
EDITORIAL

Bridging Scholarship and Practice: 20 Years of the Public International Law and Policy Group

Brianne McGonigle Leyh* and Julie Fraser*

When the Editor-in-Chief of the Utrecht Journal of International and European Law (UJIEL) approached us with the possibility of guest editing a special issue related to public international law and policy, we felt the timing could not have been better. As academics at Utrecht University with the Netherlands Institute of Human Rights and Montaigne Centre for Judicial Administration and Conflict Resolution, we felt that a theme linking the world of lawyers with that of policymakers was important in order to examine the role of law in protecting human rights and security. Moreover, as Senior Counsel with the Public International Law & Policy Group (PILPG), which celebrated its 20-year anniversary in 2016, we welcomed the idea to link academic scholarship with the work of PILPG. After all, PILPG's founders, Professor Paul Williams and Professor Michael Scharf, have themselves acted as bridges between scholarship and practice for years.

As a result, this special edition is not only intended to highlight the extraordinary work carried out by PILPG on issues of law and policy around the world, but also to emphasise the importance of linking scholarship with practice and addressing contemporary issues impacting the world in which we live. PILPG's motto 'lawyering peace' requires reflection on the role that law can play in helping to bring about the peaceful resolution of serious problems affecting individuals and societies as a whole. This special edition of UJIEL, addressing a variety of themes, does just that.

Keywords: International law; Federalism; Yemen; Piracy; Voting rights; Fact-finding; MH17; ISIL; International Criminal Court

I. About the Public International Law and Policy Group

PILPG is a non-profit organisation that operates as a global *pro bono* law firm. PILPG provides free legal assistance to States and others involved in peace negotiations, advises States on drafting post-conflict constitutions, and assists in prosecuting war criminals. PILPG also provides policy formulation advice and training on matters related to conflict resolution. In order to deliver these services, PILPG has a staff of full-time lawyers who implement PILPG's programs and advise clients. In addition, PILPG leverages volunteer assistance from international lawyers, diplomats, and foreign-relations experts, as well as *pro bono* assistance from major international law firms. Annually, PILPG provides over USD \$20 million worth of *pro bono* international legal services.

PILPG is based in Washington, D.C., with additional offices in New York and Amsterdam. PILPG also operates field offices relating to its projects, including in Georgia, Iraq, Kenya, Kosovo, Nepal, Somaliland, South Sudan, Sri Lanka, Tanzania, and Uganda. In 1999, PILPG was granted official Non-Governmental Organisations status with the UN, which enables it access to various UN fora and also the annual assembly of the International Criminal Court. Importantly, PILPG was nominated in 2005 for the Nobel Peace Prize for 'significantly contributing to the promotion of peace throughout the globe by providing crucial *pro bono* legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice'.¹

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¹ Melanie Nakagawa, 'The Public International Law & Policy Program' (2005) 15 *The Advocate*, 6 <https://www.wcl.american.edu/alumni/pub/advocate_fall05.pdf> accessed 22 March 2017.

II. Articles in this UJIEL Special Edition

There are seven articles in this special edition of the Utrecht Journal of International and European Law. Two articles deal with State policy decision-making, two address issues of fact-finding and documentation of serious human rights violations, and three touch on issues of accountability. All of the contributions are written by PILPG affiliates, including the two co-founders Paul Williams and Michael Scharf, and address PILPG's practice areas.

A. State Policy Decision-Making

The first article by PILPG President Paul Williams, Tiffany Sommadossi, and Ayat Mujais is entitled *A Legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, and discusses the allure of federalism in post-conflict countries and its consideration in the context of Yemen. PILPG has provided legal assistance to the Yemeni Minister of Local Administration in preparation for its upcoming transition to a federal system. Later, PILPG provided legal assistance to the UN Special Advisor to Yemen on matters related to the National Dialogue Conference and the status of Southern Yemen in a future federal state and provided technical expertise in the peace negotiations. Importantly, the article stresses that while lessons can be learned from other contexts there is no model roadmap for reconfiguring a State's internal structure and that the importance of considering the costs of implementing a transition to federalism need to be taken into account.

The second article, by Julie Fraser, Senior Counsel with PILPG, is entitled *Inclusive Democracy: Franchise Limitations on Non-Resident Citizens as an Unjust Restriction of Rights under the European Convention on Human Rights*. The article focuses on the issue of voting restrictions and relates to PILPG's work in assisting States in establishing and implementing electoral systems that meet international standards for democratic elections. The article addresses the issue of franchise restrictions on non-resident citizens across Member States of the Council of Europe. After considering whether residency-based limitations pursue legitimate and proportionate aims, Fraser questions whether blanket restrictions disenfranchising non-resident citizens should be permissible today under the framework of the European Court of Human Rights. Ultimately, she stresses the importance of inclusive franchise for the legitimacy of democratic systems as well as the protection of individual rights.

