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IPI Salzburg Forum 2015: The Rule of Law and the Laws of War

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Cover Photo: "Hybrid War" art installation by Ray Bartkus, Salzburg, Austria, September 8, 2015. IPI.

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Introduction

The current world order is under threat. One of the main factors of instability is the erosion of the rule-of-law-based international system, exacerbated by weak social cohesion, bad governance, and political and violent extremism. Due to the advent of new technologies and hybrid warfare, the laws of war have also become blurred. One of the major causes of both of these trends is the rapid and massive emergence of armed non-state actors.

Building on a highly successful event on "Lessons from the Past, Visions for the Future" co-organized by the International Peace Institute (IPI) at Schloss Leopoldskron in August 2014, IPI commemorated seventy years of the United Nations by launching the Salzburg Forum, a major annual event to address the risks and challenges of today and contribute to more effective multilateral governance in the future. The 2015 meeting on the theme "The Rule of Law and the Laws of War" brought together current and former foreign ministers, experts on international humanitarian law, diplomats, academics, journalists, and representatives from civil society in Schloss Leopoldskron in Salzburg to discuss the erosion of the rule of law and its impact on justice, peace, and security.

Opening remarks were made by Aurelia Frick, Minister for Foreign Affairs, Education and Culture of Liechtenstein, and Thorbjørn Jagland, Secretary General of the Council of Europe. IPI President Terje Rød-Larsen gave a speech on the importance of leadership.

Over a series of eight sessions, participants discussed a wide range of challenges to, or weaknesses in, the current system of international public, criminal, and humanitarian law. For example, participants discussed how to deal with non-state actors, strengthen compliance, enable self-governance without changing borders by force, and make more effective use of the UN normative framework around the "responsibility to protect." There was also a debate on if and how to criminalize the use of force, as well as on the impact of technology and armed non-state actors on the laws of war. One session raised frightening hypotheses about the unchecked effects of biological, cyber, and automated (robotic) weapons. In a highly topical session, participants debated how to build trust and cooperation in Europe, particularly in relation to the crisis in Ukraine. The last session, which was originally planned to look at how to improve multilateral cooperation to strengthen the rule of law, was changed to discuss how to deal more effectively with the urgent global refugee crisis. It resulted in the issuance of the Salzburg Declaration (see Appendix I).

As part of the event, Ray Bartkus, an internationally renowned Lithuanian artist based in New York, presented an installation entitled "Hybrid War" (see Appendix II and cover photo).

Law, Legality, and Legitimacy

While international law and its custodian institutions have crystallized over the past century, it remains unclear to what degree our international system is still fit for purpose. On the seventieth anniversary of the United Nations, forum participants focused on commitment to the rules and norms of the UN Charter in particular and international law in general, the evolution and adequacy of available instruments, the lack of enforcement mechanisms, and the changing security landscape, including the proliferation of non-state actors. In particular, the recent cases of Syria and Ukraine were mentioned as blatant breaches of fundamental international norms, in light of which the UN Security Council remains split and paralyzed.

To strengthen the role of international institutions, one panelist noted the need to address three key issues: (1) threats to social cohesion, (2) bad governance, and (3) violent organizations. These risks, some noted, emerged due to the double standards of big powers in applying international law (e.g., the United States' application of the Geneva Conventions during the invasion and subsequent disintegration of Iraq), including their opaque financing of various non-state actors. Another panelist suggested that the UN Charter itself was an extraordinary civilizational leap for humanity and that, instead of reviewing this solid basis for multilateralism, commitment to it should be strengthened. However, improvements are necessary in the enforcement of rules, including an effective monitoring system and oversight capacity

when the UN outsources military force (e.g., to the North Atlantic Treaty Organization [NATO] in Libya after Western powers reinterpreted the original mandate of Security Council Resolution 1973).

Noting that the International Criminal Court (ICC) itself is a fairly new development, one panelist suggested exploring new directions of legal evolution, such as the development of the "responsibility to protect" (RtoP) into what Brazil has tabled at the UN as "responsibility while protecting." Initiatives such as the Sustainable Development Goals (SDGs) or the formation of the UN Human Rights Council show that the UN has the capacity to innovate. The UN should also draw upon this capacity to reform the procedures and structural composition of the Security Council to better reflect the contemporary distribution of power and to promote accountability and justice.

The ICC, a panelist noted, plays an important role in enforcing the rule of law by dealing with the gravest crimes of concern to the international community. It is at the forefront in advancing international law, including by shaping future policies on children and the protection of property. But it also faces limitations: the jurisdiction of the court only covers crimes committed by a national or on the territory of a state party.

All formal mechanisms aside, another panelist intervened, there is a concerning gap between theory and practice. He observed that commitments under international law are detached from the harsh reality of people actually affected by grave crimes. He noted that as part of this "convenient hypocrisy," and, despite their interconnectedness, all three international legal regimes (humanitarian, human rights, and criminal) have different underlying mechanisms. Moreover, these mechanisms depend on the resources and capabilities of states, whose national politics impede their bureaucracies from efficient enforcement. The panelist noted that, while some 300 international conventions have been signed, merely nine treaty bodies exist—an insufficient number to objectively compare their effectiveness (the same applies to all special tribunals). Besides the marginal implementation of international legal instruments, high-level prosecution does not compensate for the lack of reconciliation mechanisms.

A final focus of the session was the relation of non-state actors to multilateralism. The discussion focused not only on actors such as the self-proclaimed Islamic State (a poorly addressed and escalated manifestation of despair, refuge in extremism, and popular disappointment in the international community's sense of justice), but also private sector conglomerates and organizations engaged in organized crime and money laundering, which almost entirely evade control, even at the national level. One participant commented that one third of states are fragile or failing not because of grave crimes, but because of bad governance that allows for such crimes. He concluded that, unless we address the root causes of bad governance (including bad governance of the global financial system), we will fail miserably in improving justice.

The discussion concluded with a reflection on fundamental values and their erosion; despite the post–World War II dictum of "never again," one speaker noted that 313 conflicts have produced 92 million deaths since 1945, but international courts and tribunals have only conducted 278 prosecutions. How can we assess an international system of criminal justice on this basis? How can our institutions promote accountability and justice? How can values be transformed into more effective mechanisms, in particular in national legal systems? How can we generate political will and incentivize commitment to the rules? And how do we reconcile what many believe to be shared and universal values with dissenting cultural interpretations? The panelists concluded that states could reconcile their dissenting interpretations on the basis of mutual interests, particularly on issues such as climate change and terrorism.

Strengthening Compliance with International Humanitarian Law

In an engaging debate, participants looked at two issues at the heart of the seminar's theme: *jus ad bellum*, or the legality of the use of force (see the section on "Criminalizing the Illegal Use of Force"), and *jus in bello*, or the law applicable during war, generally referred to as international humanitarian law (IHL). A panelist stated that the ratification of and accession to these principles in the Geneva Conventions and their Additional

Protocols are a significant success story. However, the Geneva Conventions have often been violated with impunity (e.g., in the Occupied Palestinian Territories, during the Vietnam War, by the Taliban authorities in Afghanistan). A key focus of this session was the challenge of compliance, particularly by non-state actors.

One panelist illustrated that the record of compliance with the conventions is "far from acceptable," mentioning, inter alia, the International Fact-Finding Commission, which has been de facto inactive since provided for under the First Additional Protocol in 1977. In relation to the Additional Protocols, the panelist mentioned the "elephant in the room": the United States not being a contracting party to the First and Second Additional Protocols, having announced well in advance that it will never become one. This has serious implications, as the US is involved in many of the major international armed conflict. It was underlined that many other countries, ranging from Israel to India, are also not contracting parties to the First Additional Protocol, which deals with international armed conflicts. This effectively leads to two separate legal regimes, even though some parts of the First Protocol are now part of customary international law and hence binding to everybody.

