Editorial:
Human Rights Crisis in Syria

In April 1946, the international community witnessed the birth of the Syrian Arab Republic or Syria as an independent parliamentary republic when it gained independence from France. After a number of military coups and coup attempts, Hafez al-Assad became President of Syria in 1971 and in the year 2000 his son Bashar al-Assad took over the presidential post. Under the authoritarian regime of Bashar al-Assad, the ruling Baath party appears to dominate all branches of the government and has far-reaching control over political, social and economic life of Syrian society. In February 2011, the wave of unrest manifested itself in various demonstrations and protests calling for democratic reform, but they were dispersed with excessive force by the al-Assad regime. Eventually, the Syrian civil war broke out in March 2011 and one and a half year later there seems to be no end to the internal armed conflict in sight in this small country of Sham or the Levant region.

Concerned with the human rights situation in Syria, the Human Rights Council appointed the Commission of Inquiry on Syria in September 2011 to investigate all alleged human rights violations that took place since the beginning of the uprising, to establish facts and circumstances of these breaches and identify perpetrators. The first report of the Commission from November 2011 established a wide array of violations of international human rights law committed by Syrian military and security forces and militia. Those breaches included such acts as excessive use of force and extrajudicial executions, arbitrary detentions, enforced disappearances, torture and other forms of ill-treatment, sexual violence, displacement and restriction of movement and violations of children’s rights and economic and social rights. Remarkably, the Commission went so far as to address the question of international responsibility and concluded that Syria had failed to comply with its human rights obligations and is therefore responsible for all wrongful acts, including crimes against humanity, committed by the personnel of its military and security forces.

The Commission’s second report from February 2012 indicated that the human rights situation in Syria has deteriorated since November 2011. The Syrian population experienced great suffering not only due to the catastrophic explosion of violence, but also several socio-economic problems it had to face. The government was found to have manifestly failed to protect Syrian people who were subjected to widespread, systematic and gross human rights violations. According to the Commission, the disunity of the international community on this issue and on the possibilities to end the violent standoff between the Bashar al-Assad regime and the rebel opposition significantly impedes the process of resolving the conflict. Some governments, such as Turkey and the United States, condemned the Syrian government’s use of force and imposed economic and other sanctions, while Qatar, Saudi Arabia, Bahrain, Tunisia and other States urgently recalled their ambassadors from Syria. There were also governments that were criticized for supporting the
Syrian regime and being reluctant to condemn its actions: Russia was fiercely against any form of ultimatums or sanctions insisting on using political means. In its report, the Commission called for an end to human rights violations and related impunity and recommended the initiation of an inclusive political dialogue among all parties to the conflict in order to bring the violence to an end, ensure promotion and respect for human rights and comply with legitimate demands of the Syrian population.

In February 2012, the former United Nations Secretary-General Kofi Annan was appointed as a Joint Special Envoy of the United Nations and the League of Arab States on the Syrian crisis according to the U.N. General Assembly resolution A/RES/66/253 and as a result of the dialogue between the U.N. Secretary-General Ban Ki-Moon and the Secretary-General of the League of Arab States Nabil Elaraby. One month later, a six-point peace plan calling for, inter alia, political dialogue, cessation of all forms of violence by all parties to the conflict and respect for human rights was submitted to the U.N. Security Council. The use of violence, however, remained during the coming months and even escalated into the Houla massacre in May 2012, in which more than hundred people were killed.

Being unable to calm the crisis and accomplish his “mission impossible”, Kofi Annan announced his resignation as peace envoy to Syria on 2 August 2012, while his mandate was to expire on 31 August. Although the United Nations officials did everything in their capacity to pave the way for the compliance of the parties to the conflict with the peace plan and there seemed to be some acceptance of its points, the implementation of the plan by those engaged in the hostilities has proved to be a major failure. The current U.N. Secretary-General noted that “the hand extended to turn away from violence in favour of dialogue and diplomacy – as spelled out in the six-point plan – has not been not taken, even though it still remains the best hope for the people of Syria.” Not only increasing levels of violence exercised by both forces loyal to the President and the opposition, but also the lack of unity in the U.N. Security Council made it impossible to find a solution to the Syrian crisis in accordance with the six-point peace plan. Kofi Annan further expressed his view that a form of “serious, purposeful and united international pressure”, also stemming from the powers within the region, is highly needed for the initiation of a political process between parties to the armed conflict. In August 2012, the noble tasks of the former U.N. Secretary-General have been entrusted to Dr. Lakhdar Brahimi who will have to facilitate peace and stability in Syria and promote human rights in this country torn by violence and chaos.

On 4 September 2012, the U.N. Secretary-General Ban Ki-moon appeared before the U.N. General Assembly in New York to report on the conflict in Syria. According to the eighth Secretary-General of the United Nations, the humanitarian situation in the country can only be described as grave and deteriorating. Given that the conflict is intensifying, he indicated the risk that it could spread to neighbouring countries, making it extremely difficult to find a political solution and restore peace and security. There are reports of various human rights violations committed by the armed opposition and government forces that fail to protect civilians and systematically breach rules of international humanitarian law. Ban Ki-moon specifically underlined the need to ensure accountability of individuals engaging in violations of human rights and the law of armed conflict. He urged the Syrian government and the opposition to cease all military activities, initiate a dialogue, protect civilian population and comply with rules and principles of international humanitarian and human rights law. Further, Ban Ki-moon called on the international community, especially countries from the region, the U.N. Security Council and the U.N. General Assembly to put an end to violence in Syria and resolve the conflict.

