

Marieke de Hoon*

Vrije Universiteit
Amsterdam/Public
International Law &
Policy Group/University
of Oxford
m.de.hoon@vu.nl

Kjersti Lohne*

University of Oslo/
University of Oxford
kjersti.lohne@jus.uio.no

Negotiating justice: reconstituting the ICC through the Assembly of States Parties Meeting

This commentary comes out of a roundtable discussion entitled 'Reflections on the ICC Assembly of States Parties: the construction of international criminal justice' held at the Globalisation and the Boundaries of Legality Conference in Weimar and organised within COST Action IS1003 'International law between constitutionalisation and fragmentation: the role of law in the post-national constellation', chaired by Wouter Werner.

In the past few decades, international criminal law has rapidly expanded into a field that is practiced through its tribunals and international relations. It has become a key feature and instrument in international affairs; it is taught and discussed in academia; and it is influenced by a multiplicity of agents and drivers, each pushing or pushed towards affecting the construction of international criminal justice in various ways. One of the fora in which this construction process takes place is the Assembly of States Parties (ASP) to the Rome Statute of the International Criminal Court (ICC). This diplomatic assembly convenes annually and comprises diplomats representing the member states, as well as observing non-member states and civil society representatives. In this newsletter's previous issue, Sander Couch discussed how the ASP's 12th Session of November 2013 was particularly sensitive and contentious as it demonstrated a clash between states on the issue of the requirement for a head of state to be present at trial like any other accused.¹ Kenya and other African Union (AU) states objected to the manner in which ICC proceedings violated the dignity of their state leaders. By electing individuals who were already indicted by the ICC, those in Kenya supporting the current government protested against the institution and its conceptualisation of what international justice entails. This commentary understands this situation as part of a larger trend in international criminal justice, where the notion of universally applicable ideas of justice has recently resurfaced as untenable. We suggest that rather than regarding such

disagreement as threatening the justice project, the ASP meetings can play an important role in recognising the reality of moral pluralism and enhancing ideas of justice in a global and diverse world. The ASP meetings should be re-imagined as a site where not only global consensus emerges on what can be agreed upon and joined forces for, but also where political contestation may find its expression.

ASP meetings as social phenomenon

The ASP is the overseeing and legislative body of the ICC. It convenes annually for two weeks, rotating between The Hague and New York. In addition to delegates from States Parties to the ICC, the ASP meetings include participation from a number of other actors, including observer states, ICC staff, academics, practitioners, journalists and non-governmental organisation (NGO) representatives. Aside from the general debate and other formal plenary sessions, where significant time is devoted to the budget and other managerial aspects of the ICC, there are stocktaking sessions, informal sessions and side events. More than merely a technocratic meeting between states on the management of the institution, we approach the ASP as a social phenomenon located between law and politics. As an annual ritual bringing together these various actors engaged in the practice and development of international criminal law, the ASP functions as a site of political proxy battles of international justice. It is a site where stakeholders reconstitute and renegotiate the

ICC, and the international criminal justice field more broadly.

Battling narratives of truth and justice at the ASP's 12th Session

In the words of the ASP President, last year's ASP meeting in The Hague in November 2013, was 'no routine affair'.² While during previous ASP meetings political debates were mainly kept out of the public arena, this year's diplomatic assembly was a site of critique and challenge to the Court's authority from the AU and, in particular, Kenya. In the months running up to the ASP's 12th Session, Kenya's President Uhuru Kenyatta and Vice-President William Ruto, who are indicted by the ICC for their roles in the post-election violence in 2007–2008, deployed a number of legal and political strategies to counter the ICC. For example, they challenged the admissibility, jurisdiction and legitimacy of the Court, attempting to delay or end proceedings by exhausting all legal means available.³ They allegedly also played a role in the withdrawal of witnesses from the cases, delaying the trials further as the Prosecutor seeks new witnesses, with reports of the Kenyan government bribing, threatening and killing witnesses.⁴ On the political playing field, diplomatic channels and regional mobilisation have been aimed at deferring the case through the Security Council, threatening the (mass) withdrawal of African member states and issuing an AU resolution stating that no African head of state should appear before an international court.⁵

With these occurrences in its run-up, it was no surprise that the situation in Kenya and the looming threats from African states to withdraw from the Rome Statute came to characterise much of this ASP meeting. At the request of the AU, a special plenary segment was included in the programme, entitled 'Indictment of sitting heads of state and government and its consequences on peace and stability and reconciliation'. The submissions from Kenyan and AU representatives aimed at reiterating Africa's commitment to the international criminal justice system and to fighting impunity, while suggesting that the way this system is administered undermines the equally important and interconnected objectives of peace and reconciliation as well as justice.⁶ Professor Charles Jalloh added that the threshold of complementarity has become unachievable for African states, and that this runs counter to the Court's objectives.