Discussants agreed that an increasing challenge is presented by violent non-state actors, in particular the so-called Islamic State (also known as ISIS or Daesh), which voices total contempt for IHL as we know it. This is not a matter of disagreement with or misunderstanding of the content of IHL but a total rejection of the IHL framework, as underlined by policies such as deliberate targeting of civilians and the destruction of cultural property. Despite broad international consensus on the principles of IHL, a panelist noted with concern, the international community failed to respond effectively.

Venturing deeper into the issue of compliance, another participant cautioned against an "overly static" view of compliance. The law itself is not well-defined and contains many uncertainties, he said, illustrating his argument with three points:

1. There are "dangerously unclear" questions about the very nature of certain conflicts. For example, the War on Terrorism, according to the US government, is an international armed conflict; according to the US Supreme Court, is a non-international armed conflict; and according to the International Committee of the Red Cross (ICRC), is not an armed conflict.
2. In some cases, the rules themselves are merely statements of general principles. For example, while targeting civilians is prohibited, defining how to balance between the anticipated military advantage of attacking a military target and the anticipated resulting damage to civilians is a difficult task that there is often a lack of will to address.
3. Law in areas of new technologies is vague, involving the application of general principles rather than dedicated rules (e.g., drone warfare and targeted killing policies).

It was suggested that a standing body of experts on IHL could prove highly useful by pronouncing on IHL issues in real time and articulating substantive principles for applying IHL—similar to the general comments system of the Human Rights Committee. A panelist pointed out that the ICRC is such an expert body that has looked into IHL's shortcomings and published a comprehensive report in 2011, concluding that the IHL framework as it stands today is able to deal with all these challenges.

Another panelist identified the absence of shared values as a problem and proposed three basic strategies for increasing compliance:

1. Norms could be internationalized. The ICRC can advocate for the training of armed forces and adoption of standards, and nongovernmental organizations (NGOs) and investigative journalists can expose departures from norms.
2. The principle of reciprocity—the "darkest secret" of IHL—could be used to justify belligerent reprisals as a deterrent measure (i.e., "if the enemy breaks the law, you can break the law back at the enemy"), which is nevertheless based on a shared value or understanding.
3. Persons who violate laws could be criminally prosecuted through international tribunals and national tribunals with universal jurisdiction. Although this would prevent safe havens of impunity, it is a politically controversial principle.

An ongoing Swiss initiative on compliance with

IHL was presented. The speaker reminded the group of the importance of the ICC as a trigger for promoting compliance: Article 8 of the Rome Statute criminalizes breaches of the Geneva Conventions. However, there have been only a few such cases so far (e.g., the prosecution of UK soldiers based on the ICC implementation statute). The Swiss initiative looked into the (lengthy and inefficient) possibility of drafting a fourth protocol to the conventions, as well as of finding solutions—whether institutional (e.g., a high commissioner for IHL) or functional (e.g., an early-warning mechanism)—to improve the effectiveness of the three current protocols: (1) the inquiry mechanism, (2) the protecting power mechanism, and (3) the International Fact-Finding Commission. At the heart of the system, the speaker reasoned, is a vacuum, reflected by the lack (until recently) of meetings among the state parties as foreseen by the Geneva Conventions.

While there are other bodies increasingly dealing with IHL, such as the Human Rights Council and the Security Council, they face challenges of their own: a blur between IHL and human rights issues and a selective membership problem, respectively. The Swiss initiative thus proposed the establishment of an inclusive forum to discuss and find consensus on how to increase clarity, improve implementation, avoid politicization, rethink the concept of fact-finding missions, and include non-state actors (a particular challenge with ISIS not seeking any kind of law-based legitimacy). This will be a long-term process, the panelist conceded, but "at least we made some steps forward for the first time [in] sixty years" by launching an ongoing dialogue (the state parties met nine times over the last four years, which has never happened before).

The concluding discussion revolved around the issue of ISIS not seeking international legitimacy—indeed, taking advantage of international rules of engagement by positioning among civilians. It also addressed the role of the international community—and political leaders in particular—in addressing such an actor that is entirely outside the normative system. Participants raised the issues of ISIS's broad support base, a possible power vacuum, and viable governance alternatives.

Preventing Mass Atrocities

The genesis of the term "responsibility to protect" (RtoP) can be traced back to the monumental UN failures in the face of the Rwandan genocide in 1994 and the massacre of Srebrenica in 1995 (neither of which came to a timely discussion in the Security Council due to political inexpediency and reluctance, despite available information). But, according to one panelist, the first significant use of the term emerged in the context of the Kosovo intervention in 1999, with the notion of a moral commitment to stop suffering and atrocities even without a Security Council mandate. The fundamental issue with RtoP was to resolve the apparent contradiction between Article 2 of the UN Charter (which affirms the Westphalian principle of national sovereignty) and Articles 5 and 6 (which underlie enforcement action to protect civilians in cases of large-scale atrocities).

Since the end of the Cold War, the speaker elaborated, a changing perspective has provided a new lens to "look at the security of the people as opposed to national security" and to design a foreign policy around the notion of protecting people. Sovereignty has increasingly been seen not as an entitlement, but as a right that states earn by the degree to which they protect their citizens; failure to do so, in cases of genocide, ethnic cleansing, crimes against humanity, and war crimes, conceptually triggers an international RtoP response.

The rather academic debate around RtoP never really picked up, however, until the 2005 World Summit at the UN, which officially adopted RtoP. Since then, the world has witnessed a few successes of the doctrine (e.g., in Kenya in 2008, Côte d'Ivoire in 2011, the early stage of the intervention in Libya in 2011, and perhaps Kyrgyzstan in 2010 and Guinea in 2009 and 2010), but these are outweighed by significant failures (e.g., in Abkhazia, the Central African Republic, Iraq, Libya after the initial intervention, South Sudan, Sri Lanka, and Syria).

One panelist added that we nonetheless need to stay optimistic about the future of RtoP, for defeatism is self-reinforcing. In fact, the principle seems to be undergoing a revival alongside large-

scale reviews of the UN peacekeeping and peacebuilding architectures and the debates on the Sustainable Development Goals (which include security). New technologies are further enhancing the RtoP toolbox. For example, crowdsourcing is allowing for more effective early assessment (prevention, the panel agreed, being much more important than intervention), participatory peacemaking is substantially enhancing development and rebuilding, and cell phone technology is providing more evidence of war crimes.

Another speaker listed four significant benchmarks providing reason for optimism:

1. RtoP as a normative force: RtoP has led to a successful change of mindset by changing vocabulary, which is seen as a condition for behavioral change. For example, since the 2011 intervention in Libya, some thirty UN resolutions and about a dozen statements from the president of the Security Council have expressly used RtoP terminology. States now universally accept the three-pillar framework of RtoP, at least rhetorically (despite some nervousness about the third pillar and a lack of effective implementation):
   a. The responsibility of the state to protect its own people;
   b. The responsibility of the international community to assist states in protecting their people; and
   c. The responsibility of the international community to engage in effective, timely, and decisive action when the state is manifestly failing to protect its people.
2. RtoP as a catalyst for institutional change and preparedness: While it is a work in progress, RtoP is much more advanced than a decade ago. Some fifty states and intergovernmental organizations have established RtoP focal points, significant civilian capacity-building efforts have been accompanied by developments in military doctrine and terminology, and there have been efforts to make the ICC and regional organizations more effective in implementing RtoP principles.
3. RtoP as a framework for effective preventive action: Understanding of the toolbox of preventive measures, both short-term operational and long-term structural, has increased significantly over the past decade. Nevertheless, commitment to these measures remains mostly rhetorical rather than substantive, including commitment to what the speaker called a "responsibility before protecting" (i.e., assessing the situation and properly planning the intervention) and a "responsibility after protecting" (i.e., knowing how to end the intervention).
4. RtoP as a framework for effective reactive action: A range of coercive measures short of military response (e.g., naming and shaming, arms embargos, threats of ICC prosecution) is available. Nonetheless, military force is sometimes the only option for stopping atrocities, and the international community has not always been able or willing to intervene militarily in these situations (e.g., in Rwanda in 1994).