Important, the following day the U.N. Secretary-General engaged in a U.N. General Assembly informal interactive dialogue and presented his fourth report on the responsibility to protect (hereinafter: R2P). Having provided details on the concept and its main developments, Ban Ki-moon stressed that the R2P reaffirms State sovereignty as a positive responsibility of governments to protect their people. With regard to the situation in Syria, the General Assembly have referred to the concept in its resolutions, while the Human Rights Council, the High Commissioner for Human Rights and the two Special Advisers have also emphasized its importance. He said that the human rights situation in Syria was in fact an ultimate test to comply with the responsibility to protect that was clearly failed and that the resulting human cost is obvious: more than 18,000 people have died since the beginning of the civil war 18 months ago. As it was agreed on the 2005 World Summit, every State has the responsibility to protect its population from genocide, crimes against humanity and other international crimes. However, if a State is manifestly failing to perform this duty and to protect its population, the international community as a whole must be able to take a collective action in a timely and decisive way. Now, some might argue that the time has come for the international community and the United Nations to step in, face the responsibility to protect and end the Syrian conflict. In this respect, the U.N. Secretary-General Ban Ki-moon has wisely pointed out: “Words must become deeds. Promise must become practice.”

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Schedule of Activities

- 21 September 2012: research seminar School of Human Rights Research “Interaction Between Legal Systems in the Field of Human Rights” – Leiden University
- 27 September 2012: PhD defense Martine Boersma “Corruption: A Violation of Human Rights and a Crime under International Law?” – Maastricht University, Aula, Minderbroedersberg 4-6, Maastricht, 2.00 PM
- 8-12 October 2012: Seminar “Regional Approaches to Human Rights the protection of indigenous and tribal communities” – Tilburg University
- 10 October 2012: Lecture by Ruijin Dai “Domestic Application of CEDAW in China” – Utrecht University, Council Chamber, Achter Sint Pieter 200, Utrecht, 10.00 AM
- 11 October 2012: PhD defense Jeroen Blomsma “Mens rea and defences in European criminal law”- Maastricht University, Aula, Minderbroedersberg 4-6, Maastricht, 4.00 PM
- 22 October 2012: Lecture by Renwen Liu “The Prospects of the Reform of the the Death Penalty System in China” – Utrecht University, Kanunniken Room Academy Building, Domplein 29, Utrecht, 3.00 PM
- 16 November 2012: PhD defense Sarah Haverkort-Speekenbrink “European Non-Discrimination Law. A Comparison of EU Law and the ECHR in the Field of Non-Discrimination and Freedom of Religion in Public Employment” – Utrecht University, Senate Room Academy Building, Domplein 29, Utrecht, 10.30 PM
- 19 November 2012: Inaugural address Ton Liefaard (UNICEF Chair Children’s Rights) – Leiden University
- 19-23 November 2012: Seminar “Promoting human rights and peace, lessons from the front Lines” – Tilburg University
- 28 November 2012: Theo van Boven Lecture by Jan Egeland “Promoting human rights and peace, lessons from the front Lines” – Maastricht University
- 13 December 2012: 3rd Koningsberger Lecture by Sari Nusseibeh – Utrecht University, Academy Building, Domplein 29, Utrecht, 3.00 PM
- 15 January 2013: PhD defense Marcelle Reneman "The EU Right to an Effective Remedy and Asylum Procedures" – Leiden University, Academy Building, Rapenburg 73, Leiden, 4.15 PM
- 24-25 January 2013: Conference “The Shape of Diversity to Come: Global Community, Global Archipelago, or a New Civility?” - Erasmus University Rotterdam, Forumzaal (M-Building, M-3-15)
- 25 January 2013: Inaugural address William Schabas (Chair International Criminal Law and Human Rights) – Leiden University
Inaugural address Alette Smeulers: “By state order: Law-abiding criminals and international crimes”

On Friday 27 April 2012 Alette Smeulers delivered her inaugural address as Professor of International Criminology at the department of Criminal Law of Tilburg Law School.

The former Yugoslavian political leader Plavsic was sentenced to 11 years imprisonment for crimes against humanity committed during the Bosnian war, whereas an East Timorese foot soldier who was forced to kill two people was sentenced to 13 years imprisonment. According to Professor Smeulers, this is undesirable and does not contribute to the credibility of international criminal justice. Why is this undesirable and how could this be altered? That in fact is the central question of Professor Smeulers’ inaugural lecture.

She starts by defining international crimes as forms of massive, collective violence with extreme consequences that are criminalized at the international level (not necessarily at the national level too) and that are tried by international courts and tribunals. Professor Smeulers describes the various possible manifestations of such international crimes, which diverge from being committed by state actors by or without the state’s command, to being committed by non-state actors by or without the state’s command.

Law-abiding criminals

Particularly extraordinary are those situations in which the state itself not only initiates the commission of international crimes, but also uses its political power to legitimize the international crimes. Those situations are very likely to involve average citizens who are not driven by criminal motives per se, but rather by obedience and loyalty to their superiors. This phenomenon has already been commonly recognized amongst scholars. New in Professor Smeulers approach towards these law-abiding criminals, however, is that she undertakes the challenge to examine the consequences of this finding for the usefulness of traditional criminological theories as well as for the prosecution and adjudication of this type of offenders.

New (criminological) theories to be developed

From a criminological perspective, Professor Smeulers states that law-abiding criminals constitute a new type of offender. Traditional criminological theories do not fully suffice to explain their behavior because these traditional theories explain why people disobey the rules rather than why people obey the rules – which law-abiding criminals actually do. For that reason, these theories need to be adapted or new theories need to be developed in order to unravel the motives behind the acts of law-abiding criminals. With regard to this, Professor Smeulers expressly mentions the importance of social psychological insights.

