1993, ch. 15, available at: <http://www.info.gov.za/documents/constitution/93cons.htm#CHAP15> (last visited 24 June 2010).

21 N. Duncan, above note 2, p. 17.

22 Ole Bubenzer, *Post-TRC Prosecutions in South Africa: Accountability for Political Crimes after the Truth and Reconciliation Commission's Amnesty Process*, Nijhoff Publishers, Leiden, 2009, pp. 168ff.

23 Constitution of the Republic of South Africa, Act 108 of 1996, ch. 2, section 7, available at: <http://www.info.gov.za/documents/constitution/1996/index.htm> (last visited 24 June 2010).

24 O. Bubenzer, above note 22, p. 169; see also Constitutional Court of South Africa, *S v. Basson*, Case No. CCT 30/3, 10 March 2004, para. 37.

25 O. Bubenzer, above note 22, p. 169.

As a result of the small in number of prosecutions by the National Prosecuting Authority, gangs have continued to thrive, in the hope that they would benefit from the amnesty provisions, and consequently the violence has continued in all its bloody horror.

Gang violence as a form of urban violence

Historically, South Africa's segregation laws have been instrumental in creating a platform for some of the most violent crimes related to urban gangsterism. Cities such as Johannesburg and Cape Town, in particular, have experienced unprecedented levels of gang-based violence.

Gang violence in Johannesburg and surrounding areas

In Johannesburg and its surrounding areas²⁶ the mining industry required a largely African male labour force. The resulting influx of Africans of various origins led to different ethnic groups being housed together in same-sex barracks on the mine property. Fights between the different ethnic groups became an everyday occurrence. The white authorities at the mines did not intervene, but rather tended to take deaths resulting from the faction fights for granted, as synonymous with the deaths from rock falls underground.²⁷ The mine managers were thus absolved of any responsibility, and it was not considered that supervisory abuse or housing and job allocation policies that encouraged ethnic chauvinism could lead to violence.²⁸

The Ninevites gang

The end of the nineteenth century marked the emergence of probably one of the most notorious gangs in South Africa: the Ninevites, led by Nongozola.²⁹ In her review of van Onselen's book,³⁰ Lucille Davie repeats that Nongozola decided on the name Ninevites because 'I read in the Bible about the great state Nineveh which rebelled against the Lord and I selected that name for my gang as rebels against the government's laws'.³¹

The Zulu-based Ninevites operated in the Witwatersrand and, according to van Onselen, frightened the inhabitants of the urban African locations; yet they

26 The region is collectively referred to as the Witwatersrand.

27 Gary Kynoch, 'Urban violence in colonial Africa: a case for South African exceptionalism', in *Journal of Southern African Studies*, Vol. 34, No. 3, 2008, p. 631.

28 *Ibid.*

29 The leader of the Ninevites was Mzuzephi Mathebula (later also known as Jan Note, or Nongozola).

30 Charles van Onselen, *The Small Matter of a Horse: The Life of 'Nongozola' Mathebula 1867–1948*, Raven Press, Johannesburg, 1985.

31 Lucille Davie, 'Nongozola: king of the Ninevites', January 2008, available at: www.joburg.org.za/content/view/2049/168 (last visited 24 June 2010). The gang was called the Ninevites or 'Umkozi Wezintaba' (Regiment of the Hills).

were also known for administering justice to white employers who had mistreated African workers.³² They were an African criminal organization that operated in prisons and in the community. With the advent of strict British administrative control at the start of the Anglo-Boer War, they sought refuge in mines and prison compounds.³³

At the turn of the twentieth century, South African prisons had a regular influx of predominantly African males, mainly owing to the pass laws enacted by parliament at that time. The criminal justice system, a reflection of racist policies, did very little to separate effectively the tough and often dangerous criminals from first offenders. These factors largely contributed to the successful predominance of the Ninevites' criminal activities in prisons. Kynoch states that the moment the Ninevites targeted white agents of the state, the government attempted to systematically wipe out the gang.³⁴ This marked the end of the Ninevites' gang activity outside prisons.

Gang activity at the mines continued with the presence of another gang, formed as a defence against the existing Ninevites. It was called the Isitshozi, and was initially established to protect the Mpondo mine workers.³⁵ The intensity of the violence at the mines later led to the imprisonment of a large number of Isitshozi members. Instead of being jailed, other Isitshozi members were sent to Pondoland, thus resulting in the infiltration of gangs into urban areas.³⁶

In the 1950s, a gang known as the Tsotsi was formed. They regarded the migrant workers as 'unschooled in the ways of the city' and friction between those workers and the Tsotsi often ensued. The migrant workers would retaliate with indiscriminate attacks on the city youth.³⁷ An array of gangs flourished during this period, whose members mostly had little or no educational background.³⁸ While many of their activities were defensive in nature, the consolidation of some gangs meant that their power increased and they consequently adopted a more aggressive approach. The most common form of violent activity for the Tsotsi was gang warfare, and bigger gangs were often tasked with carrying out ritual violence.³⁹

As violence spread through the townships, the police authorities were slow to respond, and residents in many neighbourhoods therefore grouped together in street patrols and other neighbourhood watch systems. The government's lack of institutional response was tantamount to a *carte blanche* for gangs to pursue their

32 Charles van Onselen, *Studies in the Social and Economic History of the Witwatersrand 1886–1914*, Vol. 2, *New Nineveh*, Raven Press, Johannesburg, 1982, p. 195.

33 The Anglo-Boer War (also known as the Second Boer War and the South African War) was fought from 11 October 1899 to May 1902 between the British Empire and the two independent Boer republics, the South African Republic (Transvaal Republic) and the Orange Free State.

34 G. Kynoch, above note 27.

35 *Ibid.*

36 During the 1930s and 1940s, the Isitshozi gradually started to disband. Yet that particular gang played an important role in the birth of the 'Marashea', which subsequently became the most notorious gang in Johannesburg in the late 1940s.

37 G. Kynoch, above note 27, p. 632.

38 They included the Blue Nines, the Msomi, and the Spoilers.

39 G. Kynoch, above note 27, p. 632.

criminal activity. The state actively supported many of these gangs and thus indirectly encouraged urban violence, so civic organizations were ineffective in their ‘war against gangsterism’. The cities of Cape Town and Durban did not escape the wrath of the various gangs, as shown below.

Gang violence in Durban and Cape Town

Durban and Cape Town lacked the dominance of the mining industry prevalent in the Witwatersrand region, and more particularly Johannesburg, at the turn of the twentieth century. Cape Town, for example, had a large coloured population and this naturally impacted on the dynamics of urban violence in the city.⁴⁰ It is still a city of contrasts and visible social fragmentation built on policies of apartheid. The segregation laws of the 1950s created a largely polarized population, resulting in whites living in the affluent cosmopolitan area at the base of Table Mountain and along the coast, while the non-white population settled in suburban areas, such as District Six, mainly on the back of the Group Areas Act of 1950.

As a result of urban migration and unemployed youth during the 1940s, the notorious suburb of District Six⁴¹ became the birthplace of street gangs.⁴² Its inhabitants responded fiercely with vigilante tactics; the ‘mafias’, as they became known, were in fact family-based groups who fought for the protection of their close friends and family against the ever-growing threat of gangsterism. The gangs’ infiltration of the Cape Flats⁴³ suburb was mainly due to the segregation laws and resettlement schemes of the 1960s. It is interesting to note that not all the Cape Flats inhabitants were in favour of state intervention against gangs in the area. Indeed, the *Mail & Guardian* reported in 1999 that the former Hard Livings gang boss, Rashied Staggy, was seen by many as a hero.⁴⁴

The Hard Livings gang

In 1993 the Hard Livings gang were preparing to become junior partners of organized crime. As Kinnes explains, in that same year South Africa was on the eve of

40 *Ibid.*, p. 364.

41 District Six is so named because in 1867 it became the sixth municipal district of Cape Town. By the turn of the twentieth century, it was a lively community made up of former slaves, artisans, merchants, and other immigrants, as well as Malay people brought to South Africa by the Dutch East India Company during its administration of the Cape Colony. After World War II, District Six was fairly cosmopolitan, comprising coloured Muslims and African Xhosa residents, as well as a small number of Afrikaners and Indians. Under the Group Areas Act 41 of 1950 it was formally declared a whites-only district in 1966. Forced removals started in 1968.

42 G. Kynoch, above note 27.

43 The Cape Flats is so called because of its flat topography and its geographical location south-east of the central business district of Cape Town. The Group Areas Act 41 of 1950 forced the coloured community to move away from the central and western suburbs of Cape Town to the Cape Flats and other districts.

44 André Standing, *The social contradictions of organized crime in the Cape Flats*, Institute for Security Studies, Paper 74, June 2003, p. 6. In 1994, the Hard Livings and the Americans (see also note 48 below) were the two biggest gangs in the Cape Flats, with an estimated membership of between 3,000 and 10,000 respectively.

political transition to democracy.⁴⁵ At the same time, the government and the opposition forces were negotiating amnesty and indemnity from prosecution. The political atmosphere was extremely fragile and killings and upheavals were rife, yet gangs in a rather opportunistic fashion manipulated and interpreted the socio-political uncertainty as an occasion for committing crime in the name of freedom.⁴⁶

Kinnes opines that gang members consciously did not draw a distinction between crimes committed by them and crimes committed by the liberation movements. As a result, the Hard Livings gang demanded that they be included in the amnesty provisions, as well as indemnity from prosecution, because they were supposedly victims of apartheid.⁴⁷ In part, the Hard Livings gang gave strong support to the African National Congress, while at the same time a rival gang operating in the same area, the 'Americans',⁴⁸ supported the ruling National Party. Cape Town, and especially the Cape Flats, were the scene of the most violent gang-related crimes during the run-up to South Africa's first democratic elections.

Between 1990 and 1994, South Africa had experienced quite a lot of low-intensity conflict in African residential areas.⁴⁹ There were numerous media reports on assassinations of influential political figures, bomb blasts, and ruinous battles in the various townships. Political analysts regarded the violence as being 'black on black', and Knox in particular states:

Between February 1990 and April 1994 South Africa roller-coasted between the highs of political agreements to the lows of countless massacres and levels of violence unprecedented in a land already scorched by bloodshed. ... 'the nature of political violence was transformed from a primarily overt conflict between the regime and the forces of liberation, to a more entangled fight among a wide variety of players with disparate motives, tactics and objectives'.⁵⁰

This type of violence thus had hybrid characteristics. On the one hand, it was seen as classic gang violence and, on the other hand, as political violence. Retracing its development, Kynoch writes that:

The urban-led protests of the mid-1980s, combined with the rise of state-sponsored vigilantism and the fighting between ANC and IFP [Inkatha Freedom Party] backed forces, turned many townships into virtual war zones. All the warring parties recruited criminal gangs to some extent, and not

45 Irvine Kinnes, *Structural changes and growth in gang activities*, Monograph No. 48, Institute for Security Studies, June 2000, available at: <http://www.iss.co.za/pubs/MONOGRAPHS/No48/Structure.html> (last visited 24 June 2010).

46 *Ibid.*

47 A. Standing, above note 44. Negotiations on the creation of a Truth and Reconciliation Commission were well under way in 1993, and amnesty and indemnity from prosecution were high on the agenda.

48 This name is not to be confused with the nationals of the United States of America.

49 N. Duncan, above note 2, p. 11. This was particularly the case in the Cape Flats, KwaZulu-Natal, and Gauteng.

50 Colin Knox and Pádraic Quirk, *Peace Building in Northern Ireland, Israel and South Africa: Transition, Transformation and Reconciliation*, Palgrave Macmillan, Basingstoke, 2000, pp. 153–154.

surprisingly were unable to exercise full control over the elements that fought in their name.⁵¹

Whatever the form of violence in the period between 1980 and 1994, its victims always included displaced children and political detainees held without trial, and it always involved deaths and injuries. The wrath of this violence was particularly evident in the province of KwaZulu-Natal.