One panelist noted that the RtoP discussion has played a part in the ongoing refugee crisis, which demands action to provide safe havens, and that the latest report of the UN secretary-general emphasized prevention and strengthening implementation. He therefore suggested a solution-oriented approach to four key obstacles to the development of RtoP:

1. Limitations of outside action (e.g., high expectations, moral outrage potentially leading to mistakes, difficulty of addressing "structural" or "root" causes);
2. Finite resources (due to austerity, budget cuts within the UN, etc.);
3. Contending priorities and problems of coordination (e.g., rigidity, a perceived need to preserve existing programming that can sometimes clash with the priority of atrocity prevention); and
4. A gap between expectations and capabilities.

In addressing these obstacles, the speaker recognized the apparent turn toward more long-term prevention efforts and put forward a range of concrete ideas: (1) a system-wide strategy for atrocity prevention (including clear guidance on what adjustments to mission priorities are necessary); (2) improvement of the analytical capacity in headquarters, including through the use of new technologies; and (3) sequenced (more flexible) mandating, with a focus on reducing risks, supporting local resilience, and denying perpetra-

tors the means to commit crimes.

Shifting from conceptual considerations to the politics behind RtoP, the panelists voiced more reasons for optimism, such as the fact that "nobody wants a mass atrocity on their conscience and therefore the doctrine has to be preserved." It was noted that the way forward (within the Security Council and beyond) must entail an accommodation between Moscow and Washington. Participants debated the cumulative effects of the interventions in Iraq and Libya, as well as the inaction of the Security Council in Syria, Yemen, and Ukraine. On top of that, discussants pointed out the lack of political champions at the UN and noted that in Darfur, China played the role of opposing intervention that Russia has played in Syria.

There was disagreement on whether having legal sanction to use force from the Security Council, as established by the UN Charter, is more important than preventing mass atrocities even in cases where the council is unable to act. In certain cases, can (morally) legitimate but illegal action be justified (e.g., in Kosovo in 1999)?

A significant focus of the debate was the intervention in Libya, where in Resolution 1973 (2011) the Security Council authorized a package including not only the use of force but also a provisional cease-fire and mediation by the African Union. Most participants agreed that the intervention coalition reinterpreted the mandate granted by Resolution 1973 without much consideration for its actual content. The P3 (United States, United Kingdom, and France), it was said, overreached their mandate and failed to fulfill their proper RtoP function; they shifted their strategic goal from preventing atrocities to regime change without a strategy for political development and rebuilding security, hence leaving a political vacuum on the ground. Since then, the Security Council's consensus on RtoP has evaporated, leading directly to a paralysis that has prevented action on Syria since mid-2011.

As a positive development, a panelist presented a strategy "for re-establishing consensus on the Security Council in these hardest of cases," which Brazil proposed in 2011: the so-called "responsibility while protecting." The core of this strategy, the speaker explained, is to ensure there is consensus that the relevant criteria are satisfied (e.g., balance of consequences, proportionality, use of force as a last resort), but also to guarantee that the issue is properly and fully debated in the first place and to establish a monitoring and review mechanism ensuring that the mandate is implemented as anticipated. The concept would require maintaining a consensual approach in all phases, from mandate drafting to implementation. Another participant added that this strategy should not be limited to RtoP but should become a general procedural principle in the Security Council. According to this participant, Liechtenstein is proposing a code of conduct, focusing on the need to operationalize this academic debate in practice.

Territorial Integrity and Self-Determination

One of the biggest threats to stability is the clash between the principles of self-determination and the territorial integrity of states. As such, this panel attempted to answer the challenging question of whether these two principles can be reconciled. They represent, a panelist noted, two of the most fundamental and sensitive principles of international law and international politics. Territorial integrity is older, he continued, dating back to the creation of nation-states and prominently featured in Article 2 of the UN Charter and the Helsinki Final Act of the Conference on Security and Cooperation in Europe. The right to self-determination is younger, dating back to the US Declaration of Independence in 1776 and also heavily reflected in the "Fourteen Points" presented by President Woodrow Wilson during the peace negotiations following World War I. While these two principles do not necessarily have to be in conflict, they often are in practice, mostly due to the lack of clear guidance on issues such as how and when to implement them and who has the authority to decide on their applicability.

Illustrating this tension in different cases (see Table 1), a panelist concluded that the best case is mutual agreement between the two entities. Alternatively, third-party assistance (by the Security Council or a regional authority such as the EU) can reduce the risk of escalation and conflict. In case of doubt, the speaker asserted, it is important to adhere to principles of international law and avoid any temptation to bend them.

Table 1: Cases illustrating tension between self-determination and territorial integrity

	Czechoslovakia (split)	Montenegro (independence)	Other former Yugoslav republics (independence)	Kosovo (declaration of independence)	South Ossetia, Crimea, etc. (declaration of independence)
Peaceful and constitutional?	Yes	Yes	No (violent conflict)	Questionable	No
By mutual agreement?	Yes	Yes (Serbia agreed to EU process)	No (Serbia opposed)	No (unilateral declaration)	No
Democratic referendum?	No (but political agreement)	Yes	Yes	No	Yes (although questionable whether "democratic")
In accordance with international law?	Yes	Yes	Outcome only	In conflict with some principles	No
Assistance of international community?	No	Yes (EU)	No (but subsequent recognition leading to UN membership)	Ongoing conflict in regards to recognition, not a UN member	Intervention by Russia although not recognized by most UN member states
Conflict between principal actors?	No (both parties acted in coordination and harmony)	No (preventive diplomacy by third party)	Yes (no preventive diplomacy)	Yes	Yes

One participant suggested a systemic connection between all fundamental principles of international law, which should be complementary and not contradictory. The participant explained that the principle of the "equal rights and self-determination of peoples" (the full title in the UN Charter) was invoked during the anticolonial struggle by peoples under foreign occupation. The principle was not conceived as applying to ethnic minorities within an independent and sovereign state, the speaker asserted, and hence does not contradict territorial integrity.

The panelist concluded that recent attempts to justify infringement of territorial integrity by invoking the right to self-determination, in particular for national minorities, have wrongly instrumentalized the principle for foreign policy objectives, in violation of international law. As a clear example of this "misinterpretation of what the right to self-determination means," the speaker mentioned the crisis in Ukraine, where Russia used the "kin-state" argument to justify the annexation of Crimea.

It was said that applying the right to self-determination to national minorities not only threatens international peace and security by encouraging unilateral secession but also provokes atomization of the territorial structure of states, for any part of any territory contains some kind of minority. Instead, effective participation of national minorities in decision making seems to be the best solution for creating harmonious societies.