Consequences for prosecution and adjudication

What should be the procedural consequences of Professor Smeulers’ finding that law-abiding criminals constitute a new type of offender in the context of international criminal law? According to her, the most important consequence should be that the offences committed by law-abiding criminals should not be automatically defined as international crimes. In other words, law-abiding criminals should not be automatically held responsible for the systematic and collective character of the crimes they have been involved in. Unless it appears that a law-abiding criminal himself has significantly contributed to the systematic, collective character of the acts, he should be prosecuted and tried the basis of the crimes he actually committed (e.g. 15 murders) without automatically being held responsible for the broader context (e.g. genocide) too. Professor Smeulers argues that this would do justice to the fact that it is the state that creates a political, institutional context in which average law-abiding citizens become involved in international crimes. From a broader perspective, this would contribute to the credibility of the international criminal justice system as a whole.

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Inaugural address Larissa van den Herik:
“Individualizing enforcement in international law - progress or peril?”

On 29 June 2012, Larissa van den Herik delivered her inaugural lecture as professor of public international law at Leiden University. Her address concerned the enforcement of international law. In particular, she discussed the development from the traditional decentralized state-oriented structure to a system in which centralized international institutions also target individuals. This radical change in the enforcement of international law calls for a critical examination of the theoretical underpinnings and current practice.

International law often has to defend itself against the criticism that it is not true law. As international law historically lacks an effective and coercive enforcement mechanism it can be nothing more than morality, so the argument goes. But the absence of a world police force does not mean that international law is not enforced at all. Indeed, the 1990s have witnessed major developments in this field, from the establishment of the World Trade Organization’s Dispute Settlement Mechanism, and the rise of investor-state arbitration, to the ‘reawakening’ of international criminal law. The Netherlands has been instrumental to this latter development, with The Hague as host city of the International Criminal Court, the International Tribunal for the Former Yugoslavia, the Special Court for Sierra Leone and the Special Tribunal for Lebanon. It is not a coincidence that Leiden University’s Grotius Centre on International Legal Studies is largely based in the "legal capital of the world", and that Professor Van den Herik spends much time here to do research.

The lecture both addressed the developments that led to the individualization of enforcement, and evaluated its current application. Two kinds of individualized enforcement can be distinguished: (1) individual criminal liability at the international criminal courts and tribunals, and (2) the sanctions mechanism of the United Nations Security Council. While the latter is often less in the spotlight than the former, Professor Van den Herik’s address focused primarily on this form of enforcement.

The Security Council now has 12 targeted sanction regimes in place, in relation to: Somalia/Eritrea, Iraq/Kuwait, Liberia, Ivory Coast, the Democratic Republic of Congo, Sudan, Lebanon, Libya, Iran, North Korea, Afghanistan and Al Qaeda. The characteristics of these regimes vary heavily. Some are imposed in response to the (alleged) development of nuclear weapons, while others respond to a particular civil conflict or, in the case of Al Qaeda, to the global threat of terrorism. But despite these differences, the regimes have in common that they are authorized on basis of the Security Council’s mandate to enforce peace, and that they contain lists of individuals who are the object of so-called ‘targeted sanctions’.

The reasons why a certain individual is listed thus do not (necessarily) depend on an assessment by the Security Council that he or she has violated international law, for instance by committing war crimes or grave human rights violations. Under the umbrella of peace enforcement, the Security Council has a wider discretion than when a specific instance of non-observance of law must be identified. Van den Herik: “Individuals can be listed because they obstruct the peace process, or the implementation thereof, or because they impede disarmament.” Some sanctions regimes may even list family members of the ‘primary’ targeted individual. The most recent example, albeit in the context of US and EU sanction regimes, is the Syrian first-lady Asma al-Assad. She has no formal role in the Syrian administration, but is subject to the same travel bans and asset freezing as her husband. Professor Van den Herik concludes that the UN sanctions regime intends to prevent rather than punish, by signalling to others that certain (anti-peaceful) behaviour is unacceptable. The measures are supposed to be preventive rather than punitive. This concept of UN sanctions thus vary from the ordinary meaning of sanctions, a term generally used to describe a measure that is direct reaction to a concrete violation of the law.

Building on the conclusion that UN sanctions are thus best qualified as ‘individualized enforcement measures’ rather than sanctions, Professor Van den Herik turned to the evolution of enforcement of international legal norms, to determine the historical benchmarks for progress. Three phases can be distinguished. The first commenced at the Congress of Vienna (1814-1815), where European states convened to discuss the outlook of the continent after the defeat of Napoleonic France. International law was, in the words of Professor Van den Herik, “a fully decentralized, horizontal system where States were the subject of law, they were also the legislators, they made the rules, and they were the law enforcers.” This period was characterized by the right of auto-interpretation, the system whereby States themselves judged whether a certain right had been observed or not. When it would reach a negative conclusion, the State could (unilaterally) resort to two responses: reprisals or war. The latter was a fully legitimate law-enforcement measure in this era of self-help. The Vienna system somewhat changed after the First World War when the League of Nations was established. International law became organized, and although auto-interpretation and self-help were not completely abandoned (war was still a legal enforcement measure) the League of Nations introduced some elements of centralization. The Charter obliged League members to try to settle disputes peacefully, and the Council of the League "could
coordinate and make recommendations as regards military measures, but it has not the power to issue binding decisions on the imposition and form of the sanctions."

In the second phase true centralization was reached. In 1945, the League of Nations was replaced by the United Nations. The UN Security Council was empowered with actual enforcement competences, detached from the traditional system of State-consent. The UN not only centralized, but also politicized enforcement. The fact that, as Van den Herik describes, "UN sanctions are primarily imposed to reinforce peace and not to reinforce the law," originated in the UN Charter which gives the Council an explicit mandate in this regard.