Violence in KwaZulu-Natal

The suburb that experienced the most political violence during the two decades prior to the 1994 democratic elections was Mpumalanga Township in KwaZulu-Natal, which has always been the province hosting an Inkatha Freedom Party stronghold.⁵² There have been numerous clashes between the followers of the Inkatha Freedom Party, the United Democratic Front, and the African National Congress.⁵³ In 1987 the tensions in Mpumalanga Township intensified, resulting in the creation of ‘closed’ zones for territorial and political supremacy in the region. Regarding the violence in the region, Mosoeta remarks:

The violence was often labelled as ‘black-on-black’ violence with the regime at that time posing as a neutral actor, genuinely concerned about resolving the war. Yet there is well-documented evidence of direct involvement by the South African Police in support of the Inkatha Freedom Party and against those supporting the African National Congress and its allies. At a more passive level, the police did not take up crimes committed against and reported by the United Democratic Front members.⁵⁴

The state’s response to gang violence

Black-on-black violence was largely ignored by the South African police before 1994, mainly because they were concentrating on enforcing pass laws and other repressive legislation enacted by the apartheid government. The lack of police responses to urban violence during this period meant that gangsterism, rape, and murder flourished in the townships. Kynoch states that ‘When protest against the

51 Gary Kynoch, ‘From the Ninevites to the Hard Livings gang: township gangsters and urban violence in twentieth-century South Africa’, in *African Studies*, Vol. 58, No. 1, 1999, p. 70.

52 Care must be taken not to classify the violent conflict between the African National Congress (ANC) and the Inkatha Freedom Party (IFP) as an ethnic conflict, despite the fact that the ANC is predominantly Xhosa whereas the IFP has predominantly Zulu followers, although some sporadic clashes between the two parties were ethnic-based, especially fighting on the Reef. Interestingly enough, in May 2009 the ANC chose Jacob Zuma, a Zulu, to be the President of the Republic of South Africa.

53 One of these clashes led to the killing of respected United Democratic Front leader Victoria Mxenge in 1985.

54 Sarah Mosoeta, ‘Compromised communities and re-emerging civic engagement in Mpumalanga Township, Durban, KwaZulu-Natal’, in *Journal of Southern African Studies*, Vol. 31, No. 4, December 2005, p. 860.

apartheid regime gathered momentum in the 1970s and 1980s, police efforts were concentrated on crushing political dissent rather than addressing violence within black communities'.⁵⁵

Many areas in South Africa became ungovernable, owing to lack of effort by the police. It can be argued that the police were not effective enough to combat gangsterism and prevent crime because they were more reactive than proactive. The transition to democracy in 1994 meant that police services necessarily had to change from a repressive policing style to a more community-based service. In order to achieve this, a Commission of Inquiry under the leadership of Judge Goldstone was established.⁵⁶ The objectives of the Commission were to:

- inquire into the phenomenon of public violence and intimidation in the Republic, the nature and causes thereof, and what persons were involved therein;
- inquire into any steps that should be taken in order to prevent public violence and intimidation; and
- make recommendations to the State President in respect of public violence and intimidation.⁵⁷

The Goldstone Commission made quite a number of recommendations to the State President on steps to prevent violence and intimidation. These included:

- deploying an effective police presence in local communities;
- utilizing the new division of Internal Security to counter violence;
- taking urgent steps to prohibit the carrying of weapons in public; and
- improving the relationship between the police and local communities.⁵⁸

The Commission also drew up a number of significant reports, including those on the violence affecting Crossroads⁵⁹ and Nyanga,⁶⁰ and the report on the storming of the Kepton Park World Trade Centre in June 1993.⁶¹

Durington argues that, as a result of the faith lost in the South African police services, private security companies may become the next investment strategy, because it is perceived that the private security companies might perform

55 G. Kynoch, above note 51, p. 75.

56 The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation (commonly known as the Goldstone Commission) was established under the Prevention of Public Violence and Intimidation Act of 1991. The Commission was tasked with investigating and exposing the background and reasons for violence in order to reduce the incidence of violence and intimidation.

57 These recommendations are found in Chapter 6 of the National Peace Accord, available at: <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/sa4.pdf> (last visited 24 June 2010).

58 Bilkis Omar, 'Crowd control: can our public order police still deliver?', in *South African Crime Quarterly*, No. 15, 2006, p. 8.

59 Crossroads is situated near Cape Town International Airport and was affected by numerous violent protests during the apartheid era.

60 Nyanga is one of the oldest townships in Cape Town, originally established as a result of the migrant labour system, and has a very high prevalence of crime.

61 The Kempton Park World Trade Centre was the venue where multi-party negotiations were taking place. The negotiations were strongly opposed by right-wing parties (including the notorious Afrikaner Weerstandsbeweging, commonly known as the AWB).

better than the police currently are.⁶² A short reflection on crime statistics before and after 1994 follows.

Crime statistics before 1994

Statistics on crime in South Africa during the apartheid years may not be either conclusive or accurate. This may be attributed to the fact that crime figures during this period did not include crimes committed and reported in the Bantustans (homelands).⁶³ Louw and Schönsteich state that from 1973 to 1993 recorded crime, measured on a per capita basis, increased by about 35%.⁶⁴ During the mid-1980s violent crimes were often justified by the wrongdoers as a legitimate means of defence against political opponents and enemies. This resulted in an exponential increase in violence during that period.

Crime statistics after 1994

In the first three years after becoming a constitutional democracy, South Africa saw its crime levels stabilize, despite being fairly high.⁶⁵ Statistics obtained from the United Nations Office on Drugs and Crime reveal that the overall crime rate during the 1994/1995 twelve-month period was 5,224 reported incidents per 100,000 of the population.⁶⁶ This figure increased slightly to 5,571 per 100,000 during the 2001/2002 period.⁶⁷

A steady decrease in certain crimes occurred between April 2003 and March 2009. For example, common assault offences declined from 280,942 reported incidents in the April 2003/March 2004 period to 192,838 in the twelve months ending March 2009. Yet over that same time span public violence escalated from 979 reported incidents to 1,500 in March 2009.⁶⁸ An increase in drug-related crime was also recorded.⁶⁹ These statistics show that, despite South Africa's transition into a constitutional state, the rights, freedoms, and privileges of many South

62 Mathew Durlington, 'Suburban fear, media and gated communities in Durban, South Africa', in *Home Cultures*, Vol. 6, No. 1, 2009, p. 77.

63 For the ten homelands created by the apartheid government, see above note 7.

64 Martin Schönsteich and Antoinette Louw, *Crime in South Africa: a country and cities profile*, Occasional Paper No. 49, Crime and Justice Programme, Institute for Security Studies, Pretoria, 2001, available at: <http://www.iss.co.za/pubs/Papers/49/Paper49.html> (last visited 24 June 2010).

65 *Ibid.*

66 Rob Boon, *South Africa: country profile on drugs and crime 2002*, United Nations Office on Drugs and Crime, 2002, p. 55, available at: http://www.unodc.org/pdf/southafrica/country_profile_southafrica.pdf (last visited 24 June 2010).

67 It is interesting to note that the Western Cape and Gauteng had an overall crime rate higher than 8,000 reported incidents per 100,000 during the 2001/2002 period. For a detailed discussion on this, see M. Schönsteich and A. Louw, above note 64.

68 Crime Information Management – South African Police Service, 2009, 'Crime in the RSA from April to March: 2003/2004–2008/2009', available at: <http://www.iss.co.za/uploads/0909crimetotals.pdf> (last visited 24 June 2010).

69 Statistics show 62,689 recorded drug-related incidents in the 2003/2004 period, rising steadily per annum to 117,172 in 2008/2009.

African nationals and foreigners on South African territory are constantly under threat.

Vigilantism as a means of curbing gang-related crime

Vigilante action has proliferated as a result of the government's inability to combat drugs and crime. It became evident in the late 1990s, with the emergence of the People against Gangsterism and Drugs group in 1996. At the time the police welcomed the group, seeing it as a virtual substitute performing their functions, especially since they themselves may have feared for their lives in combating gangsterism. The state was quick to curb the group's actions after it had been linked to a number of terrorist-related activities, including drive-by shootings and petrol bomb and hand-grenade attacks against alleged drug dealers and gangsters, as well as against police stations.⁷⁰ There is little doubt that crime in South Africa is a force to be reckoned with, exacerbated by the fact that the perpetrators of the most violent crimes know no bounds. Law enforcement is thus increasingly strained.

'Shoot-to-kill' policy

In 2008 the Deputy Minister of Security shocked many human rights activists when she stated publicly in response to the high crime statistics that:

You must kill the bastards if they threaten you or the community. You must not worry about the regulations – that is my responsibility. Your responsibility is to serve and protect. I want no warning shots. You have one shot and it must be a kill shot. Criminals are hell-bent on undermining the law and they must now be dealt with. End of story. There are to be no negotiations with criminals.⁷¹

South Africa's National Police Commissioner Bheki Cele reiterated that police officers should use deadly force when faced with armed criminals. The statements made by these high-profile leaders are irresponsible and in violation of international and national laws. According to the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, intentional lethal use of firearms may only be made when it is strictly unavoidable in order to protect life.⁷² These principles are guidelines that states need to follow in order to ensure

70 Mike Hough, 'Urban terror in South Africa: a new wave?', in *Terrorism and Political Violence*, Vol. 12, No. 2, 2000, pp. 67–75.

71 Ian Evans, 'Shoot the bastards ... and shoot to kill: South African minister tells police to show criminals no mercy', in *Mail Online*, 11 April 2008, available at: <http://www.dailymail.co.uk/news/article-558689/Shoot-bastards-shoot-kill-South-African-minister-tells-police-criminals-mercy.html> (last visited 24 June 2010).

72 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, September 1990. See in particular Principles 9 and 10.

that their police officials perform their duties in accordance with internationally recognized standards, and with due regard to basic human rights. The principles thus clearly guard against arbitrary killing of criminal suspects. The South African ‘shoot-to-kill’ policy has therefore come under the spotlight and will be briefly discussed here.

Section 49 of the 1977 Criminal Procedure Act⁷³ has been the centre of attention for a number of years. The section originally applied to situations in which it was deemed justifiable for the police or any arresting authority to use lethal force. This section was amended in 1998, primarily to conform to the Constitution. The amendment only came into effect in 2003, one year after the Constitutional Court ruled that section 49, prior to the amendment, was unconstitutional.⁷⁴ The 2003 amendment has not yet been challenged, although it arguably allows for lethal force only when the arrester’s own life or the lives of others are in danger.

It is submitted in hindsight that the criteria set in the *Walters* case should apply, and not the 2003 amendment, as those criteria provide better legal certainty.⁷⁵ It thus becomes clear that the South African ‘shoot-to-kill’ policy is not in accordance with international and national law. Since April 2010, a new Bill has been tabled before parliament, and it is hoped that the proposed Bill, when enacted into law, will provide legal certainty in line with the *Walters* decision.⁷⁶

73 Act 51 of 1977 as amended.

74 See Constitutional Court of South Africa, *Ex Parte Minister of Safety and Security and Others: In Re S v. Walters and Another*, Case No. CCT 28/01, 21 May 2002.

