

Global justice

Prof. Dr. W. Bruggeman
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1. Introduction

During the Cold War, security was essentially defined in military terms, as the avoidance of a direct military danger.

When the Cold War ended, it was generally thought that a new international era was about to begin. Liberated from the overarching emphasis on military security, international diplomacy turned its effort and attention to those challenges that were of importance to everybody's daily life.

The post Cold War environment is one of increasingly open borders. Flows of trade and investment, the development of technology and the spread of democracy have brought growing freedom and prosperity to many people. In spite of these encouraging trends, many problems remain unsolved and some got even worse.

Specific politico-military challenges stand out: regions of chronic tension and long-standing disputes and conflicts, failed states and civil wars, excessive militarization, terrorism and organised crime.

Regional conflicts continue to foster instability, disrupt economic activity and reduce opportunities for the people concerned. In many parts of the world bad governance, civil conflict and the easy availability of small arms have led to a weakening of state and social structures. Corruption, abuse of power, weak institutions and lack of accountability corrode states from within and contribute to regional insecurity.

Conflict not only destroys infrastructure, including social infrastructure; it also encourages criminality, deters investment and makes normal economic activity impossible. A number of countries and regions risk becoming caught in a downward spiral of conflict, insecurity and poverty. A renewal of ethnic conflicts could plunge many countries and regions into a state of anarchy.

In addition international terrorism and proliferation of weapons of mass destruction remain nowadays the single most important threat to peace and security among nations and worldwide.

In a world of global threats, global markets and global media, our security and prosperity depend on an effective multilateral system and the **ICC** contributes to the development of a stronger international society, well functioning international institutions and a rule-based international order, on the condition it is part of coherent and comprehensive approach. But in reality military means, security policy, international cooperation, multilateral treaties, international and military tribunals, NATO relations, all are issues that are operating in isolation and have been separating the two sides of the Atlantic for some months now.

2. Global problems and initiatives to prevent and combat these problems.

The nineties witnessed the rise and fall of the sense of a shared global fate. Intractable problems, both economical and political, challenged the prospects of rapid successes in global governance. Member states failed to buttress the institutions intended to deal with global problems, with the competences and resources needed to attain the goals that they were expected to pursue.

Therefore, after having started in an atmosphere of euphoria and a strong belief in the feasibility of the polity, the post-Cold War ended in its mirror image. We are now living in times of global tensions and divisions, where consensus and cooperation have become endangered species

Bad governance is often at the heart of the problems. Corruption, abuse of power, weak institutions and lack of accountability corrode states from within and contribute to regional insecurity. A number of countries and regions risk becoming caught in a downward spiral of conflict and insecurity.

Illegal drugs and human trafficking, organised crime, war crimes, genocide, terrorism, ecological dislocation, infectious diseases and financial turmoil showed how extended borderless forces have exploded faster than our ability to cope with them.

The international community failed to put an early end to human suffering in Somalia, Yugoslavia, Rwanda, Congo and Sudan. Parts of the world, especially in Africa imploded, with the international community as a powerless bystander¹. Then came September 11, Afghanistan and Iraq.

These issues are like global warming: the consequences are diffuse and only perceptible on the long term. But at a certain point, the resulting strains will have become uncontrollable.

In today's world a threat to one is a threat to all. Globalization means that a major terrorist attack anywhere in the industrial world would have devastating consequences for the well-being of millions in the developing world.

It is remarkable and encouraging that just now the UN have created the High-level Panel on threats, challenges and change to generate new ideas about the kinds of policies and institutions required for the UN to be effective in the 21st century². This report states that we live in a world of new and evolving threats, threats that could not have been anticipated when the UN was founded in 1945, threats like nuclear terrorism, and State collapse from the witch's brew of poverty, disease and civil war. Different threats are becoming more and more emerging. A distinction is often made between the so called "new" threats and the more traditional threats such as national and ethnic conflicts³. The links between terrorism, organised crime and guerrilla activity have been examined, to conclude that there is a convergence between these phenomena in some cases⁴.

The erosion of State against international threats such as terrorism and organised crime requires international cooperation. There are six clusters of threats with which the world must be concerned now and in the decades ahead⁵:

- war between States;
- violence between States, including civil wars, large-scale human rights abuses and genocide;
- poverty, infectious disease and environmental degradation;
- nuclear, radiological, chemical and biological weapons;
- terrorism, and
- transnational organised crime.

Although these threats can not be seen in isolation a distinction can be made in the

¹ Global governance: the next frontier, Brussels, KIIB, 2003

² X, A more secure world: our shared responsibility, New York, UN Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, 2004

³ Wouters, J. and Ruys, T., The fight against terrorism and the European security strategy, in: European cooperation against terrorism, The Hague, ICLN and EULEC, 2004, 111 (23-36)

⁴ Lejeune, Ph., Anti-terrorism policies: legal, ethical and political perspectives, Mercyhurst College, 1998

⁵ X, A more secure world: our shared responsibility, New York, UN Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, 2004

limited framework of this study as follows:

International war/genocide situations and crimes against humanity.

Many regions in the world are confronted with serious war situations, often at the origin of violations of international law in connection with war, genocide and crimes against humanity. These conflicts are often of ethnic origin. Warlords are not only involved in massive killings, but also part of organised crime and terrorism networks. Only some of these crime situations are subject of prosecutions be it at national or at international level.

The Nurenberg Tribunals set the first principles to put individuals on trial for crimes committed in the name of the state. The Genocide Convention (1948) called for the establishment of a permanent international court but efforts were blocked. In 1989 Trinidad and Tobago reintroduced the idea of a permanent international criminal court to the UN General Assembly.

But although there was no progress with regard to setting up a court, the body of international criminal law related to it grew. By the 1980s, the UN had managed to agree on a definition of aggression (1974), adopted the Genocide Convention (1948), the Convention on Torture (1984), against Apartheid (1973) as well as the Geneva conventions(1949) and their additional Protocols (1977) protecting the rights of combatants and civilians during armed conflicts. However, all of these conventions at best established a duty for states to nationally prosecute or extradite perpetrators.

In 1993 the Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY⁶) and in 1994 a corresponding tribunal for Ruanda (ICTR⁷), often referred to as ad hoc tribunals. The ICTY and the ICTR have since 1995 been investigating, prosecuting and bringing to justice some of these violations and crimes. The Rome Statute establishing the International Criminal Court (ICC) of 17 July 1998 affirms that the most serious crimes of concern to the international community as a whole, in particular genocide, crimes against humanity and war crimes, must not go unpunished and that their effective prosecution must be ensured by taking measures at national level and by enhancing international cooperation. The Rome Statute recalls that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such international crimes and emphasis that the ICC is to be complementary to national criminal jurisdictions. The successful outcome of effective investigation and prosecution of such crimes also requires close cooperation at transnational level between authorities of the States Parties to the Rome Statute at the one hand and the with the international tribunals at the other hand.