The end of the Cold War marked the beginning of phase three in the development of international law enforcement. The trend of individualization was launched on two separate tracks: the establishment of various international criminal courts and tribunals, and "the practice of imposing smart sanctions or targeted sanctions directly on individuals that posed a threat to peace." These individualized sanctions responded to the failure of state-oriented sanction regimes. The German reparations scheme post-World War I had already shown to be an enormous disaster. But also less severe comprehensive economic sanctions invoked much criticism, especially as their effects were often more felt by the innocent population than by the country's leadership. Fairness and human rights concerns were thus the basis for individualization of enforcement measures, and provide us with good benchmarks to assess the current system.

Professor Van den Herik then turned to the core of her address, the question whether individualized enforcement constitutes progress or peril. Both centralization and individualization were deemed benign developments at the time of their introduction. But the combination leads to some serious problems since the centralized UN system is not sophisticated enough to offer individuals sufficient guarantees against arbitrary measures. Enforcement without a clear legal basis and adequate procedures may lead to "Kafkaesque dynamics," according to Van den Herik. The most famous example hereof is the Kadi-case before the European Court of Justice. Mr. Kadi, a Saudi, was placed on the Al Qaeda list and all his assets were frozen, including in the European Union. As he could not directly challenge the Security Council decision, he brought his case before the ECJ. The Court annulled the implementation of the asset freeze, but could not order the Security Council to change its procedures. Professor Van den Herik: "The prize that was paid in 1945 for having a centralized UN system with all great powers on board was to make that system intensively political and empowering the Security Council, a political body without judicial review. What we find is that this prize of 1945 sits uneasy with the process of individualization that has been ongoing since 1990. The targeting of individuals has brought about a call for legal protection of that individual, both in terms of legalizing the process of targeting the individual, i.e. the listing process, and in terms of judicial protection for listed individuals, i.e. the delisting process."

In its quest for legitimacy and authority, the Security Council has clearly responded to external criticisms that were voiced. In this regard, Professor Van den Herik notices a greater role for international law in the design of new sanction regimes, and also in relation to concrete listing criteria. According to Professor Van den Herik: "The Security Council uses international law to make the treat to peace, which is the trigger for its actions, concrete." Second, the Council has made some important procedural changes. "There are now more articulate requirements regarding the evidence and statement of case before individuals can be listed, criteria regarding notification to individuals of the fact that they have been listed and there is a focal point where individuals from all regimes can lodge their request to be delisted which is then forwarded to the relevant sanctions committee." Specifically for the Al Qaeda regime, the Security Council set up an Ombudsperson to execute these tasks.

According to Professor Van den Herik, there are still various legal and practical perils. The Ombudsperson, for example, has no legally binding powers, and States are reluctant to share information that underlie the centralized targeting measures. Conflicts between different legal systems, such as the Kadi-case, can re-emerge in the future. But in general the individualization of enforcement is an important tool in the realization of international law and should thus be strengthened rather than broken down.

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Larissa van den Herik obtained her PhD in 2005 for her dissertation about the contribution of the International Criminal Tribunal for Rwanda to international (criminal) law. In 2007 she received an NWO-grant to do research on illegal trade in commodities in the context of armed conflict. Professor Van den Herik's current research focuses on international crimes, contra-terrorism, implementation of international criminal law in national jurisdictions, the UN sanctions regime and corporate responsibility for international crimes. She is also the editor-in-chief of the Leiden Journal of International Law.
A Keen Eye for Cultural Diversity

Catchy yet cryptic, the title of Professor Yvonne Donders’ inaugural lecture set the tone for its actual content. *Human rights: eye for cultural diversity.* The title suggests that human rights are attentive to cultural diversity and that they are clear-sighted in how they relate to cultural diversity. These far-reaching propositions were recurrent Professor Donders’ *oratio,* but her detailed, nuanced treatment of the propositions tempered them, and they became all the more persuasive for that tempering.

Professor Donders delivered her inaugural lecture, upon her appointment to the Chair of Professor of International Human Rights and Cultural Diversity, in the Aula of the University of Amsterdam on 29 June 2012. The focus of her Chair could hardly be more apt as her name has become synonymous with this specialisation in recent years, both in the Netherlands and internationally.

The inaugural lecture began with the exposition of “Donders’ Law” - a knowing wink towards Yvonne’s namesake, Professor Francisca Donders (1818-1889), who was an eminent international scholar in eye physiology. Put simply, Donders’ Law states that “no matter how the eye turns or moves, the three-dimensional position of the eye is always the same because of a correction mechanism in the brain”. Carrying the same name and now endowed with an equivalent professorial title, Yvonne felt well-placed and well-qualified to adapt Francisca’s Law and apply it to international human rights. She thus announced her intention to demonstrate that: “the international human rights system, including its standards, norms and monitoring mechanisms, is the brain that ensures a steady multidimensional view, while allowing for the moves and turns that are necessary to accommodate cultural diversity”.

**Human Rights and Cultural Diversity**

The relationship between the international human rights system and cultural diversity boasts many synergies, but it also has to overcome many frictions. Culture is, Donders explained, “not static, but dynamic; [...] not a product, but a process, which is influenced by internal and external interactions”. It has objective and subjective dimensions as well as individual and collective dimensions. Culture is also, she cautioned, neither an abstract nor a neutral concept: it “may be a mechanism for exclusion and control, whereby negotiation and power structures play a role”. Thus, it is important to ask “who decides which cultures and cultural aspects should be promoted and protected?” and as cultures are dynamic, “which interpretation of a certain culture, including cultural practices, should be followed?”