75 Judge Kriegler summarized the main points as: (a) the purpose of arrest is to bring before court for trial persons suspected of having committed offences; (b) arrest is not always the only means of achieving this purpose, nor always the best; (c) arrest may never be used to punish a suspect; (d) where arrest is called for, force may be used only where it is necessary to carry out the arrest; (e) where force is necessary, only the least degree of force reasonably necessary to carry out the arrest may be used; (f) in deciding what degree of force is both reasonable and necessary, all the circumstances must be taken into account, including the threat of violence the suspect poses to the arrester or others, and the nature and circumstances of the offence the suspect is suspected of having committed – the force being proportional in all these circumstances; (g) shooting a suspect solely in order to carry out an arrest is permitted in very limited circumstances only; (h) ordinarily shooting is not permitted unless the suspect poses a threat of violence to the arrester or others or is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of carrying out the arrest, whether at that time or later; (i) these limitations in no way detract from the rights of an arrester attempting to carry out an arrest to kill a suspect in self-defence or in defence of another person. See p. 643 of the judgment.

76 The parts highlighted in italics below are the proposed amendments to the current section 49. The proposal is that those highlighted parts be removed from the current section 49.

49. (1) For the purposes of this section: (a) ‘arrestor’ means any person authorized under this Act to arrest or to assist in arresting a suspect; *and* (b) ‘suspect’ means any person in respect of whom an arrestor has *or had* a reasonable suspicion that such person is committing or has committed an offence; and (c) ‘deadly force’ means force that is intended or likely to cause death or serious bodily harm.
- (2) If any arrestor attempts to arrest a suspect and the suspect resists ... and the suspect cannot be arrested without the use of force, the arrestor may ... use such force as may be reasonably necessary and proportional in the circumstances ... Provided that the arrestor is justified ... in using deadly force *that is intended or is likely to cause death or grievous bodily harm to a suspect*, only if he or she believes on reasonable grounds—(a) that the force is *immediately*

'Taxi wars' as a form of urban violence in South Africa

In order to understand the manifestation of taxi violence in South Africa, it is necessary to consider the history of the taxi industry dating back to 1977. Before 1977, the Motor Carrier Transportation Act of 1930 prohibited the transportation of goods or passengers by road for profit without permission from the South African Local Road Transportation Board. In essence, the transport industry was monopolized by the South African Transport Service. Thus any taxi owner who conducted business outside the jurisdiction of the Local Transport Board was doing so illegally. African transport owners found it near impossible to meet all the requirements of the regulations laid down by the Motor Carrier Transportation Act.⁷⁷ Taxi operators who were operating illegally formed various informal associations, and these associations regulated loading practices and prices.

The legislation permitted those Africans who qualified for a taxi permit to use small vehicles able to transport only four passengers at a time. Buses and trains in the 1970s were inadequate and expensive, and the demand for taxis therefore grew rapidly. The National Party government realized in the late 1970s that participation in the transport industry was becoming less viable and highly politicized. In 1977 the Van Breda Commission of Inquiry was established and recommended deregulation of the taxi industry in terms of legislation.⁷⁸ A myriad of taxi associations emerged in the wake of an absence of official control, resulting in large-scale corruption and consequential violence among the competing associations.⁷⁹ Sekhonyane and Dugard comment that:

contrary to many expectations, the cycles of taxi violence fomented during the late apartheid period did not end with the demise of apartheid. Indeed, unlike other forms of political violence that diminished and disappeared after 1994, taxi violence actually escalated in the immediate post-1994 period.⁸⁰

necessary ... or (b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or that the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of carrying out the arrest, whether at that time or later. (c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

77 Makubetse Sekhonyane and Jackie Dugard, 'A violent legacy: the taxi industry and government at loggerheads', in *South African Crime Quarterly*, No 10, December 2004, p. 14.

78 *Ibid.*

79 The two predominant associations emerging at the time were the South African Long Distance Taxi Association (SALDTA) and the South African Black Taxi Association (SABTA). Affiliations to these associations also spawned later associations. Examples of such affiliations are ATA (the Alex Taxi Association, affiliated to SABTA) and ARMSTA (the Alex-Randburg-Midrand-Sandton Taxi Association, affiliated to SALDTA). A classic example of a taxi war between two rival organizations, ATA and ARMSTA, lasted from 1987 to 1994 and caused many deaths and injuries.

80 M. Sekhonyane and J. Dugard, above note 77, p. 15.

The state's response to the taxi violence

From the above it is clear that taxi violence became increasingly widespread and less manageable by the authorities. Attempts to restructure the taxi industry were slow. In 1995 the government established the National Taxi Task Team to inquire into the causes of, and possible solutions to, the prevailing violence.⁸¹ The National Taxi Task Team presented its findings and recommendations to the Minister of Transport the following year. The most significant recommendation was that the taxi industry be deregulated.⁸² Strong opposition came from a number of taxi associations and resulted in an upsurge of taxi violence between 1998 and 1999.⁸³ The National Land Transport Act of 2000⁸⁴ was the government's attempt to help formalize and re-regulate the taxi industry. Part of the process of re-regulation included a four-year recapitalization scheme.⁸⁵ Delays in this process arose from the taxi industry's inability to form a cohesive association representing all the taxi owners, as well as disagreement between taxi owners as to the nature of the proposed recapitalization scheme.⁸⁶ The recapitalization programme has had a number of shortcomings, including the lack of financial assistance from banks, which have led to its fairly slow implementation.

In 2007 the Department of Public Transport announced that a fast, comfortable, and low-cost urban transport system called the Bus Rapid Transit System (BRTS) was being planned for the host cities of the 2010 FIFA World Cup.⁸⁷ It is envisaged that the BRTS will play a leading role in the transformation of public transport within cities. However, taxi associations remain resistant to government interference in the taxi industry, since the BRTS is seen as a threat to the livelihood of many taxi operators. Evidence of this resistance surfaced in May 2010: there were two shooting incidents in Soweto, one resulting in the death of a commuter on the Rea Vaya Bus Rapid Transit route from Soweto to Central Johannesburg.⁸⁸

The BRTS should not be viewed as the final solution to public transport in South Africa, but as the government's attempt to minimize conflict in the taxi industry, provided that existing taxi operators 'buy into the system'.⁸⁹ It remains to be seen whether this will ultimately be achieved.

81 *Ibid.*, p. 16.

82 The National Taxi Task Team was disbanded in 1998.

83 M. Sekhonyane and J. Dugard, above note 77, p. 16.

84 Act No. 22 of 2000.

85 The purpose of the scheme was to replace the fifteen-seater minibuses with eighteen- and thirty-five-seater minibuses.

86 The Taxi Recapitalization Programme (TRP) was an intervention by the South African government to bring about safe, effective, reliable, affordable, and accessible taxi operations by introducing new taxi vehicles designed to undertake public transport functions in the taxi industry.

87 Untitled article written by David Masengo and Themba Gadebe, 13 July 2007, available at: <http://www.sa2010.gov.za/node/861> (last visited 24 June 2010).

88 South African Press Association, 'BRT shooting victim dies', 3 May 2010, available at: <http://www.news24.com/SouthAfrica/News/BRT-shooting-victim-dies-20100503> (last visited 24 June 2010).

89 The negotiations between the South African National Taxi Association Council (SANTACO) and the government are ongoing. SANTACO (founded in September 2001) remains adamant that the taxi industry is to own the BRTS. This is not what the government has envisaged.

Xenophobic violence as a form of urban violence in South Africa

The Compact Oxford English Dictionary defines xenophobia as ‘intense or irrational dislike or fear of people from other countries’.⁹⁰ Xenophobia can thus be seen as unreasonable distrust, fear, or hatred of strangers or foreigners, or anything foreign or different. Brutal assaults, police victimization, and ethnic cleansing and mass expulsion are some of the forms that xenophobia may take in any particular country.

South Africa experienced a series of xenophobic attacks in May 2008, directed primarily at foreigners in poor settlements. Those attacked included foreigners who had acquired citizenship because of their specialized skills,⁹¹ as well as persons with legal work and study permits.⁹² An outline of xenophobic violence in South Africa is given below, followed by a discussion of the May 2008 and subsequent attacks.

Legal framework of laws relating to the protection of migrants

There are several international human rights instruments to promote the human rights of all migrants. It is a principle of international law that governments have wide sovereign discretion to determine nationality. However, when a foreign national is found on its territory, the government has to ensure that the foreign national’s human rights are respected. The rights contained in those international legal instruments are thus guaranteed to all persons present in a particular state, including nationals and non-nationals irrespective of their legal status, their gender, or their age.

Various human rights treaties specifically highlight the prohibition against discrimination. These treaties include the International Covenant on Civil and Political Rights (ICCPR),⁹³ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁹⁴ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).⁹⁵ Refugee protection laws include

90 *Compact Oxford Dictionary of Current English*, 3rd edition, June 2008, available at: http://www.askoxford.com/dictionaries/compact_oed/?view=uk (last visited 24 June 2010).

91 The types of skills include those of medical doctors, scientists, engineers, and academics.

92 This category of persons includes Mozambican mineworkers, Zimbabwean mathematicians, and thousands of foreign university students.

93 Adopted by the United General Assembly on 16 December 1966, entered into force on 23 March 1976. At October 2009, the ICCPR had 72 signatories and 165 states parties.

94 Adopted by the United Nations General Assembly on 16 December 1966, entered into force on 3 January 1976. At December 2008, the ICESCR had 160 states parties.

95 Adopted by the United Nations General Assembly on 21 December 1965, entered into force on 4 January 1969. At October 2009, the ICERD had 85 signatories and 173 states parties.

the 1951 Convention relating to the Status of Refugees⁹⁶ and the 1967 Protocol relating to the Status of Refugees.⁹⁷

South Africa acceded to the 1951 Refugee Convention and the 1967 Protocol on 12 January 1996. In order to give effect to its international obligations, principles, and standards relating to refugees in terms of these two international instruments, South Africa promulgated the South African Refugees Act 130 of 1998.⁹⁸ The Act provides for the reception into South Africa of asylum seekers and regulates applications for and recognition of refugee status. In addition it provides for the rights and obligations flowing from such status, and other related matters. South Africa further sought to control illegal immigration by promulgating the Immigration Act 13 of 2002.⁹⁹ Although the country was thus bound by instruments of national and international law, since its first manifestation xenophobic violence has become a 'household brand'.

History of xenophobic violence in South Africa since 1995

May 2008 was not the first time South Africa experienced xenophobic violence. Indeed, looking no further back than 1995, there are numerous shocking accounts of such attacks.¹⁰⁰ According to a Human Rights Watch report, immigrants from Malawi, Mozambique, and Zimbabwe living in Alexandra Township were physically assaulted in 1995.¹⁰¹ The report states that armed gangs identified suspected undocumented migrants and marched them to the police station in an attempt to 'clean' the township of the foreigners.¹⁰² The campaign accused the foreign nationals of being responsible for the high crime and unemployment rates, as well as the increase in sexual violence, particularly against women. Nahla Valji writes that:

In September 1998 two Senegalese and a Mozambican were thrown from a train by a group of individuals returning from a rally organised by a group

96 Approved at a special United Nations conference on 28 July 1951, entered into force on 22 April 1954. At 1 October 2008, the Convention had 144 states parties. A detailed analysis of its geographical scope of application goes beyond the ambit of this article.

97 Adopted by the United Nations General Assembly on 16 December 1966, entered into force on 4 October 1967. At 1 October 2008, the Protocol had 144 states parties.

98 The Refugees Act came into effect on 1 April 2000.

99 The Immigration Act came into effect in 2003. However, immigration regulations were not published until 2004.

100 Xenophobic violence prior to 1995 will not be discussed in this article.

101 Human Rights Watch, *Prohibited Persons: Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa*, New York etc., March 1998, part VI: 'Xenophobia and attacks against migrants', available at: <http://www.hrw.org/legacy/reports98/sareport/> (last visited 24 June 2010).