Nationalism and ethnic conflict.

Nationalism can take different forms, from benign patriotism to malign chauvinism. Ethnic conflicts remain the main root cause of crime situations against humanity. To establish the extent to which regional nationalism carries a real danger of ethnic conflict, two factors have to be taken into consideration.

First, the nationalism of ethnic minority groups, which form the majority in another country carries more severe risks than the nationalism of groups which cannot count on the effective support of nation represented by a state.

Second there is a significant difference between minorities dispersed over a large geographical area, mixed with other, in most cases majority groups, and minorities in separable entities in the vicinity of the mother nation. Some authors even speak in terms of for example “occidentalism”.

⁶ Ethnic cleansing

⁷ Genocide

The most frequently mentioned source for instability is the re-emerge of territorial claims. Much depend whether they consider the use of force to attain their objectives, of whether they rely exclusively on peaceful means.

The three basic state or war making instruments (monopolizing violence or the means thereto, accumulating wealth and offer protection) are also the distinctive features of an organised criminal organisation⁸. Faced with recent civil wars such as those in Bosnia-Herzegovina, Liberia or Ruanda, the traditional framework of for example the Cold War analytical model, has been reviewed and instead chaos theories have emerged, trying to explain the irrationality an brutality of these conflicts. The argument goes that long suppressed tribal, ethnic or national rivalries have been freed by the end of the Cold War. War is not simply a breakdown or a failure of a particular system, but also a way to create an alternative system of profit, power and protection⁹. The thesis may not exhaustively explain the different aspects of the conflict, but it can also shed light on the behavior of its decision-making entities, be it political leaders or non-state parties such as warlords, militia leaders, rebels and criminal gangs.

During the 1990s, the international community took unprecedented steps to limit the impunity all too often associated with mass slaughter, forced dislocation of ethnic groups, torture, and rape as a weapon of war. Along with genocides and widespread crimes, the decade was marked by the creation of international criminal justice mechanisms and the application of universal jurisdiction to hold perpetrators of the most serious crimes to account. Soon after the end of the Cold War and with the stark failures of national court systems freshly in mind, the United Nations, a number of governments, and many citizens groups and NGO's worked to create international criminal courts. The above mentioned ad hoc tribunals and the ICC, although empowered with criminal jurisdiction for prosecution of international crimes, significantly differs¹⁰ from the Tribunals. So the establishment of the ICC is only one prominent example of a fairly recent legislation process. Such attempts to alter the institutional and normative setting of law making processes are often carried out by transnational alliances between middle powers and non-state actors which increasingly coordinate their strategies¹¹.

Over the past decade, several European states also began to meet their obligations to prosecute those found on their territory accused of atrocities. Using domestic universal jurisdiction laws in domestic courts, Switzerland, Denmark, Belgium, Germany and other States have tried such individuals far from the countries where the crimes were committed. These different developments taken together have formed the components of a new, fragile, yet unprecedented, system of international justice consisting of ad hoc tribunals, the permanent ICC, and various other international mechanisms.

Terrorism

Terrorism is as old as mankind itself. It is part of all ages, continents and persuasions. Terrorism is merely a tool, used from the dawn of human history by all sorts of groups for widely diverging reasons (poverty, alienation, radicalisation) and aims. Terrorism has been used by nationalists, by right-wing and left-wing militants. It has

⁸ Peleman, J., War making and State making, Behind the scene in Kosovo and the South-West Balkans, 1998 (not published)

⁹ Keen, D., The economic functions of civil wars, London, Adelphi Papers nr 320, The international institute of strategic studies, 1998

¹⁰ The ICC is a multilateral, treaty based, permanent court with the status of an independent international organization, separate and apart from UN. The Court will exercise its jurisdiction only when a State is unwilling or unable to proceed with a viable prosecution.

¹¹ Deitelhoff, N., The transnational construction of legal norms and institutions, Frankfurt amMain, Paper prepared to the fifth Pan-European international relations conference, 2004

been of Jewish, Muslim and Christian origin.

Religious zeal or political goals often drive terrorists. But terrorism is not born out of poverty, nor out of religion. The particular brand of terrorism we witness today is bred of marginalization¹². Al-Qaeda today is no longer a global disciplined and centralised network; instead it is a grassroots phenomenon.

Recent terrorist attacks are illustrating the privatisation of violence and globalisation of insecurity more than ever before. International terrorism is becoming more and more a strategic threat to all States, and to the UN as a whole. The new terrorist movements seem willing to use unlimited violence and cause massive casualties. The tragic events on September 11 should not be considered anymore as “attacks”, but as “massacres”, in lay parlance, and as a crime against humanity in international law¹³. The signal horror of what happened that morning results from the occurrence of the large-scale and premeditated random killing of people over a short period of time, in a context which is revolting for its massiveness and the innocent people killed in it, whatever motives the killers may have been prompted by to commit the massacres. Terrorist organisations typically maintained a presence worldwide in order to raise and transfer funds, to create false identities for operatives, to procure weaponry and material, to set up operational sanctuaries, and to support infiltration across the borders and overseas.

The term “terrorism” was never defined by law in any consensual manner until the European Union, under the Treaty of Amsterdam has offered an ideal setting for international law enforcement cooperation, but this experience cannot be extrapolated to other regions of the world.

The first attempt to reach an international agreement on terrorism was made in 1937 within the League of Nations. However its dissolution on the eve of WWII aborted this initiative. One of the measures considered by the League of Nations was the creation of an International Criminal Court¹⁴, responsible for trying international terrorists and sea pirates. The United Nations has never achieved a comprehensive treaty on terrorism for several reasons: its membership includes nations who actively sponsor terrorists; the members could not reach an agreement on how to distinguish between terrorism and wars of national liberation. Especially the African and Asian members feared that such a treaty would endanger the right to self-determination of populations. The emphasized explicitly the legitimacy of violence in the struggle for national liberation, and the use of tactics such as hostage taking¹⁵. The third problem has been the inability of the United Nations to enforce a treaty, which makes it a futile exercise.

The Council of Europe issued the 1977 Strasbourg Convention on the suppression of terrorism. More recently, the G-7, as a periodical conference of the Heads of State and Government of the eight most industrialised countries in the world, has become more and more involved in anti-terrorism. The strength of their effort lies in the fact that they do not solely count on international treaties to resolve the problem, but pay attention to alternatives, such as the security standards set by the International Civil Aviation Organisation.

Europe’s inability to deal with the Balkan crisis in the 1990s and the divisions in Europe concerning the Iraq war, which split the EU Member States into what the U.S.