Observing that the decolonization period had a significant impact on the development of laws of

self-determination, another panelist stressed that demands for self-determination can now range from demands for various degrees of autonomy to demands for full independence. These demands will increase, as migration and forced displacement disperse communities across borders, making societies more heterogeneous. This increased heterogeneity will also make addressing these demands less politically convenient, he noted, making four basic observations:

1. The Westphalian paradigm and Wilsonian ideal of self-determination are not adequate in the contemporary world, with thousands of ethnic groups and nations spread across borders. This "problem of facts on the ground" is exacerbated by an international legal framework that is absent or not useful.
2. There is a lack of clarity regarding the substantive content of the principle of self-determination. What is a "people" ("ethnic" is a non-legal and hugely problematic term)? What are the options between external self-determination (i.e., creating a state) and internal self-determination (i.e., operating within the confines of a state)? Despite the fact that states are the primary subjects of international law, the law barely addresses the "birth and death of states."
3. There are a number of procedural issues. How does one determine the validity of a self-determination claim? Who has the authority to determine what is and is not a "people"? Where should claims be submitted (e.g., a reformed UN Trusteeship Council)? Despite various claims creating tremendous uncertainty, the inviolability of borders is often used to stall the discussion, leaving these questions unaddressed.
4. There is a wide spectrum of self-determination, on which secession is one extreme. Many communities around the world are not demanding statehood. Indeed, the idea that self-determination must end in external self-determination and statehood is false. Instead, the political focus should be on dignified life (in terms of human rights, etc.), opening an enormous breadth of options and procedures to be explored.

Reminding the participants of Principle 1 of the Helsinki Final Act, the speaker concluded that the essential question in this area should be: How do we live together in peace, stability, mutual benefit, and prosperity in a way that honors and respects each other and gives us peace and development?

The conversation continued around options for Eastern Ukraine and Crimea, weighing both legal and political considerations. Russia was criticized for its military doctrine, which includes the right to intervene militarily to protect citizens abroad (based on a logic of "kin-states"), the hugely problematic 1999 law on the protection of compatriots abroad, and the breach of the 1994 Budapest Memorandum on Security Assurances.

The discussion further revolved around the case of the Kurdish people. It was suggested that the first thing to address should be their grievances and legitimate aspirations short of statehood as a basis for an acceptable and concurrent framework among the neighboring states of the region. "If people enjoy and gain stakes in a stable situation, if they live with dignity and freedom, then demands for self-determination drop sharply," a participant asserted.

New Rules for New Technologies?

Technology—from armed drones to cyberattacks to surveillance—is transforming the way wars are being fought. The aim of this panel was twofold: (1) to raise awareness of the new roles of technology; and (2) to examine whether additional modifications to the international system are necessary to accommodate new technologies. Introductory remarks underscored that state actors are investing heavily in cybersecurity, while autonomous weapons are becoming part of the security landscape, making a dangerous global arms race for autonomous weapons virtually inevitable. Threats posed by biotechnology, biogenetics, artificial intelligence (AI), and cyber-weapons are all increasing as part of an unstoppable drive for innovation. At the same time, the political drive to build legal regulatory frameworks remains largely absent.

One speaker identified two different frameworks for addressing the future of cyberspace: (1) the techno-utopian framework that envisages cyberspace as a place where state sovereignty will not apply; and (2) the military view of cyberspace

as a new military playground. However, rule of law and sovereignty are weak and vague under both frameworks (in line with the so-called "outer space doctrine"). Cyberspace networks are becoming increasingly fundamental to the workings of society and are affecting more and more people. Yet relevant policies use outdated frameworks that need to be revised, which is difficult, the speaker noted, since the need for technical knowledge makes the topic exclusive. This is a "recipe for disaster" that, aggravated by a lack of norms, could lead to a cyber arms race. It was proposed that the international community (inclusive of civil society and other actors) ought to make greater effort and investment to change the paradigm away from preventing cyber-war toward making cyber-peace, with a move toward technical solutions that increase security without curtailing freedoms.

An expert told the panel that autonomous weapons systems can be completely autonomous without any need for communication. In using these weapons, some follow a utilitarian approach, arguing that they can save soldiers' lives, can be force multipliers without raising the probability of losses, and can be easier to command (not having emotions or seeking revenge on their commanders). Severe moral problems arise, however, because these systems cannot comply with the laws of war (they have difficulty discriminating between civilians and military personnel and making decisions about proportionality). Other problems include a possible arms race in developing these technologies, a lower threshold for armed conflict, the potential for unintentional armed conflict, and unforeseeable interactions between these weapons. It was suggested that the Convention on Certain Conventional Weapons provides a useful starting point to address these issues. Stakeholders ought to come together and draw red lines, a participant urged, implementing a system of deliberate human control of robotic weapons. "We need to define how automated we want warfare to be and map out the problems of cyberspace," a speaker suggested.

On advances in biotechnology, a panelist called for a more expansive definition of anticipatory self-defense to include biotechnology and identified two dimensions of concern: (1) scientists' ability to engineer viruses to be more lethal and mutative, effectively "creating an accident waiting to happen"; and (2) techniques allowing for gene replacement (i.e., modification of a genetic code), which enable mass attacks on specific groups of people with certain characteristics (such as gender or ethnicity). The speaker reasoned that all such developments can do harm but also possess immense potential (e.g., in areas like combatting diseases and advancing agriculture). Governments are thus resistant to regulating or banning such technologies, making it all the more difficult to find international consensus.

Governments are faced with the challenge of addressing a fast-developing new reality, an expert added. It was suggested that reopening normative frameworks often results in worse outcomes, and stakeholders cannot afford to lose time in doing so. Hence, the reasoning went, it is preferred to focus on complying with and adapting existing laws and systems (e.g., increasing technical precision, developing rules and norms on different levels of critical infrastructure) instead of creating new frameworks or conventions for cyberspace. Although states are resistant to cooperating on new technologies, for "people do not want to share their toys" (i.e., the instruments in question are highly classified), it is important for them to overcome this resistance and promote dialogue on immediate action. Moreover, a participant pointed out, the current approach is based on "operating in silos" and does not include a broad enough spectrum of stakeholders, such as civil society. The law enforcement component of cybersecurity should also be more transparent and inclusive, according to other seminar participants.

Other issues raised in the concluding conversation included the attribution problem of cyber-attacks; the need for more agency for scientists and evidence-based policy decisions (which require "champions" within the international community); possibilities for innovative frameworks; new and re-conceptualized rules, norms, and processes; and a focus on early warning and prevention. Finally, a certain degree of uncertainty will always be part of this accelerating debate, a participant observed, arguing that "the law will always be behind, because one cannot ban a weapon before it has been introduced. One cannot ban artificial intelligence, because we don't know what exactly it will be."

Criminalizing the Illegal Use of Force

The 2010 Review Conference of the Rome Statute in Kampala adopted two amendments, including one on the crime of aggression. To date, this amendment is several ratifications short of the thirty required for it to enter into force and give the ICC jurisdiction over this crime. Panelists agreed that this development would be a "game changer."

In their introductory remarks, the panelists noted with concern a range of reservations by the United States, which, according to one speaker, does not reflect a historical continuity (in fact, the United States was the driving force behind the inclusion of the then-called "crimes against peace" in the Nuremberg proceedings of 1945). The debate, it was noted, reflects "tensions between power, law and reason," as well as between the traditional realist mindset of international relations ("the strong do what they can, the weak what they must") and a different ethic purported by the Kampala amendments and engraved on the front of the US Supreme Court building ("equal justice under law," including the responsibility of the sovereign state to protect its population, first articulated in Emer de Vattel's *The Law of Nations* almost 200 years before Nuremberg).