Counterarguments mostly centered on the needs of affected communities and the political effects of marginalising indicted or prosecuted individuals from participating in transition processes. Besides drawing attention to victims, NGOs – and, in particular, representatives from Kenyan civil society – provided an alternative narrative to that of the Kenyan delegation. Njonjo Mue from Kenyans for Peace, Truth and Justice submitted that the Prosecutor had faced numerous difficulties with Kenya's cooperation and that 'the government had pulled out all stops to avoid accountability'. Feargal Gaynor, the legal representative for victims in the Kenya situation, asserted that 'there is no genuine will to prosecute' by Kenya's authorities, whom he said only pursued prosecutions of direct perpetrators but not against perpetrators in mid- or high-level positions.

The mobilisation of civil society against the Kenyan government spurred the latter's defence and counterattack. Kenya's Director of Public Prosecutions responded that 'nothing can be further from the truth', and submitted that 1,200 cases had been taken to court but, due to the lack of inclusion of international crimes into domestic legislation, they were prosecuted as ordinary crimes, and appealed that 'our colleagues in civil society must be honest about that'.

Open confrontations defending and opposing the Kenyan government's position continued throughout the ASP meeting, for example, when the Kenyan delegation left a later side event in protest.⁷ Throughout the event – in the plenary debates, side events, media briefings, and via the dissemination of NGO reports and position papers – Kenyan state delegates and human rights NGO representatives were battling and contesting each other's 'truths' and legitimacy. Both sides accused each other of not having the right to speak on behalf of the country. For example, Kenyan officials openly questioned by whom, and with what agenda, these NGOs were funded, suggesting that they are instruments of Western, or otherwise, enemy powers: 'These NGOs have really hit us below the belt this time. We don't know how they organised themselves in such a way and I think they must have been well funded to do what they are doing. They are surely evil societies and not civil societies.'⁸

Whoever is right or wrong, it certainly seems true that the ASP and the international arena provided these NGOs with a voice they

do not have on the domestic stage. Their accreditation and presence are facilitated by foreign cooperation and, as a Western state delegate explained, their role is important for contesting the Kenyan official narrative; NGOs can say things that states are prevented from saying without severely damaging diplomatic relations.⁹

The ASP as site of global deliberation

As a site of diplomatic interaction, the ASP functions as a site of continuous negotiation over not only the institutional management but also the development and practice of international criminal justice. However, as a treaty-based Court, the ICC's foundation is consensus and state cooperation. A significant tension therefore arises between the ASP meeting as a space where agreement and joint achievement must be achieved, and as a space where political contestation and deliberation is necessary for the ICC's legitimacy to be acknowledged.

While African states largely presented a historic narrative of (neo-)colonialism and failure of the 'international community' to protect them from atrocity crimes, invoking the commemoration of the Rwandan genocide, Western states largely appealed to the historic turning of a page when, in 1998, the Rome Statute to the ICC was created as a symbol of international consensus. In the opening words of the special segment, Rolf Einar Fife, Director-General of the Legal Affairs Department of the Norwegian Ministry of Foreign Affairs, presented a different historic narrative. He pointed back to 'Rome' and the agreement that united all then. In the views of the authors, this narrative is presented when disagreement on the nature or functioning of international criminal justice comes to the surface. For example, when during the ASP's Kampala Review Conference in 2010, the debate on the crime of aggression seemed to get stuck between mutually exclusive entrenched positioning, Benjamin Ferencz took to the stage and likewise appealed to this idea of agreement that existed in Rome and that should be returned to. When political contestation occurs openly, those employing this narrative reference back to the creation of the ICC in Rome, as a site where all were friends, conjoined in a mutual campaign against atrocity crimes, striving for justice, 'on behalf of the conscience of humanity'.¹⁰ 'Rome' is presented as a standstill moment

in time, representing the greater force for good, overarching the smaller disagreements that may at times surface (such as on Kenya or aggression). The response is to present and invoke what those in Rome intended in 1998 and to appeal to a faith in judges to resolve other matters. With this narrative, the idea that such contention could represent a more fundamental critique that goes to the core of how international criminal justice is interpreted and administered globally is dismissed and shoved off the agenda.