¹² Coolsaet, R., Al-Qaeda: the myth, Brussels, KHIIB, 2004 (to be published)

¹³ Méndez, J., Human rights policy in the age of terrorism, Saint Louis university law journal, 2002, 377-403

¹⁴ Alexander, Y., Carlton, D. and Wilkinson, P., Terrorism: theory and practice, Boulder, CO, Westview Press, 1979, p. 232

¹⁵ Warlaw, op.cit., p.112

Secretary of Defense D. Rumsfeld referred to as the “old” and the “new” Europe, have made clear the new initiatives were needed. In December 2001 the European Union declared the struggle against terrorism to be a joint action. Dozens of measures were taken to concretize this, ranging from a common arrest warrant valid all over Europe, through a joint definition of terrorist activities (comparable to that of the 1937 League of Nations Convention) to a routine exchange of information on terrorists through Europol (promoted during the inter-war years period, but never put into actual practice) and the adoption of “A European security strategy to secure Europe in a better world” in 2003. The key threats identified by the European security strategy are terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure and organised crime. The unique cooperation of police force and juridical service within the European Union is actually based on the 19th-century principle that terrorism is not a legitimate political activity but a criminal offence. The 2004 Madrid bombings furthered the intra-European cooperation, leading to an expansive program of antiterrorism measures in justice and home affairs and to the creation of a framework decision on preventing and combatting terrorism in 2004. Also to be mentioned are the transatlantic agreements on mutual assistance and extradition. The US has clearly expressed its wish to make the fight against terrorism the new priority, but most of the Europeans do not accept the idea of a “war on terrorism”. Behind these differences in opinion, there are divergent policies with regard to defence spending. 11 September not only led the US to declare itself at war, it also led to a sizeable increase in US military spending and brought about the biggest governmental reorganisation in fifty years by creating a new Department of Homeland Security. Planned increases of projection capability are only of slight benefit to civil defence and means are specifically earmarked to combat terrorism. Also a lot of progress has been made in the fields of police, justice and finance.

Decisions taken both in the US and Europe for protecting their societies from new attacks have been hotly debated on both sides of the Atlantic. One of main elements in the democracy/terrorism debate is military tribunals, such as those that have been put in place in the US. These appear reprehensible to Europeans for two reasons: they are a departure from the rules of democratic societies, and they prevent the cooperation that is essential for fighting terrorism. Exceptional jurisdictions are by definition a brake on international cooperation¹⁶.

UN resolution 1373, adopted only two weeks after 11 September, was one of the most expansive resolutions in the history of the Security Council. It made it mandatory for all member states to do everything within their power to stop the support and financing of terrorist acts. The Security Council also created a special committee, the Counter-Terrorism Committee, to monitor the implementation of all agreements, in the meantime turned into national laws by most of the member states. Resolution 1566, adopted in October 2004, further enhanced the Security Council’s role by reinforcing the international regime of sanctions and monitoring against the whole range of individuals, groups and entities associated with terrorist activities.

A few days after 11 September and for the first time in the history of the alliance, the NATO alliance declared that they were prepared to put into effect the solidarity clause, as laid down in article 5 of the charter, thus automatically equating terrorist attack with a military attack on all member states.

Non-conventional attacks

Whereas it was a minor concern during the Cold War, the spread of nuclear, biological

¹⁶ Amnesty International’s 2002 report is very severe on this item.

and chemical weapons, as well as the means of getting them to their targets, has now gradually become one of the main issues for security policies.

For about a decade, fears of NRBC terrorism have been in the minds of governments and experts, but have remained unknown to the wider public. The spread of these weapons, which are accurately described as weapons of mass destruction, including chemical, biological, radiological and nuclear weapons, to new states is officially held to be, since January 1992, one of the main threats to international security¹⁷.

Fortunately there has never been an attack involving a nuclear device, but terrorists seem to have a preference for chemical and biological weapons. Most experts agree that nuclear weapons are beyond international terror groups. Sensational news items about chemical, biological and bacteriological weapons have to be approached with some prudence. International terrorist groups still found it a lot easier to blow up gas tanks or chemical storage facilities than to manufacture a usable chemical weapon on their own. However, the fact that the immediate danger should be put in perspective, does not mean that there is not a real risk of radioactive, bacteriological or chemical material ever falling into the hands of terrorist organizations- or of lone individuals, as was probably the case with the anthrax filled envelopes with almost paralysed public life in the United States shortly after 11 September.

The International Atomic Energy Agency has confirmed more than a dozen cases of smuggled nuclear-weapons-usable material, and hundreds more cases have been reported and investigated over the last decade. The potential demand is strong and growing. Constrained supply and increasing demand causes prices to rise and create enormous incentives for illegal activities.

One of the more alarming aspects of international terrorism relate to the reported attempts by terrorist groups to deploy radiological, chemical or biological weapons of mass destruction. This threat environment (e.g. Al-Qaeda) is characterised by elusive, widely-dispersed and loosely structured terrorist networks, capable of deploying large number of trained, committed operatives almost anywhere in the world. Several reports proved that numerous members of Al Qaeda are excellent chemists capable of developing deadly weapons out of products easily available¹⁸.

The IAEA is concerned, both with helping in international efforts to fight terrorism and protecting the development of peaceful uses of atomic energy throughout the world. The only way to counter this risk, according to the IAEA, is the strict "cradle-to-grave control of these substances. Only the long-term international and multilateral cooperation can achieve this. It was exactly this point that M. ElBaradei, the IAEA director, emphasized when he warned the international community in June 2004 that it was a "race against time it cannot afford". Over seventy states have since arranged with the agency to exchange information regarding the industry. In addition the IAEA has taken a number of other initiatives to prevent the proliferation of nuclear components.

The Organisation¹⁹ for the Prohibition of Chemical Weapons (OPCW) is an intergovernmental organisation with independent legal personality deriving its authority from the Chemical Weapons Convention (CWC). One of the important pillars of the CWC is non-proliferation of chemical weapons.

The use of biological weapons is outlawed by an international convention that dates back to 1925, and the production and storage of biological weapons were banned by the 1972 BTW convention. It is hardly surprising that bio-terrorism, against which

¹⁷ Declaration of the president of the Security Council at a meeting of heads of state and government, 1992

¹⁸ Delpech, Th., International terrorism and Europe, Chaillot papers, 2002, nr 56

¹⁹ Coolsaet, R., Al-Qaeda: The myth, Brussels, KIIB, 2005

there is currently little protection, has caught governments' attention.

In 2001 heads of state and governments of the EU decided to establish a programme to fight bio-terrorism and at the Laeken European Council on 14/15 December 2001 it was decided to create a European Civil Protection Agency.

Organised crime.