Donders’ interim conclusion that the “breadth, complexity and sensitivity of culture are serious challenges in the integration of this concept into international human rights law” set out a path towards her announced central focus on the international human rights system. She followed that path through the terrain of “Universalism and Cultural Relativism” with a determined step. She argued that the “dichotomy between universalism and cultural relativism can be overcome by making a distinction between formal universality and substantive universality, between universality of application and universality of implementation, between universality of the subjects or beneficiaries and universality of the objects or norms”. She added that the “universal value and application of human rights does however not necessarily imply the uniform implementation of these rights” and that “while human rights apply universally to everyone, the implementation of these rights does not have to be uniform and leaves considerable space for cultural diversity”.

**International Human Rights Standard-setting**

This focus dealt primarily with the nature and impact of cultural reservations by States to various international human rights treaties. Such reservations are typically prompted by, and refer to, specific cultural or religious backgrounds pertaining to the States in question. Donders synthesised her key findings in this connection as follows:

“Reservations therefore may be a useful and essential reflection of cultural diversity. Such cultural reservations, however, must be formulated in specific terms. They must explain the cultural or religious reasons behind the reservation, which determine the scope, content and consequences of the reservation. Moreover, cultural reservations have to pass the object and purpose test, to prevent them from going against the essential parts of the treaty”.

**International Human Rights Norms**

This focus comprised the sub-focuses, diversity within equality, cultural rights and the cultural dimension of human rights. The first entailed the principle of equality – which recognises and ensures respect for cultural differences - as a vector for cultural
diversity. The second concerned human rights that explicitly “promote and protect cultural interests of individuals and communities” and are “meant to advance their capacity to preserve, develop and change their cultural identity”. The third involved the many human rights that have a cultural dimension or cultural implications, such as the right to health (incl. religious and linguistic rights), the right to a fair trial (incl. linguistic rights), the right to a particular lifestyle, etc.

**Monitoring Human Rights and Cultural Diversity**

This focus drew on the earlier discussion of the perceived dichotomy between universalism and cultural relativism. Donders recalled the crucial importance of implementing human rights in ways that are cognizant of cultural diversity. She expressed her appreciation of the margin of appreciation doctrine, describing it as a “valuable means for [international human rights] supervisory bodies to allow states to diversify in the implementation of international human rights”, subject to international supervision. She also underscored the importance of participation and impact assessment as the former can help to articulate claims for cultural diversity or different cultural interests and the latter can help to evaluate negative effects on cultural diversity or particular cultures.

**No Blind Spot in the Conclusions**

Drawing the main strands of her lecture together, Donders was mindful of the need to qualify - and sometimes temper - the potential and actual roles of cultural diversity in human rights law and discourse. For instance, she correctly insisted that “cultural practices that are clearly in conflict with international human rights law cannot be justified as a reflection of cultural diversity”. Furthermore, the accommodation of diversity “cannot condone harmful cultural practices or the exclusion of certain categories of persons, such as women, from the enjoyment of human rights”.

By the time Yvonne had repeated her earlier reformulation of Donders’ Law, there was no doubt about either the keenness of her own eye for cultural diversity or the clarity of her vision for her future research orientation. *Zij had gezegd.*

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All quotations used in this article have been taken from the transcript of the inaugural lecture (and not the more detailed published version), which was kindly provided by Professor Donders.
LLM in International Human Rights and Criminal Justice Alumni Conference 2012

On 16 July 2012, the LLM in International Human Rights and Criminal Justice held its Alumni Conference in honour of its founder and co-ordinator Professor Leo Zwaak.

Nwamaka Okany, Alumna 2000/1, now a researcher at the Amsterdam Centre for International Law, gave the welcome address, highlighted the many accomplishments of Alumni and emphasized the importance of the LLM’s Alumni Network. She stressed that the LLM, pioneered by Leo Zwaak in 1997, is now 15 years-old. The LLM has achieved great success and it has been repeatedly cited as one of the best LLM programmes in human rights in the world. The vast success of the LLM programme is proven by the diverse profiles of the Alumni speakers at the Conference, who now serve various roles at international courts, NGOs and academic institutions.

Following Ms Okany, Professor Antonio Cançado Trindade, former President of the Inter-American Court of Human Rights and now a Judge at the International Court of Justice, gave the keynote address. Drawing upon his personal experiences at the ICJ and the Inter-American Court of Human Rights, he called upon the audience to remain faithful to the fundamental assumptions of the human rights system, that individual human rights shine larger than states. He emphasized the victim-oriented nature of human rights law, as well as the importance of the petition system. He also highlighted a few challenges for the subsequent panels to focus on, including the lack of follow-up mechanisms, access to justice, the convergence of human rights and humanitarian law, and the situation of human rights in emergency situations.

The first panel, moderated by Professor Yves Haeck, addressed the realization of human rights through the work at international and regional courts. Yurita Saavedra Alvarez, now serving the Inter-American Court of Human Rights, started off by discussing the recent amendment to the rules of procedure of the court. She highlights the participation of the Inter-American Commission of Human Rights before the Court, the

Inter-American Defender, and the Victim’s Legal Assistance Fund. Next, Cedo Radnic, a registry lawyer at the European Court of Human Rights, explained how the Court is trying to reduce its backlog of cases, especially after the expansion of the EU to the Eastern European block. Finally, Eric Iverson, a trial lawyer at the International Criminal Court, narrated his personal experience of a prosecutor’s two-fold role: on the one hand, a prosecutor is a human rights advocate on behalf of the community; on the other hand, the prosecutor pays due respect to the fair trial rights of the accused. Although the ICC Prosecutor’s role as a human rights advocate has been underscored by the number of victims and the severity of crimes, he called himself “a servant to justice”. He emphasized that the focus is not to win the case, but that the justice is done.

At lunch, Alumni had the opportunity to catch up with old friends and teachers, network with one another and make new friends and connections. They also had the opportunity to attend a breakout session led by artist, photographer, and Alumnus, Eva Sajovic. She showed her photography focusing on marginalized and misrepresented communities and individuals, including women in prison, homeless, and Roma and Irish travelers.