Looking at the Kenya situation as merely a case of contested propaganda campaigns between Kenyatta and Ruto on the one hand, and the ICC on the other, appears to be an oversimplification of the occurrences. It ignores the more profound, underlying concerns that may well backfire on the ICC and the international criminal justice project of enhancing justice globally. Importantly, a substantial part of Kenya's population so strongly disagrees with the ICC's way of administering justice that it was willing to sacrifice its own presidential election to this issue. What does it mean for the ICC's representation of justice that a large portion of its addressees reject it?

While 'Rome' indeed does represent a historic moment in time where many powers in the world came together to agree that a particular type of crimes were to be addressed through a particular procedure, and in a particular institution, it would be a misrepresentation of history to think that those involved also reached substantive agreement on what 'justice' entails, for all and everyone, everywhere.

The need for discursive space

However challenging this may be for the resilience and further development of international criminal law and the ICC, it seems important to identify the ASP meeting as the site for global deliberation on the development and practice international justice. Following the ASP meeting, the Kenyan government has proposed amendments to the Rome Statute, inter alia, on complementarity and on immunity for heads of state. The amendments are currently under review by an ASP working group. In early July 2014, the AU voted to grant heads of state immunity in proceedings at the new African Court for Justice and Human Rights. As the ICC and international criminal accountability is put to the test –

not only going after power in Kenya but imaginably also in Syria and Ukraine – the road ahead must involve some difficult but all-too-important discussions about what international justice is, what it should be doing, and how it is projected.

For there to be a genuine opening of discursive space, however, significant elements must be reconsidered. For example, who is included and excluded in these discussions? Increasing the transparency surrounding access and accreditation to the ASP could contribute to this aim. While the ASP Secretariat handles accreditation to the ASP meetings for states as well as for those organisations that have UN Economic and Social Council (ECOSOC) special consultative status and are, thus, eligible to participate under their own name, the Coalition for the International Criminal Court (CICC), an NGO itself, manages accreditation for those NGOs that do not have such status and others who apply to participate. The CICC thereby has significant influence over who is to pass through the security doors and participate in the ASP and who is not. To a large extent, they therefore function as a gate-keeper for civil society access. This raises the question of which grounds individuals and organisations are accredited on, and how this affects the ASP as a space not only of deliberation but also of contestation. While, assumingly, all done and managed in good faith, the CICC supports the ICC and the ASP is a pro-Court environment. Arguably, there is a lack of space for organisations or voices opposing the ICC. As a result, resistance towards contemporary manifestations of international justice becomes expressed through non-participation.

Rather than dismissing the more profound concerns of a Court and a framework representing an interpretation of justice that is contested, and an administering of justice that is perceived as unhelpful, there is a need for discursive space in order to maintain dialogue on where disagreement lies as well as where agreement can be found. Instead of a demotion of accountability for human suffering and human rights violations, we believe this will strengthen the authority and legitimacy by which the world responds to

such atrocities. Legitimacy must continually be renegotiated. Acknowledging the ASP as a space of deliberation – of claims and counterclaims to the ICC's interpretations of justice – is a way in which the ICC can seriously address current attacks on its legitimacy.