Another historic landmark of this ethic that was discussed was the 1928 Kellogg-Briand Pact (officially, the General Treaty for Renunciation of War as an Instrument of National Policy). Without legal sanctions or enforcement mechanisms, however, and containing substantial reservations by the United States and the United Kingdom, the pact remained ineffective. Nevertheless, it did contribute to establishing subsequent legal norms and principles that were eventually applied in Nuremberg—a "tribute of power to reason," a participant observed. During the trials, US chief prosecutor Robert H. Jackson reported to President Truman that the principles of Nuremberg "constitute law—and law with a sanction." UK chief prosecutor Hartley Shawcross reportedly emphasized that, even if there is no enforcement mechanism in the Kellogg-Briand Pact, it is still valid international law. Subsequently, UN General Assembly Resolution 95 (I) (1946) "affirmed the principles of international law recognized by the Charter of the [Nuremberg] Tribunal and the judgment of the Tribunal ('the [Nuremberg] principles')."

Another key development leading to the current discussion on the Kampala amendments was UN General Assembly Resolution 3314 (1974), which approved a definition of aggression and recommended that the Security Council "take account of that Definition as guidance in determination, in accordance with the Charter [Article 39], the existence of an act of aggression." This primacy of the council (and not an independent court) in determining aggression made it easy for leaders to drag their nations into illegal wars, according to one panelist, who underscored his argument by quoting Hermann Göring: "Naturally, the common people don't want war…. That is understood. But, after all, it is the leaders of the country who determine the policy and it is always a simple matter to drag the people along."

Nuremberg, the panelists agreed, set a precedent. Should the Kampala amendment on the crime of aggression achieve its ratification threshold and be activated, this would close an important gap in the international legal architecture that has thus far threatened the legitimacy of the entire system. Indeed, a panelist pointed out that the ICC's lack of jurisdiction over crimes of aggression is a major gap.

Diving into the legal intricacies of the Kampala negotiations, experts explained that states agreed on the need to address illegal state conduct. Defining such conduct, however, proved to be challenging. Eventually, a compromise was reached, consisting of two pillars: (1) UN General Assembly Resolution 3314 (1974), Articles 1 and 3; and (2) the provision that the ICC should be able to exercise its jurisdiction based on the referral of the Security Council (purely universal jurisdiction with no state consent required). There was a clash of opinions over situations where there is no Security Council referral due to lack of consensus or even a veto. The five permanent members (P5) advocated for the Security Council maintaining a "monopoly" over referrals, while those on the other extreme argued in favor of giving the ICC the same jurisdiction over crimes of aggression as over other cases (i.e., including in cases where the accused is a national of a non-state-party that accepts the exercise of the court's jurisdiction).

Both extremes, the expert elaborated, did not achieve a sufficient degree of support. An in-

between solution thus had to be found, which was considerably closer to the consensual regime favored by the P5. In fact, not only do non-states-parties remain outside the ICC's jurisdiction, but even states parties can opt out at any moment before the crime (even in cases of a Security Council referral). This compromise has been heavily criticized by idealists and suffers from significant shortcomings, discussants conceded.

Nevertheless, and despite the politics behind the role of the Security Council and the ICC's jurisdiction, it was declared that codifying a legal definition of crimes of aggression was a significant achievement in itself. Furthermore, the independence of the court's decisions from the Security Council (i.e., its ability to take action without a Security Council referral) ought to be noted as a success. The Kampala amendments, a panelist observed, "complete the Rome Statute…and the UN Charter" by criminalizing and holding states accountable for violations of the principle of non-use of force. They generate a legal basis that decision makers can refer to and that can be incorporated into national penal codes. The panelists remained hopeful that more states (with a broader geographic distribution) would ratify the Rome Statute, including the Kampala amendments. "Nobody will question Kampala in fifty years," a participant optimistically concluded.

Reaffirming Principles and Rebuilding Trust

In 1975, the Council for Security and Co-operation in Europe, the predecessor of the Organization for Security and Co-operation in Europe (OSCE), adopted the Helsinki Final Act, with its "Declaration on Principles Guiding Relations between participating States" (also known as the "Decalogue"). Since then, however, many of those fundamental principles have been violated. One panelist outlined what he called the historical cycle of the OSCE, reasoning that reaffirming principles and rebuilding trust across the multilateral community require norms that can be practically implemented. Considering how organizations can help states implement norms and principles, the speaker identified four phases of the OSCE:

1. The signature of the Helsinki Final Act in August 1975 represented a "strange mix" between two families of values: on the one hand, traditional Westphalian values, legally enshrined in the 1970 UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (technically the first six principles of ten in the Decalogue), and, on the other hand, values of human rights and fundamental freedoms developed through the UN and European institutions (e.g., the Council of Europe, the European Convention on Human Rights). This mix resulted in unexpected consequences, particularly in regards to civil society in Eastern Europe.
2. The fall of the Berlin Wall and dissolution of the Soviet Union led to extraordinary meetings of convergence (e.g., the Paris Summit and Copenhagen Document). These meetings developed a range of detailed norms, which go into practical issues such as the rule of law, democracy, freedom of the media, and freedom of movement. During this phase, all participating states took part in an ambitious platform of cross-dimensional pan-European security, featuring a rich and diversified spectrum of (human) security institutions.
3. A number of decisions taken by NATO and later the EU started to weaken the institutional cohesion. These policies, though at first accepted, came to be resented by Russia, which saw them as double standards. This phase was marked by a decline of the values-based process. Under such circumstances, it is notable that the OSCE remained resilient and dynamic and continued to include Russia.
4. In 2014, Russia's annexation of Crimea and the conflict in Eastern Ukraine catapulted the OSCE back to the very basic goal of "creating peace in a place of war." As the only organization accepted by both sides, the OSCE has engaged in monitoring tasks, with the consent of Russia, and encouraged the implementation of agreements.

Under the current circumstances, the panelist concluded, it is best to seize upon the resiliency of the OSCE as a platform still attractive to its members and to align its values with the "mood of the time." A positive and major political signal is that Germany accepted the OSCE chairmanship in 2016 and will be followed by Austria.

This conclusion was supported by another speaker, who explained that the key mandate of the OSCE Panel of Eminent Persons is political accommodation and reconfirmation of European security as a common project. The urgency of this task was illustrated by the annexation of Crimea, which created a deep crisis for European security and an atmosphere of intolerance. To achieve its goal of reaffirming the aforementioned principles in Europe, the panel ought to provide recommendations for overcoming the existing "strategic lack of open-mindedness," reestablish honest communication at the highest levels on the root causes of the crisis, and devise creative ways to overcome the status quo. Thus far, the discussant asserted, efforts have mainly aimed to de-escalate the crisis in Ukraine. It was proposed, instead, to move toward a sustainable formula for settling the crisis in and around Ukraine—a challenge inherently linked to reconstructing a pan-European security architecture. This will require leadership, vision, and mechanisms (e.g., a feasible format for future negotiations). Two options for such a settlement were presented:

1. The so-called "Germanization" of Ukraine (i.e., dividing the country into two parts: Western and Central Ukraine, on the one hand, and Crimea and Eastern Ukraine, on the other). With the goal of stopping the use of force, this option could provide a certain degree of predictable stability for coexistence, coupled with a security umbrella for Ukraine that reaffirms the principles of the Helsinki Final Act (i.e., "pan-European security in a divided Europe," as opposed to the Paris Charter's "cooperative pan-European security in a united Europe").
2. The "Austrianization" of Ukraine (i.e., establishing a formula for neutrality). Although Ukraine is struggling for NATO membership rather than aiming for permanent neutrality, there is hope that a possible 2017 OSCE Summit could decide on a formula for neutrality.