102 *Ibid.*

blaming foreigners for the levels of unemployment, crime, and even the spread of AIDS.¹⁰³

Very often the victims of these attacks are foreign hawkers seeking refuge in South Africa. Some South Africans argue that, by taking up employment in South Africa, foreigners are largely responsible for depriving South African nationals of job opportunities. Poverty and poor service delivery are two further causal factors for xenophobic attacks.¹⁰⁴ In South Africa the gap between rich and poor is wide and deep, and various forms of violence, including xenophobic violence, have consequently become prevalent.

In September 2000, seven foreigners were killed in the Cape Flats district.¹⁰⁵ These xenophobic murders, as described by the police, were allegedly motivated by fear that foreigners would claim the property belonging to South African nationals.¹⁰⁶ In October 2001, residents of the Zandspruit informal settlement targeted Zimbabweans, believing that they were responsible for the local inhabitants being without jobs. The *Independent Online Newspaper* reported that:

The violence in Zandspruit squatter settlement outside Honeydew, west of Johannesburg, erupted when the Zimbabweans failed to leave the area after being given a 10-day ultimatum ... to leave the area or face the wrath of the locals. The ultimatum was allegedly brokered in a meeting held at the local police station.¹⁰⁷

In 2006 Somali refugees sought intervention from the South African Human Rights Commission with regard to a number of attacks on Somali traders.¹⁰⁸ The media reported that about twenty-six Somali traders had been killed in 2006.¹⁰⁹ The South African police were quick to dismiss the reasons for the deaths as being linked to xenophobic attacks. This recurring 'blind-eye' attitude of the police service seemed to reflect a more general attitude of the state towards foreign nationals.¹¹⁰

103 Nahla Valji, 'Creating the nation: the rise of violent xenophobia in the new South Africa', unpublished Master's Thesis, York University, July 2003, available at: <http://www.csvr.org.za/docs/foreigners/riseofviolent.pdf> (last visited 24 June 2010).

104 South Africa has a huge income disparity in both social and economic terms. According to the UN Development Programme in 2009, South Africa was ranked 129 out of 194 countries in terms of the Gross National Income coefficient, which is a measure of income inequality. See updated report available at: <http://hdrstats.undp.org/eng/indicators/147.html> (last visited 19 July 2010).

105 'Xenophobic attacks: seven die in one month', in *Independent Online News*, 2 August 2000, available at: http://www.iol.co.za/index.php?click_id=13&set_id=1&art_id=ct20000802102508479X510381 (last visited 24 June 2010).

106 *Ibid.*

107 Baldwin Ndaba, 'Raging mob evicts Zimbabweans, burns home', in *Independent Online News*, 21 October 2001, available at: http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=ct200110212058176Z5321926 (last visited 24 June 2010).

108 Sivuyile Mangxamba, 'Somalis turn to HRC as murder toll soars', in *Independent Online News*, 25 August 2006, available at: http://www.iol.co.za/index.php?sf=18&set_id=1&click_id=13&art_id=vn20060825131506666C924904 (last visited 24 June 2010).

109 *Ibid.*

110 See below for a discussion of this point.

Several attacks on Somalis, Pakistanis, and Zimbabweans occurred in various townships during 2007 and 2008, where some of the shops and shacks¹¹¹ were set alight.¹¹² Despite major public outcries from large sectors of the South African population and international human rights organizations, foreign nationals continued to be targeted and, in May 2008, South Africa and the world witnessed yet another series of xenophobic attacks.

On 11 May 2008 Alexandra, a township north of Johannesburg, was flooded with police after the township's local residents violently attacked foreign nationals, killing and injuring migrants from Mozambique, Zimbabwe, and Malawi.¹¹³ Shortly after these attacks, violence spread to other settlements in the Gauteng Province, as well as the coastal cities of Durban and Cape Town. In 2009, 3,000 foreigners in the De Doorns Township in Cape Town, including refugees and asylum seekers from Zimbabwe, were driven from their shacks.¹¹⁴ The UN High Commissioner for Refugees welcomed the rapid response of the local authorities in Cape Town and of the South African Red Cross Society in providing communal tents, water, public toilets, and mobile medical facilities.¹¹⁵ These attacks, as well as those prior to 2008, stemmed from the increasingly xenophobic climate that has been spreading throughout South Africa for a number of years.

The paradoxical reality is that many of the victims were immigrants from neighbouring countries who had initially integrated quite easily with the local African population during the apartheid era, with little or no violent xenophobic disruption. To unravel this paradox, some understanding is required of why these attacks occurred in the first place.

Factors that may have triggered the xenophobic attacks in May 2008

The existence of various factors conducive to xenophobic violence was mentioned above. They include poverty informed by a disparity in income between rich and poor, poor service delivery, overcrowding in squatter camps, lack of housing, and widespread unemployment. Arguably, some South Africans also exude a feeling of superiority towards other Africans.¹¹⁶ South African youth has been on the receiving end because of the socio-political defects embedded in daily South African life. Many African young people have, for various reasons, dropped out of school and subsequently been unable to find employment.¹¹⁷ This has resulted in

111 'Shack' is the term used to denote an informal dwelling in the townships.

112 'Xenophobic attacks special report', in *Sowetan Online*, available at: <http://www.sowetan.co.za/News/Article.aspx?id=%769120> (last visited 24 June 2010). These attacks left thousands homeless.

113 'South African mob kills migrants', in *BBC News Online*, 12 May 2008, available at: <http://news.bbc.co.uk/2/hi/africa/7396868.stm> (last visited 24 June 2010).

114 Andrej Mahecic, *UNHCR condemns xenophobic violence in Western Cape*, Briefing Notes, UNHCR, Geneva, 20 November 2009, available at: <http://www.unhcr.org/4b06744f9.html> (last visited 24 June 2010).

115 *Ibid.*

116 This has also been referred to as South African exceptionalism.

117 Siphamandla Zondi, 'Xenophobic attacks: towards an understanding of violence against African immigrants in South Africa', in *Africa Insight*, Vol. 38, No. 2, September 2008, p. 29.

youth being drawn into various forms of crime and violent behaviour,¹¹⁸ and thus to an ever greater extent into sub-cultures involving gangs and drugs. Zondi states that:

Low educational qualification, high unemployment and the weakening of social organizations, especially at the family and community level, seem to have combined to breed a significant sense of alienation, marginalization and neglect. This expresses itself in anger against the establishment and violence against various targets from time to time. This then also manifests in the spate of violent crime, disorderly protests and senseless attacks on 'others'.¹¹⁹

It is thus clear that poverty and unemployment are key factors to consider when addressing xenophobic violence in contemporary South Africa. This begs the question whether South Africa is effectively responding to the security risks of structural xenophobia.

The state's response to the xenophobic violence

In a public statement issued by the South African Human Rights Commission, various stakeholders emphatically called for an end to the violence that has erupted throughout South Africa.¹²⁰ The Commission very strongly urged the South African government to impose a moratorium on the arrest and deportation, despite their legal status, of victims of violence. It also called upon the Department of Justice and Constitutional Development to ensure that special and extraordinary courts be set up in order to ensure that those arrested might be brought to trial expediently,¹²¹ and urged civil society organizations to act with compassion in rendering humanitarian aid to the victims. Replying to criticism that the Commission had been slow to respond to the xenophobic attacks, its Chairperson, Lawrence Mushwana, pointed out that the Human Rights Act of 1994 does not have any prescribed methods for dealing with a complex disaster such as the xenophobic attacks that occurred on 11 May 2008.

Shortly after the attacks, state and civil society organizations established temporary camps, including police stations and community halls, for the victims of the attacks. The South African government at first thought that the refugees held there should be reintegrated into the communities from which they had originally fled. This view was rapidly dispelled as more draconian recommendations on migrants were developed by the South African Human Sciences Research Council

118 *Ibid.*

119 *Ibid.*

120 The South African Human Rights Commission (SAHRC) was inaugurated in October 1995 as an independent national institution. It draws its mandate from the South African Constitution through the South African Human Rights Commission Act of 1994. The SAHRC is tasked with monitoring violations of human rights and seeks to redress such violations, both proactively and via complaints brought before it. The public statement is available at: <http://www.info.gov.za/speeches/2008/08052910451010.htm> (last visited 24 June 2010).

121 *Ibid.*

and seemingly entertained by the government.¹²² Some of the recommendations in the Council's report are proposals that the government should legalize immigrants and refugees already in South Africa, after which the South African borders should be closed and patrolled by the South African National Defence Force.

This measure was intended to ensure that additional foreigners were not allowed to 'come and go as they please'.¹²³ The Council further recommended that foreigners be barred from certain types of employment and that a new system of minimum wages be developed in certain sectors so as to prevent immigrants from working for lower wages.¹²⁴ Sharp, in a response to South African migration policies, says:

How is it that they, like many other South Africans, have forgotten so quickly that a great deal of the country's present wealth and development was built, over the entire course of the twentieth century, on the backs of foreign African migrant workers?¹²⁵

The South African immigration policy was initially designed to deter illegal migration into South Africa by encouraging foreign nationals to apply for different permits to legalize their stay in the country. It further aimed to attract scarce skills required by the economy, in accordance with the government's Vision 2014 strategy.¹²⁶ The policy also states that a human-rights-based culture of enforcement should be encouraged. Despite this, there has been a slow and inadequate response from the South African government, which has been severely criticized. Monson and Misago argue that the state's reluctance to protect and assist foreigners perpetuates violence, social instability, and injustice for nationals and non-nationals alike.¹²⁷ They put forward the following five reasons why the state failed to address the attacks effectively.

Failure to prevent violence and protect victims

On the point that South Africa failed to prevent violence and protect the victims of the attacks, Monson and Misago comment:

That many attacks recurred in places that had experienced similar breakdowns in order in the recent past is strongly suggestive of a failure to manage risk in

122 See e.g. the recommendations made by the Human Sciences Research Council (HSRC) in its report *Citizenship, violence and xenophobia in South Africa: perceptions from South African communities*, June 2008, available at: <http://www.hsrc.ac.za/Document-2807.phtml> (last visited 24 June 2010). It is a state-sponsored body that was given two weeks to study the causes of xenophobic violence and to then make its recommendations.

123 John Sharp, "'Fortress SA': xenophobic violence in South Africa', in *Anthropology Today*, Vol. 2, No. 4, August 2008, p. 1.

124 *Ibid.*

125 *Ibid.*

126 Vision 2014 is aimed at eradicating poverty and underdevelopment.

127 Tamlyn Monson and Jean-Pierre Misago, 'Why history has repeated itself: the security risks of structural xenophobia', in *South African Crime Quarterly*, Vol. 29, September 2009, p. 25.

these areas. This prompts the question, if citizens had been the victims of the attacks, would risk management have been equally poor?¹²⁸

In a research interview between Monson and a senior police official in Alexandra, where the attacks occurred, the police official indicated that, before some of the attacks, meetings were held by communities to discuss *vigilante* action. According to Monson, the police were aware of this but took no responsive action.¹²⁹

Deportation of victims to their countries of origin

In its early responses to the xenophobic attacks, the South African Department of Home Affairs authorized immigration officers to arrest victims who did not have any documents. These persons were destined for deportation to their countries of origin. Yet later reports indicated that the Minister of Home Affairs had subsequently made an announcement that no victim of the xenophobic attacks was to be deported.¹³⁰ As a result of this incoherent governmental reaction, the state, according to Monson and Misago, 'supported the intention of the perpetrators to remove foreigners from communities, contributed to stalling judicial measures against perpetrators of violence, and, where deportation was involuntary, criminalized undocumented victims rather than their assailants'.¹³¹

Failure to prioritize prosecutions

Monson and Misago suggest that the state failed to prioritize prosecution of the perpetrators. It is argued that, when the state had the opportunity in 1994 and from then on to prosecute perpetrators, it had not done so, and this reluctance may have increased the risk of future violence. Often non-nationals are treated as outsiders, mainly because of their non-citizenship status, and therefore do not benefit from the protection of government agencies, except in limited circumstances under the authority of the Department of Home Affairs.¹³²

The Consortium for Refugees and Migrants in South Africa¹³³ reported in its newsletter in March 2009 that the office of the National Prosecuting Authority of South Africa had revealed statistics on the number of persons prosecuted since

128 *Ibid.*, p. 26.