The spread of transnational organised crime increases the risk of all the other threats. In general the illegal trade in drugs, arms, intellectual property, people and money is booming. Drugs and arms often go together. According to the United Nations, only 18 million (or about 3%) of the 555 million small arms and light weapons in circulation today are used by governments, military or police forces. Small arms helped fuel 46 of the 49 largest conflicts of the last decade and in 2001 were estimated to be responsible for 1.000 deaths a day²⁰. The illegal markets for munitions, smuggling money, gold coins, diamonds and other valuables is an ancient trade. Suitcases full of banknotes are still a key tool for money launderers, but computers, the Internet, and complex financial schemes that combine legal and illegal practices and institutions are more common. Highly decentralised groups and individuals are bound by strong ties of loyalty and common purposes and organized around semiautonomous clusters or "nodes" capable of operating swiftly and flexibly. The promise of enormous financial gain motivates those who battle governments in these wars. Like the war on terrorism, the fight to control these illicit markets pits governments against agile, stateless, and resourceful networks empowered by globalization.

Never fettered by the niceties of sovereignty, the organised criminal networks are now increasingly free of geographic constraints. Moreover, globalisation has not only expanded illegal markets and boosted the size and the resource of criminal networks, it has also imposed more burdens on governments.

In many parts of the world bad governance, civil conflict, and the easy availability of small arms have led to a weakening of state and social structures. Somalia, Liberia and Afghanistan are the best known recent examples. The weakness of the state is often exploited (and sometimes caused) by criminal elements. Revenues from drugs have fuelled the weakening of state structures in several drug-producing countries; in Afghanistan, drug revenues kept the Taliban and several private armies in power. As states fail, organised crime takes over.

The problem of organised crime and terrorism were often considered separate phenomena prior to September 11. Security studies, the military and law enforcement increasingly view terrorism and transnational crime as strategic threats. These problems are no more seen as distinct²¹ and are seen as central threats to national and international security. Illustrations of links between organised crime and terrorism are the following:

- terrorists engage in organised crime activity to support themselves financially;
- organised crime groups and terrorists often operate in network structures and these structures sometimes intersect, terrorists can hide themselves amongst criminal transnational organisations;
- both organized crime groups and terrorists operate in areas with little governmental controls, weak enforcement of laws and open borders, and conflict areas;
- both corrupt local officials to achieve their objectives;
- both often use similar means to communicate, exploiting modern technology;
- both launder money, often using the same methods and often the same operators to

²⁰ Naim, M., The five wars of globalisation, Carnegie endowment for international peace, 2003

²¹ Shelley, L., The nexus of organised international criminals and terrorism, <http://eu-ce-srv004/documentation>

move their funds.

The increasing share of the world economy attributable to illicit activity provides the financial resources for transnational crime groups to operate and hire expertise. The source of the illicit capital are such illicit commodities as drugs, human beings smuggled and trafficked, small arms and valuable natural resources such as timber, piracy, some of it linked to the maritime transport of high technology. Counterfeiting of goods, currencies, CD's and other electronic equipment is a major financial support for organised crime. The resources of the terrorists or the profits of transnational crime groups are combined with legitimate funds making it hard to detect where the criminal ends and the legitimate funds begins.

The newer criminal groups and leading terrorist organisations resemble modern legitimate business structures. The massive international illegitimate economy allows the illicit to operate with facility amongs the licit. The enormous discrepancies in regulation in a globalised world allows criminals and terrorists to exploit this lack of consistency to their advantage.

Moreover, many of the strategies presently being applied to combat terrorism, following of money trails, freezing of assets, and safeguarding borders are ones used to combat transnational organised crime.

An illustration: the so called Balkan highway to war and the gangster economies as a clear illustration.

As an example it interesting to state that simultaneously the war, the resulting blockade of the smuggling routes and the embargoes imposed on Yugoslavia, generated new criminal networks. Drug trafficking became one of the means through which the conflicting parties tried to finance their war effort. According to the 1997 report of the Observatoire géopolitique des drogues in Paris, the bulk of Serbia's activities in the drug trade are handled by three organisations: the SID (foreign ministry information and documentation service), the SDB (the interior ministry, secret police) and the KOS (the counter-espionage department of the defence ministry)²². Despite the arms embargo, imposed on 25 September 1991, arms production and export did not come to a standstill. Most of the transactions ran through criminal networks of the Yugoslav secret service or through businesses, established in Western Europe or elsewhere and controlled by Serbian businessmen or their strawmen. Some analysts believe the get-rich-quick pyramid schemes were used, by criminal cartels and international banks alike, as large money laundering machines. Politically unrecognized, surrounded by war, ridden by monetary chaos, hungry for foreign currency but isolated by international blockade, Yugoslavia was obviously a paradise for money launderers, but no proof was ever given for these allegations, mainly due to the fact that the ICTY was only interested in crimes falling strictly within its competences. Jane's Intelligence Review described the Kosovo Liberation Army as a well structured organisation, steered probably by a coordinating body in the West, but with a military command in Kosovo or Albania²³. Drug syndicates of Kosovo Albanians are today considered the most powerful and certainly the most violent in Europe. The chaotic situation in early 1997 may have been a perfect disguise for an armed confrontation between the competing criminal networks responsible for human trafficking with the help of Turkish suppliers.

²² The world geopolitics of drugs 1995/1996, Annual report. The Balkans, see www.ogd.org

²³ India in talks to buy arms from Belgrade, Jene's Defence Weekly, august 1993

3. Global defence

During the Cold War, security was essentially defined in military terms, as the avoidance of direct military danger. The dissolution of the Soviet Bloc and of the Soviet Union itself meant the end of a direct and major military threat to security. The end of the Cold War also triggered a wave of inter and intra-state armed conflicts. In these conflicts the civilian population is targeted more than ever before. Civil wars also include a crime/conflict element.

The collapse of some states into civil, and potentially regional war based on ethnic, religious, national and cultural divides is, often coupled with economic weakness, one of the central reasons for state failure. Groups fighting do mostly not enjoy any monopoly on the use of coercion. They will therefore have to come up with their own resources to protect and advance their aims. The link between crime, corruption and conflict is an issue which is both topical and problematic.

Not only terrorism, but also the proliferation of weapons of mass destruction and their delivery means, and even organised crime are closely intertwined with these developments. In such situations, getting ahold of weaponry and ammunition becomes particularly important. Having a wealthy diaspora is handy. So too is access to arsenals of failed states.

The underlying causes of these problems have come much more to the fore: organised crime, corruption, illegal immigration, social and economic underdevelopment, lack of democratic institutions and respect of human rights, failed states, ineffective multilateral institutions, ecological problems, terrorism, etc. Conflict creates an environment where corruption and organised criminal activity can prosper to the extent that they become impediments to conflict resolution and post-conflict rehabilitation. Perpetrators are sometimes parasites of conflict, in other case a symbiotic relationship develops between political and criminal elements. When it happens, crime, corruption, political aims, and ethnic extremism can become an explosive cocktail²⁴.