The second panel, moderated by Romina Sjiniensky, from Inter-American Court of Human Rights, featured the work of Alumni at governmental and non-governmental institutions. Tim Crosland, from the Organization for Inter-Cultural Development, told his personal stories as a human rights lawyer in the police force, following the enactment of the UK’s Human Rights Act. Ian Seideman, Policy and Legal Director at the International Commission of Jurists, spoke about the everlasting process of standard setting, as human rights law needs to constantly evolve in order to address new violations and new protection needs. Continuous standard setting and implementation review should go hand-in-hand. Ian emphasized the critical role that NGOs, or a coalition of NGOs, play on standard settings; the key to effective NGO advocacy is to work in coalitions, the same as the states do, or to consider alternative standard-setting bypassing the states’ systems, such as developing principles and guidelines. Roisin Murphy, formerly with Human Rights Watch, discussed the challenges of the funding landscape that human rights organizations are facing. She identified several trends: increasing ‘professionalism’, corporate social responsibility, and direct local funding. Although it remains difficult to convince the business people the value of human rights, corporations are starting to realize the value of social investment.
The third panel, moderated by Dr. Idilir Peçi, discussed the realization of human rights through research and academic institutions. Edwin Bikundo, a lecturer at the Griffith University, Australia, focused on the prevention of the recurrence of crimes through the highly politicized Kenyan cases before the ICC. He entangled the complex factual background, and illustrated a victim/victimizer paradox. Diana Contreras-Garciaño, a Ph.D. candidate at the Netherlands Institute of Human Rights (SIM), discussed the role of academics in promoting human rights in light of the seemingly enlarging gulf between academics and activists. She demonstrated that academia has long been a force for social changes, and it will continue to do so through the work of SIM. Oswaldo Ruiz Chiriboga, a Ph.D. candidate at Gent University, Belgium, discussed role and practice of legal clinics, such as litigation and research clinics, stressing the importance of combining theory and practice together.

Finally, Professor Henk Kummeling, Dean of the Faculty of Law, Economics & Governance in Utrecht University, closed the conference. He commended the Alumni speakers and described Leo as the “international ambassador of the faculty”, thanking him for his tremendous contribution to the university and to the progress of human rights around the world.

Kristin Xuejin Wu,
Intern at SIM for Summer 2012

Additional Alumni activities included a boat tour organized on 15 July and a dinner and party following the Conference. All Alumni expressed their sincere thanks to Leo, for his ‘open-door’ policy, for his guidance and commitment to his students, for instilling in them the spirit of human rights, and for further empowering his students to maintain this spirit in whatever career they choose to pursue.
Tilburg hosts successful pilot of Statelessness Course

Between 23 and 27 July, a bright sunny Tilburg welcomed the gathering of thirty participants and eight lecturers assembling to discuss the phenomenon of statelessness. The first Summer School on Statelessness, an initiative by the Statelessness Programme at Tilburg Law School and the Open Society Justice Initiative, successfully provided a stimulating curriculum and atmosphere. Through lectures, case studies, discussions and group work the Course covered many of the topical theoretical and practical issues stemming from the notion of statelessness. The Course equally drew significantly from the participants’ experiences which came from around the world, including Burundi, Kazakhstan, Thailand, South Africa, Mexico and Slovenia amongst many others, and which ranged from differing fields, such as UNHCR, NGOs, academia, and government.

Over the past few years the international community has witnessed a growing concern of the true magnitude and impact of statelessness, however, much work remains to be done in terms of developing a full understanding of the phenomenon and, importantly, building the required capacity to address some of the attached problems. It was with these two gaps in mind that the Statelessness Summer Course provided an interesting forum in offering a unique opportunity for learning, reflecting and discussing the challenges that statelessness presents and, importantly, trying to develop tangible strategies to work on the issue. Beginning with a reflection on the concept of statelessness and nationality, the Course went on to deal with legal and policy issues associated with statelessness, such as the status of stateless persons, their human rights and right to international protection and ways to research and document statelessness. The Course included smaller team work on regional issues where participants were able to tailor the knowledge they had acquired towards trends and issues that affected their regions.

Lecturers came from a varied background with differing focuses, enriching further the debate. These included Prof. Dr. Gerard-René de Groot, Professor of Law at the Universiteit Maastricht; Gábor Gyulai from the Hungarian Helsinki Committee; Julia Harrington Reddy and Sebastian Kohn from the Equality and Citizenship Program at the Open Society Justice Initiative; Mark Manly, head of the Statelessness Unit at UNHCR; Dr. Benyam Mezmu, research fellow at the University of Western Cape; Prof. Dr. Sriprapha Petcharamesree, lecturer at the Institute of Human Rights Studies and Peace Studies, Mahidol University, Thailand; and Zahra Albarazi from the Statelessness Programme. These experts had a mélange of academic knowledge and practical and regional experience to offer.

The most interesting feature was the way in which participants and lecturers were able to benefit from the knowledge and professional experience of both the lecturers and their fellow participants. Many of the participants had dealt with stateless cases in their professional fields and the week offered them the opportunity to place these country-specific experiences into an international understanding. The week concluded with an action-oriented session which saw the participants discuss how they plan to work more on this issue following the end of the Course. The Statelessness Programme hopes this initiative will invoke future similar initiatives build further interdisciplinary practical knowledge in the field of statelessness.
Some testimonials from the participants:

Barbara Perez Martinez, Deputy of Protection, Commission for Refugee Aid – Ministry of Interior, Mexico

“Nowhere else would I have been able to share with such a diverse and knowledgeable group of people so many experiences and information regarding statelessness. The Statelessness Summer Course is great for understanding and addressing such an important issue.”