129 *Ibid.* The South African armed forces were deployed to address the disorder, but by then twenty-four people had already been killed and 24,000 were reported to have been displaced.

130 *Ibid.*

131 *Ibid.*, p. 29.

132 *Ibid.*

133 The Consortium for Refugees and Migrants in South Africa (CorMSA) was formally known as the National Consortium for Refugees. It is a non-profit organization mandated to promote and protect refugee and migrant rights. This involves strengthening the partnerships between refugee and migrant service providers to provide improved co-ordination of activities, including the development of working relationships with other concerned organizations to provide an effective forum for advocacy and action. The Consortium liaises with government and other stakeholders to keep them informed of the views of its members. Its membership includes Lawyers for Human Rights, Amnesty International, and the South African Red Cross Society.

the attacks in May 2008.¹³⁴ The Consortium had asked the National Prosecuting Authority for statistics on the subject and subsequently reported that:

The NPA has responded and clarified that 1,627 people were originally arrested in connection with the violence. 105 cases out of a total of 469 have now been finalized with 70 returning a guilty vote. 208 cases have been withdrawn so far with reasons including the complainant no longer being interested in the case, the complainant not being traced, remand being refused by the magistrate and the inability to locate an interpreter. Three special courts were set up in the Western Cape and prosecutors in the other provinces were instructed to prioritize xenophobia-related cases.¹³⁵

Some of the reasons for the withdrawal of the 208 cases are without justification. It can be inferred from this that the state is unwilling to prioritize matters relating to foreign nationals, primarily because these foreign nationals are non-citizens.

While criminal prosecutions slowly proceeded, Lawyers for Human Rights in South Africa successfully challenged the legality and conditions of the Soutpansberg Military Grounds detention centre before the North Gauteng High Court.¹³⁶ They argued that the conditions at the centre were in violation of the Constitution, the Immigration Act, and international law,¹³⁷ and that the persons detained at the centre had never been charged with or convicted of a criminal offence. The detention of children at the centre was also severely criticized. The court ruled that the centre had not been set up in accordance with the Immigration Act, and that the conditions of detention at the centre were unlawful and unconstitutional.¹³⁸

Reluctance to render humanitarian assistance

The South African Constitution¹³⁹ specifically prohibits forms of prejudice such as racism and sexism.¹⁴⁰ Equality, in the form of non-discrimination, and human

134 See CorMSA newsletter, Edition 13, 24 March 2009, available at: <http://www.cormsa.org.za/news> (last visited 24 June 2010). The Consortium has also been instrumental in setting up paralegal advice centres in the regions most affected by the attacks.

135 *Ibid.*

136 See Lawyers for Human Rights (LHR), *LHR challenges unlawful detention in Musina*, media release, 9 February 2009, available at: <http://www.lhr.org.za/news/2009/lhr-challenges-unlawful-detention-in-musina> (last visited 24 June 2010); see also North Gauteng High Court, *Lawyers for Human Rights v. Minister of Safety and Security and 17 other Respondents*, Case No. 5824/2009, Judgment, 15 May 2009, available at: <http://www.saflii.org/za/cases/ZAGPPHC/2009/57.html> (last visited 24 June 2010).

137 LHR, above note 136.

138 *Ibid.*

139 Constitution of the Republic of South Africa, Act 108 of 1996. The Constitution, which was approved by the Constitutional Court on 4 December 1996 and took effect on 4 February 1997, is the supreme law of the land, and no other law or government action can supersede its provisions. South Africa's Constitution is one of the most progressive in the world and enjoys high acclaim internationally.

140 The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 also prohibits forms of racism and sexism in South Africa.

dignity are the cornerstone of a constitutional and democratic state such as South Africa. Many state organs looked to the Department of Home Affairs to render humanitarian aid within the framework of its immigration management functions.¹⁴¹ Local municipalities ‘passed the buck’ to provincial municipalities and, in the absence of aid from the provincial municipalities, the local municipalities were reluctant to respond.¹⁴²

No commitment to the reintegration process

Reintegration has been defined as the return of a person to a community and their acceptance by it as a participant member; the definition therefore includes the re-entry of formally displaced people into the social, economic, cultural, and political fabric of their original community.¹⁴³ Monson and Misago crucially distinguish the term ‘reintegration’ from ‘return’ and ‘resettlement’ and correctly submit that:

According to the UNHCR, reintegration, as it refers to returning refugees, requires access to reasonable resources, opportunities and basic services to establish a self-sustained livelihood in conditions of equal rights with other residents and citizens. Reintegration should therefore be distinguished from *return* (the process of going back to one’s place of original residence) or *resettlement*, which refers to the process of starting a new life in another part of the country.¹⁴⁴

It is clear from the above that, as a result of poor disaster management programmes in place, many local and provincial state departments were quick to adopt a policy of returning foreign nationals to their places of origin rather than reintegrating them. The lack of effective reintegration policies is not a justification for state departments to engage in a mass exodus of foreign nationals, and it is submitted that this practice is at variance with international laws relating to migrants.

The five reasons put forward by Monson and Misago and cited above are a clear indication that South Africa rapidly needs to engage in revising its existing policies on migration in order to prevent xenophobic attacks in the future. It is highly undesirable for any state to develop migration policies that are in stark contrast to its international obligations vis-à-vis migrants, and in this regard South Africa has ‘failed the test’.

141 T. Monson and J.-P. Misago, above note 127, p. 30.

142 The city of Durban, for example, stated clearly that it was not the city’s responsibility to render the humanitarian assistance – provincial government had to declare a provincial disaster, and this declaration was not forthcoming.

143 T. Monson and J.-P. Misago, above note 127, p. 31.

144 *Ibid.*, emphasis added.

Conclusion

South Africa has a long and gruesome history of violence in all its different forms. The international community placed overwhelming expectations on the country in 1994 when it became a constitutional democracy. Change was inevitable. The only lingering question was whether the new South Africa could meet the challenges it had inherited from its oppressive predecessors. One of these challenges relates to violence. This article has considered the various forms, ranging from political to xenophobic violence, that have manifested in South Africa. The work of the Truth and Reconciliation Commission raised the hopes of many, but it failed to effectively address violence in South Africa after 1994, during a period when it reached an unprecedented peak. The taxi industry in South Africa cannot be ended overnight; continued meaningful dialogue between all stakeholders is required. Government may have to provide adequate investment in its recapitalization programme, which may lead to a reduction in the taxi violence.

A review of gang and xenophobic violence in various cities and townships in South Africa has been undertaken. South Africa's townships were the battlefields of apartheid in the 1980s and the 1990s, and gangsterism thrived during that period. It is clear that South Africa's law enforcement bodies seriously need to reform their attitude towards law enforcement in a manner which may restore dignity and, in a sense, humanity to all people living within its territorial borders. The brutal xenophobic attacks on foreign nationals in the recent past are indicative of flawed government responses, as well as poor leadership at all levels of government.

South Africa is a signatory to most international human rights instruments and consequently has an obligation to ensure that justice there must not simply be done, but must also be seen to be done. The country has a vibrant civil society, a fairly advanced infrastructure, and a free press, and enjoys global support. Although these attributes imply that South Africa should be able to take its place in the international community with pride, the high rate of ongoing violence means that this goal may not be readily attained. As Desmond Tutu has so wisely said, 'Stability and peace in our land will not come from the barrel of a gun, because peace without justice is an impossibility'.¹⁴⁵

145 Archbishop Desmond Tutu is a Nobel Peace Prize laureate. This quotation is available at: <http://www.spiritualityandpractice.com/teachers/teachers.php?id=239&g=1> (last visited 24 June 2010).

BOOKS AND ARTICLES

Recent acquisitions of the Library & Research Service, ICRC

Arms – books

Crowley, Michael. *Dangerous ambiguities: regulation of riot control agents and incapacitants under the chemical weapons convention*. Bradford: Bradford Non-lethal Weapons Research Project, October 2009, 120 pp.

ICRC. *Mine action 2009: special report*. Geneva: ICRC, April 2010, 32 pp.

ICRC. *Weapon contamination*. Geneva: ICRC, January 2010.

Quille, Gerard (ed.). *War remnants and the pollution of the sea: workshop summary*. Brussels: European Parliament, April 2009, 44 pp.

Quinlan, Michael. *Thinking about nuclear weapons: principles, problems, prospects*. Oxford: Oxford University Press, 2009. 194 pp.

Arms – articles

Black-Branch, Jonathan. ‘The legal status of cluster munitions under international humanitarian law: indiscriminate weapons of war’, *Humanitäres Völkerrecht: Informationsschriften [Journal of International Law of Peace and Armed Conflict]*, Vol. 22, No. 4 (2009), pp. 186–193.

David, Eric. ‘La Convention de 2008 sur les armes à sous-munitions’, *Revue générale de droit international public*, T. 113, No. 4 (2009), pp. 785–804.

Kaurin, Pauline. ‘With fear and trembling: an ethical framework for non-lethal weapons’, *Journal of Military Ethics*, Vol. 9, No. 1 (2010), pp. 100–114.

Robert Muggah et al.; introduction by Stina Torjesen. ‘Disarmament, demobilisation and reintegration (DDR): grasping complexity, rescaling ambition and rethinking intervention’, *Conflict, Security and Development*, Vol. 9, No. 4 (December 2009), pp. 411–564.

Orbons, Sjef. ‘Do non-lethal capabilities license to “silence”?’’, *Journal of Military Ethics*, Vol. 9, No. 1 (2010), pp. 78–99.

Rappert, Brian and Moyes, Richard. ‘Enhancing the protection of civilians from armed conflict: precautionary lessons’, *Medicine, Conflict and Survival*, Vol. 26, No. 1 (January–March 2010), pp. 24–47.

Rappert, Brian and Moyes, Richard. ‘The prohibition of cluster munitions: setting international precedents for defining inhumanity’, *Nonproliferation Review*, Vol. 16, No. 2 (July 2009), pp. 237–256.

Children – books

Cantwell, Nigel and Hlozscheiter, Anna. *A commentary on the United Nations Convention on the Rights of the Child, article 20: children deprived of their family environment*. Leiden; Boston: M. Nijhoff, 2008, 68 pp.

Dupuy, Kendra E. and Peters, Krijn; foreword by Ishmael Beah. *War and children: a reference handbook*. Santa Barbara: Praeger Security International, 2010, Contemporary military, strategic, and security issues series, 204 pp.

Gates, Scott and Reich, Simon (eds.). *Child soldiers in the age of fractured states*. Pittsburgh: University of Pittsburgh Press, 2010, The security continuum: global politics in the modern age series, 310 pp.

Jones, Gareth A. and Rodgers, Dennis (eds.). *Youth violence in Latin America: gangs and juvenile justice in perspective*. New York: Palgrave Macmillan, 2009, Studies of the Americas series, 234 pp.

Palomo Suárez, Gregoria. *Kindersoldaten und Völkerstrafrecht: die Strafbarkeit der Rekrutierung und Verwendung von Kindersoldaten nach Völkerrecht*. Berlin: Berliner Wissenschafts-Verlag, 2009, Berliner juristische Universitätschriften: Stafrecht, Bd. 35, 384 pp.