Notes

- * Marieke de Hoon is Research Fellow at the Centre for the Politics of Transnational Law at Vrije Universiteit (Amsterdam), Senior Counsel at the Public International Law and Policy Group (PILPG), Co-Director of PILPG's Netherlands Office and Academic Visitor at the University of Oxford. Kjersti Lohne is a PhD Research Fellow at the University of Oslo and an Academic Visitor at the University of Oxford. The authors sincerely thank Sara Kendall, Sarah-Jane Koulen, Wouter Werner and Kamari Maxine Clarke for the inspiring discussions at, and in preparation of, the roundtable, as well as all others who joined the discussions in Weimar.
- 1 Sander Couch, (2014) 'Cui Bono: presence requirement of the accused before the ICC and debate at the 12th ASP', 1 IBA Human Rights Law Working Group News 1, 21.
- 2 Tiina Intelmann, 'Annual Session of States Parties to the Statute of the International Criminal Court', *The World Post*, 26 November 2013, available at www.huffingtonpost.com/tiina-intelmann/annual-session-of-states_b_4338134.html, accessed 25 June 2014.
- 3 See, inter alia, the ICC Appeals Chamber ruling on admissibility ICC-01/09-02/11 OA, 30 August 2011.
- 4 For a fuller discussion, see Susanne D Mueller, (2014) 'Kenya and the International Criminal Court (ICC): politics, the election and the law', *Journal of Eastern Africa Studies*, Vol. 8(1), 25–42.
- 5 The press release of the AU Extraordinary Session of October 2013, announcing this resolution as well as the appeal to the UN Security Council to defer the cases, can be found at www.au.int/en/sites/default/files/PR-%20177Extraordinary%20Summit%20on%20ICC-%2011-10-13-F.pdf.
- 6 These statements were all made in the special plenary debate on 'Indictment of sitting heads of state and government and its consequences on peace and stability and reconciliation'. For official documents and statements from the event, see http://icc-cpi.int/en_menus/asp/sessions/documentation/12th-session/Pages/default.aspx
- 7 *Sitting heads of state on trial: a leap forward for the ICC or the beginning of the end?* organised by the Institute for War and Peace Reporting, Reporting Kenya and Wayamo Communication Foundation.
- 8 Ndanyi, Mathews (2013) 'Kenya's NGOs almost defeated Uhuru in Hague', *The Star*, 20 November, www.the-star.co.ke/news/article-145610/kenyas-ngos-almost-defeated-uhuru-hague, accessed 25 June 2014).
- 9 Discussion with state delegate at the ASP meeting, The Hague, 2013.
- 10 Benjamin Ferencz's statement at the Rome Statute Review Conference, on 8 July 2010, Kampala, Uganda.

Talking the talk: challenges of structure, good faith and ripeness at the Geneva II Conference on Syria

Tyler Thompson*

Public International
Law and Policy Group;
United for a Free Syria,
Washington DC
tthompson@
unitedfreesyria.org

In early 2014, the United Nations, the Arab League and several key states including the United States and Russia convened the Geneva II Conference (the ‘Conference’) on Syria. The Conference was intended to produce a negotiated resolution to the conflict in Syria between the Assad government and the opposition, but critical flaws in the process led to failure.

The Syrian crisis began in 2011 when non-violent demonstrators took to the streets in support of economic and political reforms. The government of President Bashar al-Assad responded to the protests with deadly force, compelling the opposition movement to take up arms as the Free Syrian Army and defend themselves. In the years since the conflict turned violent, foreign fighters in support of both parties have flowed into Syria. Further, Al-Qaeda and the Islamic State (IS) (formerly the Islamic State of Iraq and Syria (ISIS)) have flourished in the context of security chaos. These groups have capitalised on the influx of weapons and money to further their own regional aspirations unrelated to the cause of the activists and opposition fighters aligned against Assad. Since 2011, the conflict in Syria has devolved into an internationalised armed conflict, claiming the lives of over 160,000 people and displacing over nine million.

The Geneva Communiqué

On 30 June 2012, the UN and the Arab League convened a meeting in Geneva with the foreign ministers of the permanent five members of the UN Security Council and regional powers. The participants, referred to as the Action Group for Syria, identified steps to implement a political solution to the Syrian conflict. The outcome of these discussions was a document known as the ‘Geneva Communiqué’. It called for the

maintenance of Syria’s territorial integrity and national unity, an end to violence and the launch of a Syrian-led political process that would allow a transition from the current governing framework. The implementation mechanism and key focal point of the Geneva Communiqué is the ‘transitional governing body’ (TGB). The Communiqué says that the TGB can be comprised of members of the present government and the opposition, and shall be formed on the basis of mutual consent. The envisioned TGB would exercise full executive powers during the transition. Under the Communiqué, the TGB is tasked with developing a national dialogue, a review of the constitution and legal system, public approval of any legal amendments, free and fair multiparty elections, and the protection of vulnerable groups. The Communiqué also calls for the continuity of government institutions and the restoration of public services, specifically including military and security forces, to prevent a scenario similar to de-Ba’athification in post-Hussein Iraq.¹

Preparing the peace talks

In May 2013 US Secretary of State John Kerry and Russian Foreign Minister Sergey Lavrov agreed to hold an international conference, referred to as Geneva II, to achieve a political transition with the Geneva Communiqué at its foundation. The US would work to deliver the opposition forces to Geneva II, and Russia would work to deliver the Assad government. The discussions would be mediated by UN–Arab League Special Envoy, Lakhdar Brahimi. The success of the Geneva process would depend on the ability of the US and Russia to alter the parties’ interest analysis in a way that would drive them to meaningful negotiation.