B. Fact-Finding and Documentation

The next two articles in the special edition touch on issues of fact-finding and documentation of serious human rights violations written by PILPG Senior Counsel and co-founder of PILPG's Netherlands Office, Dr. Brienne McGonigle Leyh, and PILPG UN Representative, Federica D'Alessandra. PILPG plays a leading role in equipping clients and civil society actors with tools for documenting serious human rights violations and both articles place PILPG's documentation work into a larger context.

McGonigle Leyh's article, *Changing Landscapes in Documentation Efforts: Civil Society Documentation of Serious Human Rights Violations*, explores, as its name suggests, the changing landscape of civil society documentation and what that means for standardising and professionalising documentation efforts. Focusing on technological changes and the rise of citizen journalism and unofficial investigations, she notes the increasing support for documentation efforts worldwide, which has resulted in the proliferation of international documentation initiatives aimed at providing local civil society actors guidelines and practical assistance on how to recognise, collect, manage, store and use information about serious human rights violations, as well as on how to minimise the risks associated with the documentation of human rights violations. She calls for even more sustained cooperation in this area, greater dissemination of information, and increased training for civil society actors.

D'Alessandra's contribution, *The Accountability Turn in Third Wave Human Rights Fact-Finding*, emphasises the role of the UN and its core competencies concerning the protection of human rights through its human rights fact-finding activities. Building on scholarship and her own experience with fact-finding efforts, she analyses the challenges of UN fact-finding efforts, including a 'lack of institutional memory' among fact-finding mechanisms as well as newer demands related to identifying those most responsible for violations and considering questions of law such as the qualification of the violations as crimes under international law. She refers to these challenges as arising from the 'accountability turn' in the 'third wave' of human rights fact-finding, and discusses how solidifying a human rights fact-finding methodology can assist UN inquiries by bolstering the credibility of their findings.

C. Accountability

The third group of articles concerns issues of accountability for violations of international law. Accountability has been long been an issue covered by PILPG as it has assisted every international(ised) criminal tribunal as well as a countless number of States in the prosecution of international crimes. Michael Scharf

and Mistale Taylor's article entitled, *A Contemporary Approach to the Oldest International Crime*, details the creation and work of PILPG's High Working Group on Piracy, which operated between the years of 2011–2014. The group consisted of 30 key individuals working in government, civil society and academics from around the world, and was dedicated to tackling numerous legal issues arising out of modern maritime piracy. Such issues included, *inter alia*, substantive and procedural issues related to the prosecution of pirates, the criminalisation of the payment of ransom to pirate hostage takers, the law governing the use of force and how it applies to combating piracy, the extradition and transfer of captured pirates, the issue of juvenile pirates, the principle of non-*refoulement*, and whether pirates can seek asylum. Finally, this piece explores the idea of an international piracy court and emphasises that if such a court were to be created PILPG would be there to help train its judges and equip its prosecutors with vital research.

Next, Dr. Marieke de Hoon, PILPG Senior Counsel and Director of the Netherlands' Office, contributes a piece called *Navigating the Legal Horizon: Lawyering the MH17 Disaster*. It explores what role a lawyer takes on when complex international situations occur such as the downing Malaysia Airlines Flight MH17 from Amsterdam to Kuala Lumpur on 17 July 2014. PILPG was amongst those asked by the Dutch Parliament, already days after the crash occurred, to provide assistance on questions of accountability. De Hoon's article discusses what that assistance entailed, addressing the legal avenues that States and victims can pursue to hold a wide variety of actors accountable. She provides insight into how different legal orders (various state systems, regional and international legal orders) and different legal frameworks (criminal law, private law, human rights law, public international law) interact and support one another. She concludes with observations about the strategic decision-making role of the Dutch Government in light of the legal options, as well as the role of lawyers when dealing with issues of law and policy.

In the last article of the special edition, entitled *Prosecuting Crimes of International Concern: Islamic State at the ICC?*, C oman Kenny, former Legal Advisor with PILPG's Netherlands Office, delves into complex issues of criminal accountability before the International Criminal Court (ICC). His article focuses on the rise of the Islamic State in the Levant (ISIL) and how it has fundamentally altered the conception of transnational terrorism, a development which he argues international criminal law is unprepared for. His article addresses some of the key issues facing any potential attempt by the ICC to initiate proceedings against ISIL members or those assisting the group, focusing on (i) jurisdiction; (ii) applicable crimes; and (iii) modes of liability. The questions he examines are far from theoretical. His practical expertise in international criminal prosecutions sheds light on the challenges that will inevitably arise when attempts are made to ensure that those responsible for ISIL's heinous acts are prosecuted.

III. With Special Thanks

Having been intimately connected to the work of PILPG for years, we are proud to have assisted on this special edition that highlights linkages between law and policy, and scholarship and practice. We would like to thank the contributors to this special edition, as well as all those who made it possible, including the expert anonymous reviewers and the staff of the Utrecht Journal of International and European Law. A special mention must also be made of Shan Patel, the Editor-in-Chief of the Journal, for his invaluable suggestions and dedication. We hope you enjoy the edition!

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Competing Interests

Both authors work as Senior Counsel at the Public International Law & Policy Group.

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