It is not possible therefore to avoid the old-time problem of the war crimes, crimes against humanity, the terrorist and the freedom-fighter through the looking glass of history, or the question of "state terrorism". On the one hand, it will be noted that in some cases conflicts that are labeled "inter-ethnic" have little to do with ethnic or national-cultural issues and more to do with defending narrow economic issues.

Therefore the way to resolve them requires as much attention to underlying criminal activities as to so-called national agendas. The other key consideration is the opposite extreme, namely the tendency to equate minorities with criminals and/or terrorists and therefore use the excuse of cracking down on extremists to "deal with" minority issues. This can even deepen inter-ethnic instability.

The concept of human security is usually thought to have originated in the 1994 Human development report²⁵. Human security takes the individual and his community as a point of reference, rather than the State, by addressing both military and non-military threats to his security. The security of a state is not an end in itself, but a means of and necessary precondition for providing security for people. Territorial integrity, traditionally the cornerstone of security policy, is less important. Human security is geared to attaining justice, not just order and stability.

The issue of involving the army in domestic security situations is not an easy one.

²⁴ Kemp, W. Profiting from instability: crime, corruption and inter-ethnic conflict, OSCE, 1993

²⁵ UNDP, Human development report 1994, New York, UN?, 1994; Commission on human security, Human security now, New York, UN, 2003

Warlaw argues that the answer to this question differs from country to country²⁶. But generally speaking, in a democratic society, the police have the monopoly of violence on the domestic level. The armed forces, on the other hand, are designed to protect national territory from outside threats and aggressions. This distinction seems clear, but does not take into account two specific contingencies. Firstly, there are situations in which the police is not capable to face the threat created by terrorists. This was for example the case in Northern Ireland, before the army moved in the Ulster counties in 1969. Secondly, the differentiation between the role of the police and army assumes that a state can easily make the difference between an “internal threat” and “external threat” and thus, war and peacetime. O’Brien argues: “The problem that emerge is in the interpretation of “peace-time” versus “war-time”; given the emergence of low-intensity conflict, in which a state is not in an overt state-of-war with an opponent but is confronted with a level of violence from that opponent that precludes peace”²⁷. Sometimes conflicts are protracted because certain individuals or groups have a vested interest in perpetuating instability. But anyway the idea of a collective responsibility to protect civilians from genocide, ethnic cleansing and other comparable atrocities is generally accepted.

Military intervention does not always solve problem, it may even end up creating new ones²⁸.

A classical military response is politically not always feasible and not practical from a strict military point of view. With most armed conflict taking unconventional or irregular forms rather than state-to-state warfare, the principles covering resort to, and use of, military force will increasingly be called into question. One must also not forget that soldiers are trained in an entirely different perspective than police officers. Conflicts that relate to corruption or organised crime are not the type for which standard conflict prevention and crisis management techniques and tools have been developed.

In post-conflict situations, communities are often polarized, the rule of law is fragile, and relationships gorged in conflict may still be strong. It often happens that in a post-conflict situation (especially after a conflict with ethnic undertones) ethnic kin, war veterans, and profiteers rally around each other and develop a system of ethnic cronyism in which so-called “national interest” are equated with those of the power-seeking elite. Therefore more should be done to tackle criminality and corruption and their relationship to conflict.

Another element is the growing awareness of the importance of international relations, such as democracy and respect of human rights and an effective international legal order. The changing security environment is therefore moving and a number of international organisations have sought new ways to deal with security and justice. Since then the international society and individual countries are focussing on four key threats:

- international terrorism;
- proliferation of weapons of mass destruction;
- state failure, which undermines global governance;
- organized crime.

Through the need to maintain the stability of the international system, comprehensive security can be linked to the notion of global public goods that emerged in the context

²⁶ Warlaw, G., Political terrorism, Cambridge, Cambridge university press, 1982, p. 87

²⁷ O’Brien, K., The use of assassination as a tool of state policy, available on <http://www.terrorism.net>

²⁸ Institute for security studies, Note pour le Haut représentant. Stratégie de sécurité de l’Union Européenne, Rome, 19 September 2003, available at <http://www.iss-eu.org/Solana/reprom.pdf>, at 3.

of the UN at the end of the 1990s. Global public goods provide benefits that are quasi universal in terms of countries, people and generations. Core public goods can then be defined as follows:

- international stability and security;
- an open economic world system;
- an international legal order;
- full respect of human rights;
- global welfare;
- a shared commitment to combat pockets of lawlessness and a shared commitment to settle regional conflicts.

The foremost public good is the stability of the international system itself, for which the greatest powers have to carry the greatest responsibility, but global public goods are strongly interrelated and the idea of promoting global governance in order to increase access to global public goods is prevalent in the UN's millennium goals²⁹.

Amongst the basic rules to be observed by all are:

- no state can decide under its own auspices to use military force in its relations to others, except for the provisions foreseen in the United Nations Charter;
- international terrorism is a global challenge that should be dealt with globally;
- the proliferation of weapons of mass destruction has to be contained;
- a joint commitment and ambition to put an end with all necessary means to gross and persistent human rights violations, war crimes and genocide;
- a joint effort to combat illegal drugs and human trafficking and other transnational crimes so that these are not allowed to grow as a cancer threatening the very health of the international system.

In theory three strategic objectives should be strived for:

- a particular contribution to stability and good governance;
- to build an international order, including a legal international order;
- to tackle the threats.

NATO does since the adoption of a Strategic Concept in 1999³⁰ recognize the importance of political, economic, social and environmental factors in addition to the indispensable defence dimension. But because of its very nature, that of a defence organisation NATO can only offer the politico-military part of the answer to the new security environment: collective defence (cfr. Art. 5), peace support operations, and politico-military dialogue and partnership.

The EU security strategy is promoting a mixture of intelligence, police, judicial, military and other means. The EU intends to become more active in the field of conflict prevention and crisis management. Different EU missions were set up, starting with the EU Police Mission in Bosnia and Herzegovina in 2003. This missions in the DRC (Operation Artemis), the former Yugoslav Republic of Macedonia (Operation Concordia, followed by Operation Procima) and in Georgia (Themis Eujust). An important step was the creation of the European Defence Agency, which should be fully operational by 2005. There is also clearly the intention to extend the definition of the so-called "Petersberg Tasks" already laid down in the EU Treaty since the Treaty of Amsterdam and expanded in the Treaty establishing a Constitution for Europe (Constitution) signed on 29 October 2004 in Rome: joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict

²⁹ Harriss-White, B., Globalisation and insecurity. Political, economic and physical challenges, New York, Palgrave, 2002

³⁰ The Alliance's strategic concept, approved by the Heads of State and Governments participating in the meeting of the North Atlantic Council, Washington DC, 23-24 April 1999

prevention and peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation (art. III-309 of the Constitution). The OSCE considers the protection and promotion of human rights and fundamental freedoms, along with economic and environmental cooperation to be just as important for the maintenance and peace and stability as politico-military issues. Security is more and more seen as indivisible.