Either way, it was noted, a settlement between the signatories of the 1994 Budapest Memorandum on Security Assurances (Ukraine and the P5, although France and China were not primary signatories) plus two (the EU and Germany) will be essential. Expectations were raised that the German or Austrian chairmanships could initiate a process following this format. Finally, a discussant suggested that the Council of Europe (CoE), as a "real pan-European framework," with its priority on the rule of law based on human rights, could put forward creative and open-minded ideas. "It is impossible," a speaker observed, "to go back to business as usual."

Indeed, another participant emphasized that states must guarantee the CoE's principles of rule of law. Regrettably, however, an "old culture" contradictory to the post–World War II human rights system survived in parts of Europe, the speaker said. With this mentality, "individuals exist for the state, and not vice versa."

To build peace, a panelist reasoned, it is important to build trust. He illustrated this argument by noting that the crisis in Ukraine is older than the annexation of Crimea. Already back in 2009, the CoE warned its institutional partners about the lack of trust in Ukrainian society, reflected by a dependent and corrupt judiciary, the influence of oligarchs on government decisions and their wide-reaching immunity and impunity, and a parliament that was not autonomous and could not check executive power. Corruption and mistrust, according to the speaker, ultimately led to the Maidan revolution, which profoundly destabilized Ukraine. Weak and vulnerable, the country was susceptible to any Russian actions (which resulted in part from the similarly corroded rule of law in Russia, the participant argued).

It followed from these arguments that a functioning system of checks and balances, rule of law, and free media are essential for stability. There is thus a need for a constitutional framework that allows for building institutions and trust and that generates broad societal support and good relations with neighbors. Furthermore, international actors must be consistent in their policies and play by the rules to avoid another situation like Ukraine.

The remaining discussion highlighted that, while "values are valued" (rhetorically), it will be important to bridge the wide gap between normative and operational definitions and to operationalize and implement mutually agreed-upon norms. This is another crisis of compliance that must be addressed effectively.

Desperate Displacement and Migration: A Call for Action

Due to the urgency of action on the growing refugee crisis and the need for a strategic vision and policy response by European and international leaders, participants and organizers of the Salzburg Forum decided to discuss this concrete issue in lieu of the planned session on "Multilateral Cooperation: Norms and Institutions for Crises beyond Borders.". Indeed, the refugee crisis represents a key example of the need for strengthened multilateral cooperation. Concluding the session, participants agreed on concrete steps to help save refugees and issued the Salzburg Declaration on the European Refugee Crisis (see Appendix I).

Inspired to contribute positively to mitigating the ongoing refugee crisis, participants noted that the international response to date has been disjointed and inadequate. The panel agreed on the need to look at the root causes, as well as long-term solutions, and to focus on the immediate refugee crisis while putting it in a broader perspective.

Giving the example of massive displacements in Central America and Mexico in 2014, an expert illustrated how the ICRC established cooperation with and among all the concerned societies and governments and launched a private project to contain and manage the crisis. Although the migration flow could not be stopped, the speaker noted that all governments agreed it was one of the most successful programs in reducing the vulnerability of migrants to being recruited by cartels. "Migration at [a] large scale is a social phenomenon and not a problem," a participant asserted. "It can be managed." The key lesson of this experience was to identify pressure points and ease them in order to mitigate the most negative impacts of migration. In Central America, the ICRC was able to enter into meaningful dialogue with the United States on return policies in order to limit recruitment to drug cartels and crime.

Moving away from this case study, participants learned that, despite a "tradition to respond to crises without addressing the root conflicts," the ICRC is first and foremost engaged at the place of origin, since most of the displaced today are displaced internally, and in Syria, some 75 percent of all assistance is delivered by Syrians. If we fail to resolve conflicts at the root and support local aid actors, the potential for further displacement is massive.

The panelist made two striking points: (1) there is underinvestment in diplomacy to stabilize conflicts, which is "neglect in its most egregious form"; and (2) there is blatant disrespect and disregard for international humanitarian law and insignificant effort to have this law respected. In addition, policies addressing forced displacement are completely underestimating what the speaker called the "new connectivity," leading to a "sea change in migration": migrants' best strategic instrument is the cell phone, which allows them to remain hyper-connected and to wire payments to traffickers. This economic and technological dimension of migration must be acknowledged to address the issue effectively, the speaker concluded.

There was a certain frustration that—unlike the ICRC, the Red Cross and Red Crescent Societies, and Médecins Sans Frontières (MSF)—the UN has no solid presence on the ground. This was traced back to the UN's limitations as "both a political and a humanitarian organization," as in some cases "the political aspect prevents the UN from doing its duties in the humanitarian part."

According to another panelist, Syria and Libya represent concrete examples of what the 2001 EU Temporary Protection Directive was meant for. When a refugee arrives, it is incumbent on the receiving country to take charge of the situation. Under difficult circumstances, this puts pressure on the capacity of certain countries. The speaker proposed universalizing a small exception included in the Dublin III Regulation on asylum and unaccompanied minors. Refugees ought to be immediately granted protection, as opposed to asylum or immigrant status, and not put in centers with others awaiting determination of their status. The panelists agreed that the current European response is shamefully out of proportion to the number of refugees, especially considering the even larger number of refugees in Jordan and Lebanon. "Fortress Europe is trying to deny the reality knocking on their door," one participant concluded.

Avowing that, in this situation, everyone bears a shared responsibility for inaction, the panel called for vision and political leadership to seize and build

on available public compassion while dismantling the rise of right-wing extremism in Europe. Leaders should establish relevant policies "before the almost inevitable backlash will come," particularly in light of terrorist operations in Europe.

One panelist argued that the international community (and the Security Council in particular) is committing the sin of inaction at home while undertaking counterproductive action abroad that has made humanitarian action even more difficult (e.g., bombing ISIS while most Syrian refugees are in fact fleeing violence perpetrated by the Assad regime). A violent response leads to temporary peace but ultimately creates more problems.

Observing with concern that "politicians meet, say something needs to happen, and then leave the room," participants called for immediate action, vision, and leadership, which inspired a group of high-level individuals to take the initiative to produce a declaration. The "Salzburg Declaration" calls for the formation of a task force that could subsequently serve as an evidence-based and expert-driven pressure group (see Annex I). Forced displacement and desperate migration, several participants announced, are global problems, and all countries must acknowledge their shared responsibility. It was further proclaimed that "Europe was created on humanitarian values, and if we do not assist in the humanitarian crisis, the fundament of European societies will erode."

On a more positive note, some voices articulated that a crisis can be an opportunity for transformation and for launching sustainable solutions. Experience shows that small incidents, rather than comprehensive global frameworks, can sometimes change systems. This declaration, the signatories announced, shall serve to crystallize the issue and propose solutions. It is intended to seize the available willingness around the world and form a coalition with other stakeholders. To bring in partners whose engagement will be key to a sustainable solution—such as the United States—a sincere reassessment of national strategic interests vis-à-vis the costs of conflict (in the form of migration) has to be conducted. The panel concluded that incentives for governments to actually ponder the advantages of changing their policies can go a long way toward a concerted and effective long-term policy response.

Appendix I:
Salzburg Declaration on the European Refugee Crisis

We are moved and concerned by the massive human tragedy unfolding before our eyes. The United Nations was established to save future generations from the scourge of war. At the moment, not only are millions of men, women, and children suffering from the scourge of war, but are struggling and often dying to find protection. Many are facing barriers of unsafe journeys, unscrupulous smugglers and traffickers, and unsympathetic governments.

The refugee crisis now confronting Europe is the most immediately critical of the many alarming problems of people displacement around the world, collectively constituting one of the biggest humanitarian disasters in the 70 year history of the UN.

How the international community resolves this crisis is a test of the seriousness of our commitment to our common humanity, and will hopefully provide a model for our collective response to acute displacement problems in other parts of the world.