Von Schorlemer, Sabine. *Kindersoldaten und bewaffneter Konflikt: Nukleus eines umfassenden Schutzregimes der Vereinten Nationen*. Bern: Peter Lang, 2009, Dresdner Schriften zu Recht und Politik der Vereinten Nationen [Dresden papers on law and policy of the United Nations], Bd. 9, 408 pp.

Children – articles

Gilligan, Chris. ‘“Highly vulnerable”? Political violence and the social construction of traumatized children’, *Journal of Peace Research*, Vol. 46, No. 1 (2009), pp. 119–134.

Jacobson, Anna-Liisa. ‘Lambs into lions: the utilization of child soldiers in the war in Iraq and why international and Iraqi laws are failing to protect the innocent’, *Richmond Journal of Global Law and Business*, Vol. 8, Issue 2 (Winter 2008), pp. 161–194.

Conflict, violence, and security – books

Boniface, Pascal and Védrine, Hubert; cartographie Jean-Pierre Magnier. *Atlas des crises et des conflits*. Paris: A. Colin; Fayard, 2009, 125 pp.

Tanaka, Yuki and Young, Marilyn B. (eds.). *Bombing civilians: a twentieth-century history*. New York; London: The New Press, 2009, 291 pp.

Roberts, Ron (ed.). *Just war: psychology and terrorism*. Ross-on-Wye: PCCS Books, 2007, 272 pp.

Brooker, Paul. *Modern stateless warfare*. Basingstoke; New York: Palgrave Macmillan, 2010, 256 pp.

Gross, Michael L. *Moral dilemmas of modern war: torture, assassination, and blackmail in an age of asymmetric conflict*. Cambridge: Cambridge University Press, 2010, 321 pp.

Black, Jeremy. *Naval power: a history of warfare and the sea from 1500*. Basingstoke; New York: Palgrave Macmillan, 2009, 266 pp.

Van Baarda, Th. A. and Verweij, D. E. M. (eds.); foreword by Richard Dannett. *The moral dimension of asymmetrical warfare: counter-terrorism, democratic values and military ethics*. Leiden; Boston: Martinus Nijhoff, 2009, 529 pp.

Cavanaugh, William T. *The myth of religious violence: secular ideology and the roots of modern conflict*. Oxford: Oxford University Press, 2009, 285 pp.

Conflict, violence, and security – articles

Bakonyi, Jutta and Bliesemann de Guevara, Berit (eds.). ‘The mosaic of violence’, *Civil Wars*, Vol. 11, No. 4 (December 2009), pp. 397–538.

Davis, Diane E. ‘Non-state armed actors, new imagined communities, and shifting patterns of sovereignty and insecurity in the modern world’, *Contemporary Security Policy*, Vol. 30, No. 2 (August 2009), pp. 221–245.

Detention – books

Coyle, Andrew. *A human rights approach to prison management: handbook for prison staff*, 2nd edn. London: International Centre for Prison Studies, 2009, 168 pp.

Mabon, Armelle. *Prisonniers de guerre ‘indigènes’: visages oubliés de la France occupée*. Paris: La Découverte, 2010, 297 pp.

Mark, Graham. *Prisoners of war in British hands during WWI: a study of their history, the camps and their mails*. Great Britain: The Postal History Society, 2007, 258 pp.

Pastor Ruiz, Fátima. *El batallón minero n.º 1 en las minas de Vizcaya [Lehenengo meatze-batailoia bizkaido meategietan]*. Bilbao: Beta III Milenio; Bizkaia: Museo de la Minería del País Vasco, [2009?], Cuadernos de investigación minera [Meatze-ikerketak], 174 pp.

Scheipers, Sibylle (ed.). *Prisoners in war*. Oxford: Oxford University Press, 2010, 330 pp.

Detention – articles

Barnsby, Robert E. ‘Yes, we can: the authority to detain as customary international law’, *Military Law Review*, Vol. 202 (Winter 2009), pp. 53–90.

Letnar Cernic, Jernej. ‘Fundamental guarantees in armed conflict in the Slovenian context: lessons learnt?’, *Slovenian Law Review*, Vol. 6 (2009), pp. 203–222.

Jones, Heather. 'International or transnational? Humanitarian action during the First World War', *European Review of History [Revue européenne d'histoire]*, Vol. 16, No. 5 (October 2009), pp. 697–713.

Olson, Laura M. 'Guantanamo habeas review: are the D.C. district court's decisions consistent with IHL internment standards?', *Case Western Reserve Journal of International Law*, Vol. 42, Nos. 1–2 (2009), pp. 197–243.

Economy – books

Cohen, Marc J. and Garrett, James L. *The food price crisis and urban food (in)security*. London: International Institute for Environment and Development; New York: United Nations Population Fund, August 2009, Urbanization and emerging population series, 36 pp.

Estival, Jean-Pierre. *Le marché mondial des ressources: la guerre fait rage*. Paris: L'Harmattan, 2009, 246 pp.

Environment – books

Dodds, Felix, Higham, Andrew and Sherman, Richard (eds.); foreword by Achim Steiner. *Climate change and energy insecurity: the challenge for peace, security and development*. London; Sterling, VA: Earthscan, 2009, 282 pp.

Gemenne, François. *Géopolitique du changement climatique*. Paris: Armand Colin, 2009, Perspectives géopolitiques, 254 pp.

Humphreys, Stephen (ed.); foreword by Mary Robinson. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010, 348 pp.

ICRC. *Technical review: borehole drilling and rehabilitation under field conditions*. Référence, Geneva: ICRC, February 2010, 126 pp.

Lasserre, Frédéric; préface de Michel Rocard. *Ecologie, irrigation, diplomatie, comment éviter les guerres de l'eau: l'eau au coeur des conflits du XXIe siècle*. Paris: Ed. Delavilla, 2009, 261 pp.

Péclard, Didier (ed.); with contribution by Christine Bichsel et al. *Environmental peacebuilding: managing natural resource conflicts in a changing world: Swisspeace annual conference 2007*. Bern: Swisspeace, 2009, 31 pp.

Environment – articles

Lujala, Päivi. 'The spoils of nature: armed civil conflict and rebel access to natural resources', *Journal of Peace Research*, Vol. 47, No. 1 (January 2010), pp. 15–28.

Mazo, Jeffrey. 'Climate conflict: how global warming threatens security and what to do about it', *Adelphi*, No. 409 (2010), 166 pp.

Peterson, Ines. 'The natural environment in times of armed conflict: a concern for international war crimes law?' *Leiden Journal of International Law*, Vol. 22, Issue 2 (2009), pp. 325–343.

Geopolitics – books

- Bedford, Sofie. *Islamic activism in Azerbaijan: repression and mobilization in a post-Soviet context*. Stockholm: Stockholm University, 2009, 229 pp.
- Branche, Raphaëlle. *L'embuscade de Palestro: Algérie 1956*. Paris: A. Colin, 2010, Le fait guerrier, 256 pp.
- ICRC. *Summary report: Afghanistan, Colombia, Democratic Republic of the Congo, Georgia, Haiti, Lebanon, Liberia and the Philippines: opinion survey and in-depth research, 2009*. Geneva: Ipsos/ICRC, December 2009, Reference (ICRC), 121 pp. + 1 CD-ROM.
- Jackson, Ashley. *The cost of war: Afghan experiences of conflict, 1978–2009*. [Oxford]: OXFAM, 2009, 52 pp.
- Maccaglia, Fabrizio and Matard-Bonucci, Marie-Anne; cartographie Alexandre Nicolas. *Atlas des mafias: acteurs, trafics et marchés de la criminalité organisée*. Paris: Autrement, 2009, Atlas/Monde, 80 pp.
- Nawaz, Shuja. *Crossed swords: Pakistan, its army, and the wars within*. Oxford: Oxford University Press, 2008, 655 pp.
- Shlaim, Avi. *The iron wall: Israel and the Arab world*. London: Penguin Books, 2001, 670 pp.

Geopolitics – articles

- Bellamy, Alex J. and Davies, Sara E. 'The responsibility to protect in the Asia-Pacific region', *Security Dialogue*, Vol. 40, No. 6 (December 2009), pp. 547–574.
- Breton-Le Goff, Gaëlle. 'Ending sexual violence in the Democratic Republic of the Congo', *Fletcher Forum of World Affairs*, Vol. 34, No. 1 (Winter 2010), pp. 13–40.
- Geremia, Maurizio et al. 'Humanitarian action in Colombia', *Humanitarian Exchange*, No. 45 (December 2009), pp. 2–19.
- Kessler, Gabriel (coord.). 'Crime organisé et violences', *Problèmes d'Amérique Latine*, No. 76 (printemps 2010), pp. 7–93.
- Makinsky, Michel et al. 'L'Iran et le Moyen-Orient', *Maghreb Machrek*, No. 201 (automne 2009), pp. 13–89.
- Picciotto, Robert and Fukuda-Parr, Sakiko (eds.). 'Conflict prevention and development co-operation in Africa', *Conflict, Security and Development*, Vol. 10, No. 1 (March 2010), 188 pp.
- Stevenson, Jonathan. 'Jihad and piracy in Somalia', *Survival*, Vol. 52, No. 1 (February–March 2010), pp. 27–38.

Health/Medicine – books

- Sanz, Pilar León (ed.). *Health institutions at the origin of the welfare systems in Europe*. Pamplona: Ediciones Universidad de Navarra, 2010, Astrolabio – Salud series, 197 pp.

Health/Medicine – articles

Avril, Jacqueline et al. 'Health risks and risk-taking behaviors among International Committee of the Red Cross (ICRC) expatriates returning from humanitarian missions', *Journal of Travel Medicine*, Vol. 16, No. 6 (2009), pp. 382–390.

Buhmann, Caecilie et al. 'The roles of the health sector and health workers before, during and after violent conflict', *Medicine, Conflict and Survival*, Vol. 26, No. 1 (January–March 2010), pp. 4–23.

History – books

Il crinale dei crinali: la battaglia di Solferino e San Martino/a cura di Costantino Cipolla. Milano: F. Angeli, 2009, Laboratorio sociologico: sociologia e storia, 623 pp.

Il crinale della vittoria: la battaglia di Solferino e San Martino vista dal versante francese/a cura di Costantino Cipolla e Angiolino Bignotti. Milano: F. Angeli, 2009, Laboratorio sociologico: sociologia e storia, 498 pp.

L'altro crinale: la battaglia di Solferino e San Martino letta dal versante austriaco/a cura di Costantino Cipolla e Pia Dusi. Milano: F. Angeli, 2009, Laboratorio sociologico: sociologia e storia, 637p.

Sul crinale: la battaglia di Solferino e San Martino vissuta dagli italiani/a cura di Costantino Cipolla e Matteo Bertaiola. Milano: F. Angeli, 2009, Laboratorio sociologico: sociologia e storia, 434 pp.

Versluys, Karen. *When lines become crossed: how the British government shaped the British Red Cross' humanitarian aid efforts during World War II*. Saarbrücken: VDM Verlag Dr. Müller, 2008, 120 pp.

Human rights – books

Flauss, J.-F. (ed.). *La protection internationale des droits de l'homme et les droits des victimes [International protection of human rights and victims' rights]*. Publications de l'Institut International des Droits de l'Homme; Institut René Cassin de Strasbourg. Bruxelles: Bruylant, 2009, 264 pp.

Human Rights Watch. *Human Rights Watch world report 2010: events of 2009*. New York: Human Rights Watch, 2010, 612 pp.

Jovanovic, Miodrag A. and Krstic, Ivana (eds.). *Human rights today: 60 years of the Universal Declaration*. Utrecht: Eleven International, 2010, 210 pp.