The perception of enhanced security in the Western states since the end of the Cold War has weakened their commitment to an integrated defence structure and re-nationalised their security policies, whereas other states have now become more enthusiastic advocates of collective defence. NATO's traditional framework has been subjected to pressures from different political and geographical directions, including pressure from Central Europe for a NATO defence commitment. In the face of this pressure, the West has pulled back from multilateralism, and shown itself unwilling to use NATO or the WEU to engage in a decisive way in the task of management of the post-Cold War international system beyond the established perimeter of the Western security-community.

So individual countries and international bodies and organisations are involved in many initiatives, often illustrating their inability to pay to their strengths when trying to make more of their human intelligence capabilities and coordination of information, their knowledge of terrorist and criminal networks, their special forces, their peacekeeping forces, their broad conception of security issues and their ability to enforce international laws, be it at national or at international level. The risk of proliferation grows over time; left alone, terrorist networks will become even more dangerous. State failure and organised crime spread if they are neglected, as we can see in West Africa

The United Nations Security Council has the historic responsibility to function as the primary venue to watch after the stability of the international system. The UN Charter provides in theory a clear framework for the use of force. States have an inherent right to self-defence, enshrined in article 51. Long-established customary international law makes it clear the States can take military action as long as the threatened attack is imminent, no other means would deflect it, and the action is proportionate. When a State fails to protect its civilians, the international community then has a further responsibility to act, through humanitarian operations, monitoring missions and diplomatic pressure- and with force if necessary, though only as a last resort. So the Security Council has the authority to act preventively, but has rarely done so.

The open-ended and over-inclusive use of military force in connection to terrorist attacks for example has already brought the planet on the brink of nuclear war by unduly stretching the justified response to a crime against humanity, thus giving the way to knee-jerk reactions in complex conflicts which have been plagued with violence for decades. This is most apparent in the century-long crises between India and Pakistan over Kashmir, and between Arabs and Israelis over Palestine³¹.

The perpetrators, facilitators, and abettors of crimes against humanity must be sought under international law across the planet, and it is the duty of all countries and governments, and competent international organisations to help actively in their arrest, trial and punishment after due process is served. Justice means due process, far more dedication to its projection internationally, and the identification of neutral judges and tribunals to supervise any use of violence. It should not be a license to wage war whenever an act of terror or serious violations of international humanitarian law, as

³¹ Mallat, C. The need for a paradigm shift: a Middle Eastern contribution to the debate on "What are we fighting for", European Commission conference, Brussels, december 2002

these crimes are described in the Rome Convention on the ICC, are committed somewhere. While measured use of force should not be precluded against the rulers of a country who refuse to respond and cooperate with international justice requesting the surrender of mass-scale political assassins hidden or protected on their territory, an open-ended war on terrorism is ill-conceived, unjust, and interminable³². A different approach is needed, where legal categories recognisable under international law (jus cogens) determine any use of violence, preferably in the shape of independent and effective national or international tribunals that use of force would strengthen rather than undermine. International criminal tribunals looking at situations in Yugoslavia and Ruanda offer a prime example, as do national tribunals by so-called universal jurisdiction and the long-arm reach of justice for especially heinous crimes recognised as such by international law.

4. Global security and justice and the possible role of and impact on the International Criminal Court (ICC)

Despite increased public awareness and major incidents the development of effective transnational and global justice enforcement have not kept pace with the rapid expansion of transnational terrorism, organised crime and similar threatening situations. But we have to admit: due to the enormous social impact of these phenomena it is not easy to develop a coherent, lawful, legitimate and effective policy to contain for example terrorism. The development and implementation of any policy will always raise difficult dilemmas and stir complicated controversies, not only when it comes to all sorts of policing measures, but also in relation to long-term internal and foreign policies, aiming at the so-called causes of terrorism³³ and related problems. As Gijs de Vries, the EU coordinator for counter-terrorism, recently declared, we must be careful to preserve and protect the rights and liberties, the principles and values that terrorists are seeking to destroy. Otherwise the terrorists would have won³⁴. Non-proliferation, disarmament, arms control and law enforcement initiatives can make an essential contribution to the global fight against terrorism by reducing the risk of non-State actors gaining access to weapons of mass destruction, radioactive materials and means of delivery. Therefore for example the EU's declaration urges its member states to enhance the effectiveness of law enforcement cooperation. This makes clear that recent strategies go beyond the strictly politico-military dimension. Security is "the condition of being protected from or not exposed to danger, a feeling of safety or freedom from or absence of danger"³⁵. Security is seen as indivisible and is described as a comprehensive approach underlying the concept of security and cooperative mechanisms. In a Common concept, the WEU³⁶ described the security environment, highlighting inter alia the importance of the maintenance of international peace and order and the widest possible observance of generally recognized norms of conduct between states and of democratic institutions, respect for human rights and fundamental freedoms and the rule of law.

Canada defines human security as "freedom from pervasive threats or people's rights,

³² Ibid

³³ Fijnaut, C. Introduction to the conference European cooperation against terrorism, in: European cooperation against terrorism, The Hague, ICLN and EULEC, 2004, 109 (4)

³⁴ De Vries, G., European strategy in the fight against terrorism and the cooperation with the US, 13 May 2004

³⁵ Bishop, S. and Coolsaet, R., The world is the stage – A global security strategy for the EU, Brussels, KIIB, 2003

³⁶ European security: A common concept of the 27 WEU countries, Madrid, WEU Council of Ministers, 14 November 1995

safety or lives, i.e. freedom from fear as opposed to freedom from want, which corresponds to well-being rather than security³⁷. Canada has identified five policy priorities: protection of civilians, peace support operations, conflict prevention, governance and accountability and public safety. Like comprehensive security, human security highlights the interconnections between different dimensions of security and puts into evidence the global nature of security challenges.

Security gets a different interpretation on different continents. For some countries insecurity is seen as terrorism and weapons of mass destruction. For other countries insecurity is assimilated with civil wars. In other parts of the world it is seen as poverty and organised crime group activities. The global dimension of war situations and terrorism demonstrated by Al Qaeda called for a substantial cooperation and coordination. The very existence of an international society is, just as is the case with a nation state, dependent upon the existence of shared norms and laws. It obliges international fora and States, inter alia, to:

- criminalize the provision or collection of funds destined to support the phenomena, prohibit persons from doing so and bring any perpetrator to justice, be it at national or at international level;
- freeze funds and other financial assets or economic resources of criminals or of the persons that attempt, participate or facilitate illegal acts, including funds generated from property owned or controlled by them;
- refrain from supporting these criminals in any way (e.g. recruitment, safe haven, use of territory, permitting them to cross borders, forge documents, etc.);
- prevent the commission of illegal acts;
- cooperate in criminal investigations and proceedings.