The battlefield dynamics in the months before Geneva II weighed in favour of Assad.

By early 2014, the Syrian army had taken several key cities and had surrounded others in horrible starvation sieges. The Free Syrian Army and other opposition groups were caught in a two-front war between pro-Assad forces and a rising menace known as IS. Both fronts exacted heavy casualties from opposition fighters. Russia and Iran continued their flow of money, weapons, soldiers and advisers to Assad. In contrast, the opposition forces received sparse military support from their allies in the Friends of Syria, an international collective of states sympathetic to the opposition cause. The US described the trickle of military support to the opposition as a means to balance the battlefield and force the parties to a political solution. Peace negotiations reflect battlefield dynamics and the state of play by the commencement of Geneva II was not favourable for a balanced negotiation. Several voices among the opposition and their friends concluded that there was nothing to gain by attending Geneva II. They predicted that momentum would grow and allies would eventually pressure the opposition to attend. It seemed that even the US, as a key ally, did not have a vision for what the negotiations might yield after simply getting the parties to the table. This approach stood in stark contrast to Russia and Iran, who seemed to support the Assad analysis that the situation was not ripe for negotiation and success could still be achieved through military means.

Several members within the opposition's primary political organisation, the National Coalition of Syrian Revolution and Opposition Forces (the 'Syrian Coalition'), were against attending Geneva II. A significant internal bloc within the Syrian Coalition, known as the Syrian National Council, made statements to officially boycott the talks. These uncertainties within the opposition made the international community uneasy, even after the Syrian Coalition gave assurances that the opposition would attend. Much of the opposition forces and civilian communities inside Syria viewed the Geneva process with a great deal of scepticism, with many of them taking a 'wait and see' approach to the talks. The opposition waited until the very last moment to reveal the composition of its delegation, which highlighted doubts among the international community about its cohesion and seriousness. In reality, all of the potential members of the opposition delegation – through the efforts of the Syrian Coalition

– had been engaged in strategy sessions and preparation activities for the better part of the previous year.

Last-minute plans inserted some confusion into an already precarious process. The official invitation to the parties included a summarisation of the Geneva Communiqué, but no agenda was proposed. The Assad delegation displayed reservations against using the Geneva Communiqué as a starting point. Further, the actual participating entities were in flux until days before the start. For instance, a last minute invitation extended to Iran caused the opposition delegation to threaten withdrawal. The mediators quickly rescinded the invitation to preserve the process.

Geneva II begins

On the first day of the Geneva II Conference on 22 January 2014, warning signs emerged that the process might be more about theatre than substance. The first session featured foreign ministers from forty states making grandiose statements about peace and stability. Nearly all were gone the next day, leaving behind lower-level diplomats to keep an eye on the talks. Syrian Foreign Minister, Walid al Moualem, took the opportunity to set the tone for the rest of the negotiations by lambasting the opposition delegation as terrorists, criticising the attending countries, and lashing out at dignitaries including UN Secretary-General Ban Ki-moon. These first flourishes indicated that the Assad delegation had no intention of engaging in good faith. Those inside the process speculated that the Assad delegation's messaging was targeted towards supporters and government officials inside Syria, to show an unwillingness to make any compromises that could risk defections or structural weaknesses. It seemed that where the US offered no real vision for the talks to support the opposition, Russia secured no promises from the Assad regime to engage constructively.

The negotiating rounds confirmed that Assad would be intransigent. His delegation refused to negotiate any of the points highlighted in the invitation to Geneva II and refused to address the Geneva Communiqué. The Assad delegation even refused the discussion of an agenda that did not focus on counter-terrorism and efforts to reassert government dominance over the security sector. Brahimi relented to Assad's focus and proposed the discussion of a TGB simultaneously with counter-terrorism issues. In response, the Assad delegation



TALKING THE TALK: CHALLENGES OF STRUCTURE, GOOD FAITH AND RIPENESS

refused to discuss anything in conjunction with terrorism. At this time, the biggest terrorist threat in Syria emanated from IS and Al-Qaeda-linked Jabhat al Nusra, two fighting factions that did not have any representation in the talks. The Assad government, however, took a much broader definition of terrorism and even legally designated the entire opposition delegation as terrorists. By the second week of talks, it was evident that Russia either had no intention or no ability to compel Assad to participate in good faith. Thus, an essential pillar of the process had eroded.