Krause, Catarina and Scheinin, Martin (eds.). *International protection of human rights: a textbook*. Turku: Abo Akademi University, 2009, 677 pp.

Sous la direction de Jean-Pierre Marguénaud et Hélène Pauliat; contributions de Laurence Burgorgue-Larsen et al. *Les droits de l'homme face à la guerre: d'Oradour à Srebrenitsa. Thèmes et commentaires: actes*. Paris: Dalloz, 2009, 235 pp.

Seibert-Fohr, Anja. *Prosecuting serious human rights violations*. Oxford: Oxford University Press, 2009, 326 pp.

Van Leeuwen, Fleur. *Women's rights are human rights: the practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights*. Antwerp: Intersentia, 2010, School of Human Rights Research series, Vol. 36, 318 pp.

Human rights – articles

Buyse, Antoine. 'A legal minefield: the territorial scope of the European Convention', *Inter-American and European Human Rights Journal* [*Revista Interamericana y Europea de derechos humanos*], Vol. 1, No. 2 (2008), pp. 269–296.

Coriolano, Mario. 'Torture prevention network: topics for planned action', *Humanitäres Völkerrecht: Informationsschriften* [*Journal of International Law of Peace and Armed Conflict*], Vol. 22, No. 4 (2009), pp. 194–199.

De Vito, Daniela, Gill, Aisha and Short, Damien. 'Rape characterised as genocide', *International Journal of Human Rights*, Year 6, No. 10 (June 2009), pp. 29–51.

Esteve Molto, José Elías. 'El derecho internacional y la protección de los derechos y libertades en los territorios ocupados', in *Uso de la fuerza y protección de los derechos humanos en un nuevo orden internacional*. Valencia: Tirant Lo Blanch, 2006, pp. 173–201.

Gilligan, Michael J. and Nesbitt, Nathaniel H. 'Do norms reduce torture?', *Journal of Legal Studies*, Vol. 38, No. 2 (June 2009), pp. 445–470.

Hendin, Stuart. 'Extraterritorial application of human rights: the differing decisions of Canadian and UK courts', *Windsor Review of Legal and Social Issues* [*Revue des affaires juridiques et sociales de Windsor*], Vol. 28 (January 2010), pp. 57–86.

Kälin, Andreas. 'Die Frage des Rechts auf Sezession und die Anerkennung von aus (einseitigen) Sezessionen hervorgegangenen neuen Staaten', *Revue suisse de droit international et européen* [*Schweizerische Zeitschrift für internationales und europäisches Recht*], No. 4 (2009), pp. 481–498.

Murdie, Amanda and Davis, David R. 'Problematic potential: the human rights consequences of peacekeeping interventions in civil wars', *Human Rights Quarterly*, Vol. 32, No. 1 (February 2010), pp. 49–72.

Olson, Laura M. 'Practical challenges of implementing the complementarity between international humanitarian and human rights law: demonstrated by the procedural regulation of internment in non-international armed conflict', *Case Western Reserve Journal of International Law*, Vol. 40, No. 3 (2009), pp. 437–431.

Ryngaert, Cedric. 'Human rights obligations of armed groups', *Revue belge de droit international*, Vol. 41, Nos. 1–2 (2008), pp. 355–381.

Vermeulen, Marthe Lot. "'Living beyond death": torture or other ill-treatment claims in enforced disappearances cases', *Inter-American and European Human Rights Journal* [*Revista Interamericana y Europea de derechos humanos*], Vol. 1, No. 2 (2008), pp. 159–198.

Humanitarian aid – books

Bailey, Sarah et al. *Early recovery: an overview of policy debates and operational challenges*. HPG working paper. London: Overseas Development Institute, November 2009, 21 pp.

Borton, John. *Future of the humanitarian system: impacts of internal changes*. Medford, MA: Feinstein International Center; London: King's College, November 2009, 108 pp.

Feinstein International Center, Humanitarian Futures Programme. *Humanitarian horizons: a practitioners' guide to the future*. Medford, MA: Feinstein International Center, January 2010, 50 pp.

ICRC. *Professional standards for protection work: carried out by humanitarian and human rights actors in armed conflict and other situations of violence*. Geneva: ICRC, October 2009, Reference (ICRC) series, 80 pp.

Khan, Shanza and Najam, Adil. *The future of globalization and its humanitarian impacts*. Medford, MA: Feinstein International Center; London: King's College, November 2009, 77 pp.

Transparency International; foreword by Christiaan Poortman. *Preventing corruption in humanitarian operations: handbook of good practices*. Berlin: Transparency International, 2010, 164 pp. + 1 CD-ROM.

Humanitarian aid – articles

Barnett, Michael. 'Evolution without progress? Humanitarianism in a world of hurt', *International Organization*, Vol. 63, No. 4 (Fall 2009), pp. 621–663.

Dijkzeul, Dennis, Herman, Joost and Hilhorst, Dorothea (eds.), in collaboration with Alex de Waal et al. 'The social dynamics of humanitarian action', *Disasters*, Vol. 34, Supplement 2 (April 2010), pp. 127–273.

Mégret, Frédéric. 'Beyond the "salvation" paradigm: responsibility to protect (others) vs the power of protecting oneself', *Security Dialogue*, Vol. 40, No. 6 (December 2009), pp. 575–595.

Seybolt, Taylor B. 'Harmonizing the humanitarian aid network: adaptive change in a complex system', *International Studies Quarterly*, Vol. 53, No. 4 (December 2009), pp. 1027–1050.

ICRC/International Movement of the Red Cross and Red Crescent – books

Berger, Jean-François; préface de Sonia Zoran. *Eclats de mémoire(s): souvenirs d'employés du CICR en ex-Yougoslavie (1991–2001)*. Vevey: L'Aire; Genève: CICR, 2010, 269 pp.

Chaponnière, Corinne; préface de Rony Brauman. *Henry Dunant: la croix d'un homme*. Paris: Perrin, 2010, 519 pp.

Dunant, J. Henry. *Un souvenir de Solférino*. Edizione italiana a cura di Costantino Cipolla e Paolo Vanni con testo originale a fronte. Milano: Franco Angeli, 2009, Laboratorio sociologico, 320 pp.

ICRC/International Movement of the Red Cross and Red Crescent – articles

Brinkmann, Uwe and van Schewick, Florian. 'Zielscheibe Rotes Kreuz', *Neue Zeitschrift für Wehrrecht*, No. 5 (2009), pp. 177–183.

International criminal law – books

Andersen, Elizabeth and Crane, David M. (eds.). *Proceedings of the Second International Humanitarian Law Dialogs, August 25–26, 2008 at the Chautauqua Institution*. Washington, DC: The American Society of International Law, 2009, Studies in transnational legal policy, no. 40, 275 pp.

Byron, Christine. *War crimes and crimes against humanity in the Rome Statute of the International Criminal Court*. Manchester: Manchester University Press; New York: Palgrave Macmillan, 2009, Melland Schill studies in international law series, 285 pp.

Kolb, Robert, avec la collaboration de Philip Grant et al. *Droit international pénal: précis*. Bâle: Helbing Lichtenhahn; Bruxelles: Bruylant, 2008, Collection de droit international public, 488 pp.

Fourcans, Claire. *Les violences sexuelles devant les juridictions pénales internationales*. Lille: Atelier national de reproduction des thèses, 574 pp. Thèse, U.F.R. de sciences juridiques et politiques, Section droit public, Université Paris X – Nanterre, présentée et soutenue publiquement le 5 novembre 2007.

Ryngaert, Cedric (ed.). *The effectiveness of international criminal justice*. Portland: COST; Antwerp: Intersentia, 2009, 278 pp.

Schabas, William A. *The International Criminal Court: a commentary on the Rome statute*. Oxford: Oxford University Press, 2010, Oxford commentaries on international law series, 1259 pp.

Stahn, Carsten and van den Herik, Larissa (eds.). *Future perspectives on international criminal justice*. The Hague: T.M.C. Asser, 2010, 693 pp.

International criminal law – articles

Clark, Roger S. 'Building on article 8(2)(b)(xx) of the Rome statute of the International Criminal Court: weapons and methods of warfare', *New Criminal Law Review*, Vol. 12, No. 3 (Summer 2009), pp. 366–389.

Clark, Roger S. et al. 'The codification of the crime of aggression', *European Journal of International Law*, Vol. 20, No. 4 (November 2009), pp. 1101–1146.

Gillett, Matthew et al. 'The Special Tribunal for Lebanon kicks off', *Journal of International Criminal Justice*, Vol. 7, No. 5 (November 2009), pp. 885–944.

de Hemptinne, Jérôme. 'La définition de la notion de "population civile" dans le cadre du crime contre l'humanité: commentaire critique de l'arrêt Martić', *Revue générale de droit international public*, T. 114, No. 1 (2010), pp. 93–104.

Young, Rebecca. 'How do we know them when we see them? The subjective evolution in the identification of victim groups for the purpose of genocide', *International Criminal Law Review*, Vol. 10, No. 1 (2010), pp. 1–22.

International humanitarian law: generalities – books

David, Eric, Tulkens, Françoise, and Vandermeersch, Damien, avec la collaboration de Sylvie Ruffenach. *Code de droit international humanitaire: textes réunis au 1er janvier 2010*. 4^e éd. à jour au 1er janvier 2010. Bruxelles: Bruylant, 2010, Codes en poche, 972 pp.

Deyra, Michel. *Le droit dans la guerre*. Paris: Gualino, 2009, Master pro, 283 pp.

Quénivet, Noëlle and Shah-Davis, Shilan (eds.). *International law and armed conflict: challenges in the 21st century*. The Hague: T.M.C. Asser Press, 2010, 434 pp.

International humanitarian law: generalities – articles

Eden, Paul et al. 'The relationship between international humanitarian law and international human rights law', *Journal of Conflict and Security Law*, Vol. 14, No. 3 (Winter 2009), pp. 441–527.

Lewis, Dustin A. 'Unrecognized victims: sexual violence against men in conflict settings under international law', *Wisconsin International Law Journal*, Vol. 27, No. 1 (2009), pp. 1–49.

Spieker, Heike. '60 Jahre Genfer Abkommen: können wir uns einen Verzicht auf die Genfer Abkommen leisten?' *Humanitäres Völkerrecht: Informationsschriften [Journal of International Law of Peace and Armed Conflict]*, Vol. 22, No. 4 (2009), pp. 206–208.

Wijffels, Alain *et al.*; voorwoord Nik de Boer en Jacob Giltaij. 'Oorlog en recht', *Ars aequi*, Jaargang 58, 07/08 (juli/augustus 2009), pp. 433–520.

International humanitarian law: conduct of hostilities – books

Henderson, Ian. *The contemporary law of targeting: military objectives, proportionality and precautions in attack under Additional Protocol I*. Leiden; Boston: Nijhoff, 2009, International humanitarian law series, Vol. 25, 266 pp.

International humanitarian law: conduct of hostilities – articles

Akande, Dapo. 'Clearing the fog of war? The ICRC's interpretive guidance on direct participation in hostilities', *International and Comparative Law Quarterly*, Vol. 59, No. 1 (January 2010), pp. 180–192.

Ballestero, Manon. 'Les boucliers humains volontaires: des civils ne participant pas directement aux hostilités?' *Revue belge de droit international*, Vol. 41, Nos. 1–2 (2008), pp. 265–291.

Giladi, Rotem. "'Undercover' operations and IHL advocacy in the Occupied Palestinian Territories", *Journal of Conflict and Security Law*, Vol. 14, No. 3 (Winter 2009), pp. 393–439.