Diverse transnational actors, such as the Financial Action Task Force (FATF), the G-8 Senior expert group on transnational organised crime (Lyons group), the EU (Europol and Eurojust), and even the UN crime commission, are not yet seen as an adequate check. But the terrorist attacks 9/11 and the bombing rush hour trains on 11 March 2004, create an increased momentum of the fight against terrorism and many new initiatives have been launched. Discussions proceeded much faster than before and developments have been rapid and comprehensive.

Three different strategic objectives have been spelled out, as well by the European Union as by other organisations: addressing the threats, creating an international order based on effective multilateralism, and building security in our neighbourhood. As regards the commitment to multilateralism, there is the need to cooperate with NATO, but also to affirm the loyalty of international law and the UN, as stresses the Security's Council primary role regarding international peace and security.

Effective investigation and prosecution are only possible to a limited extent.

Consequently, efforts will primarily need to focus on³⁸:

- the timely identification and disruption of possible preparations for assaults, surveillance, following and timely arrests of individuals who could potentially be involved;
- the acknowledgment and adequate monitoring and security of persons, objects, places or gathering that could be a potential terrorist goal;
- if possible refusing those suspected access to the area and developing the sensitivity and decisiveness of these authorities responsible.

International cooperation is essential in preventing and tackling these phenomena, given that the causes lay elsewhere, preparation can take place outside the borders in

³⁷ Axworthy, L., Nato's new security vocation, Nato review, 1999, nr. 4, 8-11

³⁸ Fijnatu, C., Ibidem, 8

various countries and the many countries that are potential targets.

But just like in a national society, an international legal order is needed to ensure the legal equality of us all, just like a Constitution does in a nation state. It is obvious that the ICC plays an important role in this. Combatting crimes against humanity, implies a very different kind of warfare than do conventional military, judicial and other law enforcement agencies and bodies. The concept of security is in fact very broad, by nature indivisible, what implies a broad and well equilibrated multi-agency approach. The blurring of the border line between global and domestic has already had its impact. It is now widely recognised that when states, instead of being protectors of individuals, become tormentors, the international community has the right and even the duty to take over in order to protect the individual man, woman and child from violence, abuse and injustice.

On July 1998, a United Nations Conference adopted the Rome Statute of the ICC. The Rome Statute identifies for the purposes of exercising jurisdiction the most serious violations of international human rights and humanitarian law. These violations are grouped within the categories of genocide³⁹, crimes against humanity⁴⁰, war crimes⁴¹ and the crime of aggression⁴². Crime of aggression will come under the court's jurisdiction if and when a satisfactory definition can be agreed.

The Rome statute contains no requirement that the assistance be either direct or substantial. Furthermore, incitement is limited to the crime of genocide (art. 25, 3, e). According to art. 25, ordering, soliciting or inducing any crime within the statute, which occurs or is attempted, gives rise to responsibility. The Statute defines the boundaries of complicity in a wide way, situating the net well beyond the principal perpetrators. The objective element requires little more than assistance, while the subjective element requires a purpose to facilitate the crime as well as the knowledge that the assistance will assist in the offence.

The aim of ICC investigations is to identify the precise nature of the alleged criminal activity, to identify alleged suspects and potential witnesses including victims, and to

³⁹ The Rome Statute defines the crime of genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group; forcible transferring of children of the group to another group.

⁴⁰ Crimes against humanity are defined as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

⁴¹ Under the Rome Statute, war crimes are any of the following breaches of the Geneva Conventions of 12 August 1949, perpetrated against any persons or property; willful killing; torture or inhuman treatment, including biological experiments; willfully causing great suffering, or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war or other protected person to serve in the forces of a hostile power; willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement; taking of hostages + violations extensively defined in article 8, subparagraph b of the Rome Statute.

In the case of armed conflict not of an international character, the Court's jurisdiction will cover breaches of article 3 common to the four Geneva Conventions of 12 August 1949.

⁴² The Court will have jurisdiction over the crime of aggression once a provision defining the crime has been adopted.

investigate both incriminating and exonerating circumstances.

It is clear that many groups responsible for crimes falling within the mandate of the ICC, are involved in other forms of crime such as terrorist acts, illegal immigration, social and economic underdevelopment and organised crime, as the end of the cold war produced a drastic change in security environments. In the absence of a major military threat, other factors can and will constitute the underlying causes of terrorism or of armed conflict between or within countries. These can intrinsically affect the values and interest of the ICC as it is not difficult to prospect further and more intense targeting of the civilian population. Most interesting for the ICC are the financial support from illicit activity, organised crime groups operating as supporting networks, common base of operations (functioning where the central state controls are least, where there are porous borders and weak law enforcement), corruption of officials, the use and exploitation of information technology to maximise the effectiveness of their operations, the employment of specialists and experts, money laundering (especially via underground banking mechanisms) and (weapons, false passports, etc.) activities. It is not difficult to prospect further and more intense targeting of the civilian population via a more and more intense interaction between criminal, terrorist, and anti-humanitarian activities.

Nevertheless it would be completely unjustified to criminalize all war lords and rebels as an ethnic group, nor to consider them all as terrorists or key figures in international organised crime. But it is clear that many of them are heavily involved in criminal networks and activities, falling only partly within the strict mandate of the ICC.

It is becoming more and more clear that situations falling within the mandate of the ICC can not be seen in isolation and the ICC should not work in isolation and therefore it is interesting to explore the capabilities of the ICC when tackling criminal situations on an ad hoc basis. Coalition building between national and international law enforcement agencies could become a better guarantee for more focussed investigations and the promotion of better coordinated investigation efforts, making full use of the available intelligence and evidence. There are also other concerns with the capacities of federal or international courts. First is the protecting intelligence information – especially in the middle of an ongoing conflict. Also the capabilities to arrest and convict people in the middle of a conflict poses serious problems. If military capacities are deployed for peacekeeping, as well as for peace enforcement, being valuable tools in ending wars and helping to secure States in their aftermath, interantional law enforcement actions would be facilitated. The same is valid during post-conflict peacebuilding activities.

Another problem is the tightly woven exclusion of probative evidence in traditional federal and international trials, limiting what can be placed before a court or a jury for evaluation.

Acting in accordance with Chapter VII of the UN Charter, the Security Council can require the court to defer investigations or prosecutions for a 12-month period, which is renewable. So investigations and prosecutions may be triggered by referral from the Security Council or a complaint from a State party. The office of the prosecutor has also to capacity to initiate investigations within territories that have ratified the Statute, but there must be agreement from the state where the alleged crimes took place and from the state of nationality of the accused. The Court's relationship to the Security Council was one of the most contentious issues when creating the ICC.