To encourage a global sense of solidarity, live up to the spirit of the UN Convention on Refugees, and enable those fleeing persecution and violence to find safety, we strongly urge that a massive rescue operation be mobilized. This global rescue initiative should:

- Create humane, properly resourced and equipped reception centres in key hubs in the Middle East, North Africa and Europe where refugees are congregating;
- Ensure that these centres provide for the basic needs of those seeking protection, and assist them in the process of resettlement;
- Devise criteria for indicative quotas against which Member States throughout the world should be asked to accept refugees;
- Treat all nationals fleeing violence from Syria as eligible for temporary protection status;
- Seek support from commercial ship and airlines to provide safe and dignified transportation from reception centres to welcome centres in receiving countries;
- Create a Solidarity Fund to help finance the initiative to which all can contribute, including Member States, corporations, and private individuals, in addition to supporting existing under-funded facilities;
- Involve the urgent convening by the UN Secretary General of a Pledging Conference.

This global rescue initiative would save lives, significantly reduce the market for smugglers and traffickers, facilitate the effective processing of protection claims, and more equitably share the responsibility of a humanitarian tragedy that affects us all.

This declaration was made at the conclusion of a forum on “The Rule of Law and the Laws of War” organized by the International Peace Institute which took place between 6 and 9 September in Salzburg. Among the prominent participants who endorsed the declaration are: Turki Al Faisal, Lloyd Axworthy, Gareth Evans, Rita Hauser, Lord Levy, Amre Moussa, Hardeep Puri, Terje Rød-Larsen, Ghassan Salamé, and Christian Strohal.

Appendix II:

"Hybrid War" Art Installation by Ray Bartkus

"These weapons are here to enable the self-defense and secure the territorial integrity of the lake's inhabitants: a goose and three ducks," artist Ray Bartkus announced to the participants of the 2015 IPI Salzburg Forum on "The Rule of Law and the Laws of War." "We artists have nothing to do with it and deny all accusations to be involved in this so-called art installation," he said.

At the annual IPI high-level event in Schloss Leopoldskron, Salzburg, Austria, which took place from September 6 to 9, 2015, participants reflected on the theme of the conference against the backdrop of a world in the midst of turbulent change. In his installation entitled "Hybrid War," Bartkus created a different kind of reflection, using the placid surface of the lake and the natural backdrop of the surrounding park, mountains, and picturesque rococo palace. Each day, additional pieces of military hardware (a periscope, artillery cannons, the turret of a tank, and a missile defense launcher) emerged from the water. In this way, "Hybrid War" is, literally, a reflection on modern warfare, characterized by a high degree of uncertainty, elements of surprise, and symmetry or asymmetry.

Bartkus's art has been seen by millions through his award-winning editorial illustration work for a number of publications such as *The Wall Street Journal, The New York Times, Time, Newsweek, Harper's, Billboard, The Los Angeles Times, The Boston Globe*, and many others. Last year, Bartkus, a native of Lithuania, had exhibitions in the Salle des Pas Perdus at the UN in Geneva, at Neon Gallery, at the Wrocław Academy of Arts, and at Titanikas Gallery at the Vilnius Art Academy. In December 2015, an installation was unveiled at the UN in New York.

Appendix III: Agenda

Sunday, September 6, 2015

8:15pm **Welcome and Introduction**

Andrea Pfanzelter, *Senior Director, IPI (Vienna)*
Rita Hauser, *Chair, Board of Directors, IPI; President, The Hauser Foundation*

Opening Remarks

Thorbjørn Jagland, *Secretary General, Council of Europe*
Aurelia Frick, *Minister for Foreign Affairs, Education and Culture, Liechtenstein*

Monday, September 7, 2015

9:30–11:00 **Session 1: Law, Legality, and Legitimacy: International Norms in Flux?**

With the evolution of the international system came the need for norms and "rules of the game" to provide a certain degree of stability, predictability, and sustainability. While international law and its custodian institutions crystallized over the past century, countless actions continued to breach—or shape—these universal norms. What is the relation between rules and their acceptance? Are legal actions always legitimate, and are legitimate actions always legal? How will international law evolve in the twenty-first century? How will the existing international order transform in light of the rapidly increasing number of challenges to the post-1945 system? How can good governance and the rule of law, domestically and globally, be strengthened and preserved in a dramatically changing global social environment?

Chair
Michael Rendi, *Former Ambassador of Austria to Israel; Director, Department for International Organizations, Federal Ministry for Europe, Integration and Foreign Affairs, Austria*

Panelists
Cherif Bassiouni, *Emeritus Distinguished Research Professor of Law, DePaul University*
Fatou Bensouda, *Chief Prosecutor, International Criminal Court (ICC)*
Antonio de Aguiar Patriota, *Permanent Representative of Brazil to the UN*
Amre Moussa, *Former Secretary General, League of Arab States; Former Minister of Foreign Affairs, Egypt*

11:00–11:30 Break

11:30–1:00 **Session 2: Jus in Bello: Strengthening Compliance with International Humanitarian Law**

One hundred years ago, the third Hague Conference on the laws of war was postponed due to the outbreak of World War I. The previous Hague Conferences had helped define jus in bello, or international humanitarian law (IHL). The 1949 Geneva Conventions and their Additional Protocols are among the most successful international treaties, enjoying near universal acceptance. Nevertheless, IHL is routinely violated in many armed conflicts around the globe. What

can be done to strengthen compliance with and monitoring of IHL? How can we better involve non-state actors to ensure their respect for IHL and prevent the erosion of the reciprocity principle? What is the relationship of national governments vis-à-vis armed non-state actors and their compliance (or lack thereof) with IHL?

Chair
Christian Wenaweser, *Permanent Representative of the Principality of Liechtenstein to the United Nations*

Panelists
Yoram Dinstein, *Professor Emeritus, Tel Aviv University*
Stephen Neff, *Reader in Public International Law, University of Edinburgh*
Valentin Zellweger, *Director and Legal Adviser, Department of Foreign Affairs, Switzerland*

1:00–3:00 Lunch

3:00–5:30 **Session 3: Responsibility and Protection: Preventing Mass Atrocities**

Twenty years ago, the United Nations failed to prevent the Srebrenica massacre, just a year after its tragic failure to respond to the Rwandan genocide, during which some 800,000 people were slaughtered. Eventually, these traumatic events led to the unanimous adoption of the responsibility to protect at the 2005 World Summit. The tenth anniversary of this adoption provides a useful occasion to reflect on how this principle has been used and abused over the past decade, for instance in Libya or Ukraine. Experiences with invoking this principle have led to new developments, such as the notion of "responsibility while protecting" introduced by Brazil, and have opened up new discussions about its relevance and implementation in contemporary crises.

Chair
James Rubin, *Writer, Commentator, and Lecturer on World Affairs and US Foreign Policy*

Panelists
Lloyd Axworthy, *First Chancellor, St. Paul's University College, University of Waterloo*
Gareth Evans, *Chancellor, Austrian National University*
Adam Lupel, *Director of Research and Publications, IPI*
Hardeep Singh Puri, *Secretary-General, Independent Commission on Multilateralism (ICM)*

Tuesday, September 8, 2015

9:30–11:00 **Session 4: Territorial Integrity and Self-Determination: Reconcilable Governance?**

One of the biggest threats to stability is the clash between the principles of self-determination and the territorial integrity of states. Are these principles reconcilable as foreseen by the UN Charter and Helsinki Final Act? How can the space between the two principles be developed more effectively to prevent and settle conflicts, for example in the specific context of Ukraine or "frozen conflicts" in Europe?