Josh Friedman, Protection Programme Manager, Danish Refugee Council, Tajikistan

“The Statelessness Summer Course provided me with the background and the intellectual ammunition to promote sustainable solutions to the scourge of statelessness at the local level and more broadly.”

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2012 Advanced Summer Programme on Countering Terrorism

Between 27 and 31 August 2012, the International Centre for Counter-Terrorism – The Hague (ICCT) and the T.M.C. Asser Instituut organised the second Advanced Summer Programme on Countering Terrorism: ‘Countering Terrorism in the Post 9/11 World’.

Twelve participants, coming from both the U.S. and Europe, and having a variety of professional backgrounds (police, military, academia, ministries and international organisations), attended the 5-day programme hosted at the T.M.C. Asser Instituut in The Hague.

After a word of welcome from the Directors of the ICCT (Peter Knoop) and the T.M.C. Asser Instituut (Ann O’Brien) and an introduction by Christophe Paulussen (T.M.C. Asser Instituut/ICCT), the first day started with a lecture by Professor Edwin Bakker (Leiden University/ICCT). He introduced the phenomenon of terrorism to the participants, who subsequently could listen to a talk on radicalisation, de-radicalisation and counter-radicalisation by Dr. Alex Schmid (Terrorism Research Initiative/ICCT). After that, Dr. Kimberly Trapp from Cambridge University addressed the issue of defining terrorism under international and domestic laws. In the evening, a welcome dinner was organised to encourage informal networking among the participants.

The second day was kicked off by Professor Richard English (University of St. Andrews), who focused on the two models in countering terrorism, the war and law enforcement paradigm. During this day, the topics of balancing soft vs. hard counter-terrorism measures in practice (Peter Knoop) and negotiating with terrorists (Dr. Alex Schmid) were also addressed.

Day three focused on the different counter-terrorism actors and started with a visit to Eurojust and a substantive talk on the European Union in countering terrorism by Alinde Verhaag. Not only the European context was discussed during this day, but also the national (in a talk by Dr. Cees Wiebes from the NCTV) and the international (in a talk by Dr. Bibi van Ginkel from Clingendael/ICCT). The last lecture of the day, by Fulco van Deventer of Cordaid, addressed the engagement of NGOs and civil society in countering violent extremism.

‘Trying terrorists’ was the central topic of day four. After a talk by former terrorist prosecutor Alexander van Dam on the Dutch perspective in trying terrorism, Dov Jacobs (Leiden University) looked at the question how terrorists can be brought to justice at the international level. To provide the participants even more context on this last topic, the participants were brought to the Special Tribunal for Lebanon, where they were briefed by practitioners (working in Chambers, Office of the Prosecutor and Defence Office) how the youngest international criminal tribunal of The Hague is dealing with suspected terrorists.

The last day started with a lecture on targeted killings and counter-insurgency operations (by Col. Dr. Paul Duchêne (University of Amsterdam) and Maj. Eric Pouw (Netherlands Defence Academy) and was followed by an exploration of the key current and future human rights challenges in counter-terrorism (Dr. Quirine Eijkmann (Leiden University/ICCT). After that, Dr. Alex Schmid and Farhan Zahid (Vrije Universiteit Brussel) spoke about the current strengths and weaknesses of Al Qaeda and its affiliates. The day, and the programme, was closed with an evaluation (during which the ICCT and the T.M.C. Asser Instituut received many compliments and tips to improve the programme even further), a certificate ceremony and a reception.

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Human Rights Legal Frameworks in the Climate Change Regime

On 6 and 7 September 2012, the first workshop on Law and Policy, as part of the European Cooperation in Science and Technology (COST) Action on Climate Change and Migration, took place at the Netherlands Institute of Human Rights (SIM) at Utrecht University. The workshop, titled ‘First Networking Workshop on Human Rights Legal Frameworks in the Climate Change Regime’, was organized by Anja Mihir (Utrecht University) and Dimitra Manou (University of Thessaloniki). It was the first of a series of workshops aimed at enhancing cooperation between researchers and policy makers that specialize in the overlap between human rights and climate change. Scholars and researchers from 12 countries within and outside of Europe came to participate, representing the fields of law, geography, anthropology and political science.

After a brief introduction by Jenny Goldschmidt, director of SIM at Utrecht University, the first session began, focusing on ‘climate change and migration’. Dimitra Manou (Greece) chaired the session and Mirela Mazilu (Romania) was the discussant. The first speaker, Mariann Erdó (Hungary), discussed the fragmentation of international law towards climate refugees. Calum Nicholson (UK) provided a critical review of the connection between environmental change and migration. Benoît Mayer (Singapore) argued that climate refugees are not necessarily part of the analytical framework within the human rights regime. Arising from this session was the acknowledgement that defining ‘climate refugees’ will be very challenging as both migration and climate change are highly complex issues. Responses to climate change take a utilitarian approach, while the human rights regime is based on absolute rights.

The second session, ‘the human rights legal framework’, was chaired and discussed by Anja Mihir (Netherlands). Elisa Fornalé (Switzerland) discussed various definitions of environmental refugees and migrants, followed with an outline of various responses to the issue on an international, regional and national level. Jeanette Schade (Germany), using the Tana Delta in Kenya as a case study, illustrated the human rights and climate change policy issues to demonstrate that people are equally affected by climate change as they are by the economic policies of the state. The third speaker, Dug Cubie (Ireland), talked about climate change induced catastrophes and legal frameworks that could reduce vulnerability and improve response. Using several examples, Cubie showed that laws do not immediately change following a disaster. However, the need for a quick response will drive states to seek out ways around the rigid laws.