Hayashi, Nobuo. 'Requirements of military necessity in international humanitarian law and international criminal law', *Boston University International Law Journal*, Vol. 28, Issue 1 (2010), pp. 39–140.

Jenks, Chris. 'Law from above: unmanned aerial systems, use of force, and the law of armed conflict', *North Dakota Law Review*, Vol. 85, No. 3 (2009), pp. 649–671.

Plaw, Avery. 'Upholding the principle of distinction in counter-terrorist operations: a dialogue', *Journal of Military Ethics*, Vol. 9, No. 1 (2010), pp. 3–22.

International humanitarian law: implementation – articles

Dörmann, Knut and Geiss, Robin. 'The implementation of grave breaches into domestic legal orders', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 703–722.

Ferdinandusse, Ward. 'The prosecution of grave breaches in national courts', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 723–741.

Fleck, Dieter. 'Shortcomings of the grave breaches regime', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 833–854.

Henckaerts, Jean-Marie. 'The grave breaches regime as customary international law', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 683–702.

Kress, Claus. 'Reflections on the ludicre limb of the grave breaches regime', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 789–809.

Meyer, Michael and Garraway, Charles. 'The Geneva Conventions and United Nations personnel (protocols) act 2009: a move away from the minimalist approach', *International and Comparative Law Quarterly*, Vol. 59, No. 1 (January 2010), pp. 171–180.

Moir, Lindsay. 'Grave breaches and internal armed conflicts', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 763–787.

O'Keefe, Roger. 'The grave breaches regime and universal jurisdiction', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 811–832.

Roberts, Ken. 'The contribution of the ICTY to the grave breaches regime', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 743–762.

Sandoz, Yves. 'The history of the grave breaches regime', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 657–682.

Stewart, James G. 'The future of the grave breaches regime: segregate, assimilate or abandon?', *Journal of International Criminal Justice*, Vol. 7, No. 4 (September 2009), pp. 855–877.

International humanitarian law: law of occupation – books

Amirante, Aldo. *Occupazione bellica: quale ruolo per un istituto del diritto internazionale classico nel diritto internazionale moderno*. Napoli; Roma: Edizioni Scientifiche Italiane, 2007, Pubblicazioni della Facoltà di studi politici e per l'alta formazione europea e mediterranea 'Jean Monnet' della Seconda Università degli studi di Napoli, quaderni 19, 196 pp.

International humanitarian law: law of occupation – articles

Mégret, Frédéric. 'Grandeur et déclin de l'idée de résistance à l'occupation: réflexions à propos de la légitimité des "insurgés"', *Revue belge de droit international*, Vol. 41, Nos. 1–2 (2008), pp. 382–425.

Poissonnier, Ghislain and Osseland, Pierre. 'Les colonies israéliennes de Cisjordanie en droit international', *Revue générale de droit international public*, T. 114, No. 1 (2010), pp. 63–92.

International humanitarian law: types of actor – books

Clapham, Andrew. *The rights and responsibilities of armed non-state actors: the legal landscape and issues surrounding engagement*. Genève: Académie de droits humains, February 2010, 45 pp.

Crawford, Emily. *The treatment of combatants and insurgents under the law of armed conflict*. Oxford: Oxford University Press, 2010, 213 pp.

de Tomás Morales, Susana. *Las operaciones de mantenimiento de la paz y el derecho internacional humanitario*. Madrid: Dykinson, 2009, 277 pp.

International humanitarian law: types of actor – articles

Bangura, Mohamed A. 'Prosecuting the crime of attack on peacekeepers: a prosecutor's challenge', *Leiden Journal of International Law*, Vol. 23, No. 1 (2010), pp. 165–181.

Sossai, Mirko. 'Status of private military companies' personnel in the laws of war: the question of direct participation in hostilities', *The Italian Yearbook of International Law*, Vol. 18 (2008), pp. 89–115.

Tonkin, Hannah. 'Common article I: a minimum yardstick for regulating private military and security companies', *Leiden Journal of International Law*, Vol. 22, No. 4 (2009), pp. 779–799.

International humanitarian law: type of conflict – books

Higgins, Noelle. *Regulating the use of force in wars of national liberation: the need for a new regime: a study of the South Moluccas and Aceh*. Leiden; Boston: M. Nijhoff, 2010, International humanitarian law series, vol. 28, 266 pp.

Palojärvi, Pia. *A battle in bits and bytes: computer network attacks and the law of armed conflict*. Helsinki: The Erik Castrén Institute of international law and human rights, 2009, Erik Castrén research reports, No. 27, 186 pp.

Peterke, Sven. *Rio de Janeiros 'Drogenkrieg' im Lichte der Konfliktforschung und des Völkerrechts: eine Fallstudie zur Behandlung organisierter bewaffneter Gewalt*. Berlin: Berliner Wissenschafts-Verlag, 2009, Bochumer Schriften zur Friedenssicherung und zum humanitären Völkerrecht, Bd. 60, 124 pp.

International humanitarian law: type of conflict – articles

Küfner, Stefanie. 'The threshold of non-international armed conflict: the Tadic formula and its first criterion intensity', *Militair-rechtelijk Tijdschrift*, Vol. 102, Issue 6 (2009), pp. 301–311.

Ohlenschloeger Buhl, Kenneth. 'Legalization of civil wars: the legal institutionalization of non-international armed conflicts', *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 8, Issue 1 (2009), pp. 1–33.

Perilleux, Jonas. 'L'interprétation des notions de "conflit armé interne" et de "violence aveugle" dans le cadre de la protection subsidiaire: le droit international humanitaire est-il une référence obligatoire?', *Revue belge de droit international*, Vol. 42, No. 1 (2009), pp. 113–143.

International organization – articles

Wasinski, Christophe et al.; introduction par David Ambrosetti, Yves Buchet de Neuilly. 'Crises et organisations internationales', *Cultures et conflits*, No. 75 (hiver 2009), pp. 7–122.

Media – articles

Griffin, Michael. 'Media images of war', *Media, War and Conflict*, Vol. 3, No. 1 (April 2010), pp. 7–41.

Missing – books

ICRC. *Missing people, DNA analysis and identification of human remains: a guide to best practice in armed conflicts and other situations of armed violence*, 2nd edn. Geneva: ICRC, November 2009, 47 pp.

ICRC and Inter-Parliamentary Union. *Missing persons: a handbook for parliamentarians*. Geneva: ICRC; Inter-Parliamentary Union, 2009, Handbook for parliamentarians, No. 1792 pp.

Office of the United Nations High Commissioner for Human Rights. *Enforced or involuntary disappearances*. Geneva: Office of the United Nations High Commissioner for Human Rights, 2010, Human rights fact sheet No. 6/rev. 3, 68 pp.

Missing – articles

McDonald, Collin. 'Reconciling Holocaust scholarship and personal data protection: facilitating access to the International Tracing Service Archive', *Fordham International Law Journal*, Vol. 30, No. 4 (April 2007), pp. 1360–1391.

Peace – books

Chetail, Vincent (ed.). *Lexique de la consolidation de la paix*. Collection de l'Académie de droit international humanitaire et de droits humains à Genève. Bruxelles: Bruylant, 2009, 574 pp.

Protection of cultural property – articles

Van Der Auwera, Sigrid. 'Peace operations and the protection of cultural property during and after armed conflict', *International Peacekeeping*, Vol. 17, No. 1 (February 2010), pp. 3–16.

Public international law – books

Bailliet, Cecilia M. *Security: a multidisciplinary normative approach*. Leiden; Boston: M. Nijhoff, 2009, International humanitarian law series, Vol. 26, 383 pp.

Boisson de Chazournes, Laurence and Kohen, Marcelo (eds.). *International law and the quest for its implementation [Le droit international et la quête de sa mise en oeuvre: liber amicorum Vera Gowlland-Debbas]*. Leiden; Boston: Brill, 2010, 513 pp.

Giegerich, Thomas (ed.); Heinz, Ursula E. (assistant ed.). *A wiser century? Judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference*. Berlin: Duncker and Humblot, 2009, Veröffentlichungen des

Walther-Schücking-Institut für internationales Recht an der Universität Kiel, Bd. 173, 522 pp.

Moir, Lindsay. *Reappraising the resort to force: international law, jus ad bellum and the war on terror*. Oxford; Portland: Hart, 2010, Studies in international law, Vol. 27, 176 pp.

Public international law – articles

de Wijk, Rob, Anderson, David M. and Haines, Steven. ‘The new piracy: three contexts: [global, local and legal]’, *Survival*, Vol. 52, No. 1 (February–March 2010), pp. 39–54.

Le Boeuf, Romain. ‘La saisine de la Cour internationale de justice pour faits de guerre’, *Revue belge de droit international*, Vol. 42, No. 1 (2009), pp. 52–77.

Roscini, Marco. ‘Neighbourhood watch? The African Great Lakes pact and ius ad bellum’, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 69 (2009), pp. 931–959.

Refugees, displaced persons – books

Collinson, Sarah et al. *Realising protection: the uncertain benefits of civilian, refugee and IDP status*. London: Overseas Development Institute, September 2009, HPG report, No. 28, 62 pp.

International Organization for Migration and Permanent Mission of Greece. *Climate change, environmental degradation and migration: addressing vulnerabilities and harnessing opportunities* [Changements climatiques, dégradation de l’environnement et migrations: remédier aux faiblesses et saisir les opportunités] [El cambio climático, la degradación del medio ambiente y la migración: qué hacer ante las circunstancias de vulnerabilidad de la población y cómo aprovechar las oportunidades de solventar el problema]. Geneva: IOM: The Permanent Mission of Greece, 2009, 99 pp.

Norwegian Refugee Council. *Climate changed: people displaced: a thematic report from the Norwegian Refugee Council*. Oslo: Norwegian Refugee Council, 2009, 39 pp.

United Nations High Commissioner for Refugees. *Handbook for emergencies*, 3rd edn. Geneva: UNHCR, February 2007, 582 pp.

Refugees, displaced persons – articles

Derderian, Katharine et al. ‘Human rights of people on the move: migrants and refugees’, *International Journal of Human Rights*, Bibliographies, Year 6, No. 10 (June 2009), pp. 105–202.

Mulugeta Abebe, Allehone. 'Displacement of civilians during armed conflict in the light of the case law of the Eritrea–Ethiopia Claims Commission', *Leiden Journal of International Law*, Vol. 22, No. 4 (2009), pp. 823–851.

Tibajjuka, Anna et al. 'Urban displacement', *Forced Migration Review*, Issue 34 (February 2010), pp. 4–49.

Religion – books

Durward, Rosemary and Marsden, Lee. *Religion, conflict and military intervention*. Farnham; Burlington, VA: Ashgate, 2009, 186 pp.

Meriboute, Zidane. *Islamisme, soufisme, évangélisme: la guerre ou la paix*. Genève: Labor et Fides, 2010, 287 pp.

Terrorism – books

Baud, Jacques. *Djihad: l'asymétrie entre fanatisme et incompréhension*. Panazol: Lavauzelle, 2009, Renseignement, histoire et géopolitique: études, 185 pp.

Ginbar, Yuval. *Why not torture terrorists? Moral, practical, and legal aspects of the 'ticking bomb' justification for torture*. Oxford: Oxford University Press, 2010, 436 pp.

Lehto, Marja. *Indirect responsibility for terrorist acts: redefinition of the concept of terrorism beyond violent acts*. Leiden; Boston: M. Nijhoff, 2009, The Erik Castrén Institute monographs on international law and human rights, Vol. 10, 487 pp.

Terrorism – articles

Kellman, Barry. 'An international criminal law approach to bioterrorism', *Harvard Journal of Law and Public Policy*, Vol. 25, No. 2 (Spring 2002), pp. 721–742.