Chair
Walter Kemp, *Senior Director for Europe and Central Asia, IPI (Vienna)*

Panelists
Bogdan Aurescu, *Minister of Foreign Affairs, Romania*
Miroslav Lajčák, *Deputy Prime Minister and Minister of Foreign Affairs, Slovak Republic*
John Packer, *Director, Human Rights Research and Education Centre, University of Ottawa*

11:00–11:30 Break

11:30–1:00 **Session 5: New Rules for New Technologies?**

Technology is having a growing impact on wars and security. Armed drones, cyberattacks, surveillance, and other technologies are transforming the way wars are being fought. What are the implications for the rule of law and the laws of war?

Chair
Alexander Kmentt, *Ambassador, Director for Disarmament, Arms Control and Non-Proliferation, Federal Ministry for Europe, Integration and Foreign Affairs, Austria*

Panelists
Anne Clunan, *Associate Professor and Director of the Center on Contemporary Conflict, Naval Postgraduate School*
Camille François, *Fellow, Berkman Center for Internet and Society, Harvard Law School*
Steven Hill, *Legal Adviser and Director, Office of Legal Affairs, North Atlantic Treaty Organization*
Noel Sharkey, *Professor of Artificial Intelligence and Robotics, University of Sheffield*

1:00–3:00 Lunch

3:00–5:30 **Session 6: Criminalizing the Illegal Use of Force**

Five years ago, states parties to the Rome Statute of the International Criminal Court agreed on a definition of the crime of aggression (the Kampala amendments). For the first time since the establishment of the International Military Tribunal in Nuremberg seventy years ago, an international court will have jurisdiction over this crime, in accordance with the UN Charter's prohibition of the threat or use of force, which continues to be violated. Is the criminalization of war realistic? Where and how can high-profile members of criminal and armed groups be brought to justice, and what is the role of special courts and tribunals (such as the International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, Special Court for Sierra Leone, and Special Tribunal for Lebanon) in strengthening accountability?

Chair
Valentin Zellweger, *Director and Legal Adviser, Department of Foreign Affairs, Switzerland*

Panelists
Donald Ferencz, *Convenor, Global Institute for the Prevention of Aggression*
Claus Kreß, *Director, Institute for Criminal Law and Criminal Procedure, University of Cologne*
David Tolbert, *President, International Center for Transitional Justice*
Christian Wenaweser, *Permanent Representative of the Principality of Liechtenstein to the United Nations*

Wednesday, September 9, 2015

9:30–11:00 **Session 7: Reaffirming Principles and Rebuilding Trust**

Forty-five years ago, the UN General Assembly adopted the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. How can this declaration be more effectively implemented? Is the vision of a cooperative postwar system of global governance eroding? How can multilateral frameworks for international cooperation be enhanced to mitigate the growing number of crises?

While the Organization for Security and Co-operation in Europe (OSCE) marks the twenty-fifth anniversary of the Copenhagen Document and the fortieth anniversary of the Helsinki Final Act, many of those fundamental principles have been violated. Is the OSCE still a community of values? Can its principles and commitments be reaffirmed? More generally, can trust among global decision makers and between governmental and civil/private actors be rebuilt?

Chair
Natalie Nougayrède, *Foreign Affairs Commentator and Editorial Board Member, The Guardian*

Panelists
Marc Perrin de Brichambaut, *Former Secretary General, Organization for Security and Co-operation in Europe (OSCE)*
Oleksandr Chalyi, *President of Legal Services, Grant Thorton LLC (Kiev)*
Thorbjørn Jagland, *Secretary General, Council of Europe*
Ivan Krastev, *Chairman, Centre for Liberal Strategies (Sofia)*

11:00–11:30 Break

11:30–1:00 **Session 8: Desperate Displacement and Migration: A Call for Action**

Due to the urgency of action in light of the growing refugee crisis and the need for a strategic vision and policy response by European and international leaders, participants and organizers of the Salzburg Forum decided to discuss this concrete issue in lieu of the planned session on "Multilateral Cooperation: Norms and Institutions for Crises beyond Borders." Indeed, the refugee crisis represents a key example of the need for strengthened multilateral cooperation. Concluding the session, participants agreed on concrete steps to help save refugees and issued the Salzburg Declaration on the European Refugee Crisis (see Appendix I).

Chair
Terje Rød-Larsen, *President, IPI*

Panelists
Rita Hauser, Chair, Board of Directors, IPI; President, *The Hauser Foundation*
Peter Maurer, *President, International Committee of the Red Cross*
Ghassan Salamé, *Dean, Paris School of International Affairs*
Bruno Stagno Ugarte, *Deputy Executive Director for Advocacy, Human Rights Watch*

Appendix IV: Participants

Fabrice Aidan
International Adviser, Edmond de Rothschild Group

Turki Al Faisal
Chairman, King Faisal Center for Research and Islamic Studies

Bente Angell-Hansen
Ambassador of Norway to Austria and Permanent Represenative of Norway to International Organizations in Vienna

Jenae Armstrong
Intern, IPI (Vienna)

Bogdan Aurescu
Minister of Foreign Affairs, Romania

Lloyd Axworthy
First Chancellor, St. Paul's University College, University of Waterloo

Ray Bartkus
Artist

M. Cherif Bassiouni
Emeritus Distinguished Research Professor of Law, DePaul University

Bethany Bell
Foreign Correspondent, British Broadcasting Corporation (BBC)

Fatou Bensouda
Chief Prosecutor, International Criminal Court (ICC)

Tomáš Borec
Minister of Justice, Slovak Republic

Johanna Borstner
Office and Events Manager, IPI (Vienna)

Marc Perrin de Brichambaut
Former Secretary General, Organization for Security and Co-operation in Europe (OSCE)

Oleksandr Chalyi
President of Legal Services, Grant Thornton LLC (Kiev)

Anne Clunan
Associate Professor and Director of the Center on Contemporary Conflict, Naval Postgraduate School

Nicola Davies
Special Assistant to the Special Envoy of the UN Secretary-General on Resolution 1559

Yoram Dinstein
Professor Emeritus, Tel Aviv University

Charles Dunlap
Professor of the Practice of Law and Executive Director of the Center on Law, Ethics and National Security, Duke University

Raphaela Engel
Security Policy Adviser, Directorate for Security Policy, Federal Ministry of Defence and Sports, Austria

Gareth Evans
Chancellor, Australian National University

Donald Ferencz
Convenor, Global Institute for the Prevention of Aggression

Camille François
Fellow, Berkman Center for Internet and Society, Harvard Law School

Aurelia Frick
Minister for Foreign Affairs, Education and Culture, Liechtenstein

Nejib Friji
Director, Middle East and North Africa (MENA) Office, IPI (Manama)

Thomas Fronek
Head, Bureau for Security Policy, Federal Ministry of Defence and Sports, Austria

Barbara Gibson
Senior Adviser, IPI (New York)

Hanne Grotjord
Journalist and Foreign Affairs Commentator

Nasra Hassan
Senior Adviser, IPI (Vienna); Director of International Relations, Association of Austrian Peacekeepers

Rita Hauser
Chair, Board of Directors, IPI; President, The Hauser Foundation

Gustave Hauser
The Hauser Foundation

Steven Hill
Legal Adviser and Director, Office of Legal Affairs, North Atlantic Treaty Organization (NATO)

Daniel Höltgen
Spokesperson of the Secretary General, Council of Europe

Clément Hugon
Chargé de mission to the President, Fédération Internationale de l'Automobile

Barbara Illková
Director General, Law and Consular Affairs Division, Ministry of Foreign and European Affairs, Slovak Republic

Thorbjørn Jagland
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