The third session, focusing on ‘climate change induced migration’, was chaired by Teresa Thorp (Netherlands) and discussed by Dewi van de Weerd (Netherlands), Margreet Weverink (Italy) was the first speaker and spoke on her research: the right to culture in relation to climate change induced migration. Weverink showed examples of cultures depending on climate and the manners in which these cultures have already had to adapt and change due to climate change. Additionally, she emphasized the legal implications of whether or not a causal link between emissions by states and migration can be proven. The second speaker, Silja Klepp (Germany),
spoke on the complex issue of climate change induced migration in Kiribati in the Pacific, emphasizing that governmental migration strategies for all citizens are important and that many migrants who migrate due to climate change do not wish to have refugee-status. Brooke Ackerly (USA) followed, sharing her case study of polders in Bangladesh. A striking conclusion made by Ackerly is that she does not anticipate a tipping point in how people will behave after increased climate change in comparison to now. Farmers and citizens have difficulties accessing water, but do not move, indicating that they still may not move in the future as more difficulties arise.

Session 4, chaired by Andrew Baldwin (UK) and discussed by Vera Künzel (Germany), centered on ‘legal protection in times of climate change’. Pauline Brücker (France) argued that a human rights-based approach combined with a concept of Disaster Risk Reduction (DRR) is beneficial for adaption strategies to climate change. Both adaptation policies and DRR aim at reducing the vulnerability of people to climate change, and this can be achieved by ensuring human rights protection. The second and last speaker, Teresa Thorp (Netherlands), talked about existing and potential normative tools to address pre-empive climate induced displacement. First, she discussed the existing scientific ideas about legal frameworks on climate induced migration. Second, she introduced the idea of transitional legal protection, and finally she indicated the links between transitional legal protection, human security and displacement.

Anja Mihr (SIM) summarized the conference content, emphasizing the commonalities and differences of the various arguments made throughout the workshop by participants. It became evident that future COST action network meetings on Law and Policies should focus on and discuss the following:
1. Define and elaborate on the issue of climate change and human rights, the victimhood of people being affected as well as the duty bearers and the right holders in this process.
2. Elaborate and discuss the existence or lack thereof of causal links between climate change/environmental change and human rights protection.
3. Define institutional and individual actors in this research area and their linkage to issues of good governance, e.g. accountability, transparency and participation.
4. Develop criteria and indicators for the assessment and mainstreaming of climate change related issues and consequences within the existing international, regional and national human rights regime.

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Publications

School of Human Rights Research Series

Mens rea and defences in European criminal law
By Jeroen Bloemra
School of Human Rights Research Series, volume 54
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The Principle of Equality of Arms in International Criminal Proceedings
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School of Human Rights Research, volume 55
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Corruption: A Violation of Human Rights and a Crime Under International Law?
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Informed Decision-Making: the Comparative Endeavours of the Strasbourg Court
Konstantin Dzgebtiauron and Vasily Lukashevich
The article explores the use of comparative surveys in judgments of the European Court of Human Rights (ECtHR). It argues that the inclusion of a comparative survey serves an informational purpose that may increase the substantive legitimacy of ECtHR rulings. The article aims to provide a broad, however preliminary account of the use of comparative data by focusing on a number of pertinent doctrinal, methodological, and practical issues.

Will China’s Rise Lead to a New Normative Order?
Katrin Kinselbach
This article examines whether and how the People’s Republic of China challenges international human rights norms based on a qualitative analysis of human rights debates at the United Nations in the period 2000–2010. The study differentiates between framing and implication contests and is focused on China’s statements on four main issues: the validity of norms; the UN’s monitoring of human rights compliance; the relationship between sovereignty and human rights; and the interaction of civil and political with economic, social and cultural rights. China’s human rights diplomacy at the United Nations is shown to be highly consistent; it primarily contests implications of human rights rather than the norms themselves. Although China has so far not provided an alternative normative frame to human rights, it is argued that the contestation is nonetheless serious as it facilitates a gradual erosion of established norms and instruments.
Colophon

The School of Human Rights Research (established in 1995) aims at promoting disciplinary and multidisciplinary scientific research in the field of human rights. By means of critical analysis and the submission of proposals, based on thorough scientific research, the School wants to contribute to the further implementation and strengthening of the international, regional and national system of protection of human rights.

Participants:
Utrecht University, Faculty of Law
Utrecht University, Faculty of Humanities
Maastricht University, Faculty of Law
Tilburg University, Faculty of Law
Erasmus University of Rotterdam, Faculty of Law
Leiden University, Faculty of Law
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www.schoolofhumanrights.org

The Editorial Board consists of Otto Spijkers (Faculty of Law Utrecht University), Ingrid Leijten (Leiden University), Phyllis Livaha (Maastricht University), Evgeni Moyakina (Tilburg University), Petra Gyongyi (Erasmus University Rotterdam) and Marcella Kiel (School of Human Rights Research); there are vacancies for the Faculty of Humanities Utrecht University and the T.M.C. Asser Institute.

Any reactions to or comments on articles published in the Newsletter are welcome: m.m.kiel@uu.nl.

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Het kind in het immigratierecht
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Miscellaneous

Special Issue in the Journal of Human Rights Practice:
The Protection of Human Rights Defenders

Over the past two decades, there has been growing recognition of the significance of human rights defenders as agents of change, and of the importance of protecting their rights in order to enable them to work safely and effectively. In 1998, the General Assembly adopted the Declaration on Human Rights Defenders. Since then, states have developed a number of international, regional and national mechanisms for the protection of the rights of human rights defenders.


Those interested can submit an abstract before 1 November 2012; submissions from practitioners are particular welcome. Manuscripts will be subject to peer review.

For more information on this call for papers, please contact Alice Nah at alice.nah@york.ac.uk.