The ambiguities as what conduct is criminal in regard to ICC should be further explored, especially when trying to acknowledge the seriousness of the disintegrating processes and the threat they poses to the social, economical and political future of

the regions, subject of any ICC involvement. Ultimately, the direct threats pose the biggest frustrations. International criminal law was seen to be more effective in addressing the relatively minor threats of local or regional group criminality or, at the opposite extreme, providing a capability for international criminal law offers limited capacity to diminish the threat of Osam bin Laden for example. But in the aftermath of the recent attacks it has become clear that the existing legal framework for bringing the attackers to justice is inadequate. No less serious is the law's difficulty in reaching States who refuses to join multilateral agreements, precisely because they want to engage in the activities that the agreement prohibits. Some countries have placed themselves outside the bounds of international new developments. On May 2002, the US administration took the unprecedented step of withdrawing the signature. The US then embarked upon a literal crusade against the ICC. Unsigning of this treaty would be a move that is unprecedented in international law and, in effect would signal the intention to go to war with the Court.

All these problems can not be considered anymore as separate phenomena and there is a need to better understand the links between these phenomena. Therefore more interest should go in a more comprehensive approach and in further developing existing institutions and in supporting and clarifying the role of new ones such as the International Criminal Court as it is submitted that the role of international organisations could be divided into a normative role, an operational role and a key element in the upgrowth of transnational epistemic communities.

A central question is which crime situations should fall within the sphere of interest of the ICC in order to better evaluate the situations (potentially) under investigation. Not only the definition of related crimes is extremely important, but also the criteria based on which the selection of cases to be prosecuted earns particular attention. Formal criteria include today: the person to be targeted for prosecution, the serious nature of the crime, policy considerations, practical and other relevant considerations. Also informal criteria such as showing that the tribunal is capable bringing the persons before the court merit particular attention.

When exploring possibilities to investigate arms trafficking, illegal financial transactions and money trails, other related forms of organised crime, and especially terrorist activities, the question who is jurisdictionally responsible takes on additional significance.

But international criminal law enforcement has not advanced so far that the various ad hoc tribunals and the ICC, will be adapted to prosecute support and related criminal activities, because procedural difficulties have been and continue to be surmounted successfully.

Ad hoc international tribunals have not been as effective or as efficient as envisioned. Prosecution of senior officials for serious human rights crimes is a complex and expensive process regardless of whether the cases are tried before national or international courts. These prosecutions tend to involve massive amounts of evidence. Such cases require sophisticated prosecution strategy and trials must comply with international human rights standards to ensure their legitimacy and credibility. Cases brought before international criminal tribunals or in national courts (based on universal jurisdiction) are often tried far away from the crime scene and thus are less accessible to victims and those in whose name the crimes were committed. These trials sometimes lack the visibility in the country where the crimes occurred that a local trial would have. The state where the crimes occurred, whose government may include accused war criminals to their confederates, may oppose the prosecutions, resisting cooperation and making it difficult to obtain custody of the defendants or obtain evidence. Gathering

evidence for crimes that occurred hundreds or thousands of miles away makes it more difficult to meet the level of proof required for a conviction and for the accused to develop a comprehensive defense. Another downside to distance includes a lack of familiarity with the cultural and historical context in which the crimes occurred. Bringing together judges prosecutors, and other court personnel from different backgrounds and legal cultures creates obstacles to efficient trials. Reconciling the civil and common law traditions to establish and implement rules of procedure and evidence is time-consuming and costly. And by 2001, steps to enhance international justice began to encounter broadening political opposition. The attacks of 11 September unfortunately further contributed to a shift away from support for international justice, with efforts to combat terrorism taking precedence over international law.

The question also arises what to do with information collected by the ICC and not of direct interest when prosecuting a case before the Court and whether and how this information can be used to facilitate prosecution of international criminals before other national or international tribunals.

There is also the problem of sharing information among States, as well as in coordination with international institutions, including Interpol, the United Nations Centre for International Crime Prevention, the ICRC, the Council of Europe and other regional organisations (e.g. Europol), and international tribunals such as the ICTY and the ICTR.

Unfortunately, most States lack effective legislation in order to share information with the ICC, when being not directly involved in ICC investigations and cases.

Use of information for treaty compliance and law enforcement poses a serious problem of how to maintain the confidentiality of that information. To successfully assimilate accurate information requires that reporting parties, public and private, willingly divulge sensitive and valuable secrets; resistance will mount if there are unanswered suspicions that the information is mishandled or released. The practice in the ICTY and the ICTR and the practice of the ICC will show to what extent international law enforcement is accepted and reinforced by all those concerned. Anyway it is surprising that the UN do not mention in their Report of the Secretary-General's High-level Panel on Threats, Challenges and Change the role nor the importance of international law enforcement organisations such as the ICC⁴³.

5. Conclusions

Widespread violations of international humanitarian law has become a practice in the contemporary world: violent conflict is one of the biggest threats to security. In this world of growing global threats, global markets and global media, our security and prosperity depend on an effective multilateral approach.

While measured use of force should not be precluded against the rulers of a country who refuse to respond and cooperate with international justice, an open-ended war is ill-conceived, unjust and interminable. A different approach is needed, where legal categories recognisable under international law determine any use of violence in justified conditions.

But just like in a national society, an international legal order is needed to ensure the legal equality of us all, just like a Constitution does in a national state. Growing concerns of the international community resulted in a demand for international prosecution. With respect to criminal sanctions the universality principle provides for

⁴³ X, A more secured world: our shared responsibility, New-York, UN, 2004

jurisdiction both to prescribe domestic laws and to enforce sanctions against crimes or violations that have an independent basis on international law.

International justice has been elevated to the next level by the establishment of the International Criminal Court. But global defence and global justice should be more subject of an integrated approach, making possible a more and better balanced interactivity between national and international fora, making sure that serious violations of crimes against humanity and other serious forms of organised crime and terrorism, become subject of a structural and integrated preventive and repressive approach.

Unfortunately international law enforcement has not advanced so far that the various ad hoc tribunals and the ICC, will be adapted to prosecute support and related crimes more effectively, because of procedural difficulties have been and continue to be surmounted successfully. In addition, international law may be under threat, but it is not at all certain that its role will be significantly diminished.

In the meantime the ICC has to continue to promote such an open and cooperative attitude on a pragmatic basis. International lawyers, foreign experts, and criminologists will increasingly have to become multi disciplinary in their vision and strategic planning, flexible in their ability to form alliances and construct methods to interact with each other and develop their own networks, while deflating those of criminal groups.

And the United Nations must play a more central and systematic role in terrorism and post-conflict situations. Although the UN has often been pivotal in forging the international response to serious human rights crimes, the “justice gap” underscores the need for more systematic UN efforts.