In the most egregious display of bad faith, the Assad government increased its deadly and terrorising barrel bomb campaigns to an unparalleled level during Geneva II, in an attempt to create widespread contempt for the Geneva process and to compel the opposition to surrender. A barrel bomb is a large cylinder packed with dynamite, shrapnel, and even chemical agents, dropped over civilian areas. They cannot be aimed and are used as an indiscriminate killing tool. Assad's helicopters regularly fly over civilian areas for hours a day, striking fear that a bomb will be dropped. The frequency of barrel bombs during Geneva II earned them the nickname of 'Geneva Bombs'.

In contrast, the opposition delegation impressed their international backers, the media and even themselves. The team worked through each night planning for multiple contingencies, developing compromise proposals, meeting with their allies on the sidelines and making their presence felt through a robust presence on international media. The format of the negotiations evolved into one-on-one meetings between each delegation and Brahimi, with interspersed bilateral discussions between opposition and Assad officials. The bilateral sessions were usually tense with an unrelenting and exclusive focus on terrorism from the Assad delegation. During the second week of talks, the opposition delegation submitted a detailed statement of basic principles to kick off the negotiation of the TGB. The proposal was met with high praise from the states involved on the sidelines of the process, from the media and from the mediators. The Assad delegation refused to discuss the proposal and the talks reverted back to single-team meetings with Brahimi. In a small glimmer of progress, the parties did manage to agree to a local short-term humanitarian ceasefire in Homs, which allowed for some assistance, for and

evacuation of, civilians. The implementation of this small measure was highly problematic, with several breaches and attacks on humanitarian workers from uncertain sources. Several months later, Homs would fall to the regime.

The process unravels

With the US and Russia unable to alter Assad's interest analysis and approach to the process, Brahimi called a break. During the break, Brahimi called for diplomatic efforts to pressure the parties to a meaningful course forward. During this break, the partnership between the US and Russia has all but collapsed due to strained relations following the Russian annexation of Crimea and other interventions in Ukraine. Russia and Iran have continued their political, financial and military support for the Assad regime, including a recent offer of US\$330m to his government. The US has also recently made domestic overtures to increase its military support for opposition forces in Syria, particularly in the wake of IS's incursion into Iraq and seizing considerable territory in both countries. Under this new phase of American and Russian animosity, the existing framework of the Geneva process will likely not produce results. The US has been unable to change Assad's interest analysis and the Russians seem to have not even tried to do so. Based on his delegation's performance, Assad never saw a benefit to negotiating in good faith. His delegation seemed under direct orders to not budge on any topic, least of all a transition. In the face of these structural challenges, Lakhdar Brahimi tendered his resignation in May 2014.

Conclusion

While a political solution is still possible in Syria, a new structure will be required to achieve productive negotiations. Since the end of Geneva II in February, the conflict has become further internationalised. Thus it may be necessary for Iran, Saudi Arabia, Iraq, Russia and the US to play a more direct role in order to produce meaningful results. What the Geneva process exposed above all is that parties to a peace negotiation cannot be convened simply under the expectation that bringing parties to the table will be fruitful. Such negotiations often mirror the state of affairs on the battlefield. Russia was unable or unwilling to take serious steps to compel

Assad to compromise or negotiate in earnest. The US, in contrast, seemed to view the talks as an end in and of themselves, viewing opposition participation as a success for the administration, and hesitating to offer the kind of material support likely to alter the Assad/Russian/Iranian calculus. As a result, the Assad government was able to protect itself from more forceful international action to end its widespread and systematic attacks on civilians. The existence of an ongoing 'political process' provided a shield against such action. Unless opposition forces are able to make serious gains on the battlefield, with or without the support of the internationals,

Assad's widespread killing campaigns and the spread of pan-regional terrorist organisations like IS will likely continue.

Notes

* During his time as Counsel with the Public International Law and Policy Group, Tyler Thompson served as a strategic and technical adviser to the Syrian opposition delegation at the Geneva Peace Conference. Mr Thompson is now Policy Director at United for a Free Syria.

1 De-Ba'athification refers to the policy of the Coalition Provisional Authority in Iraq that removed all government employees with association with the Ba'ath party. The policy damaged the capacity of government institutions and alienated many Sunnis from participation in government. See Miranda Sissons and Abdulrazzaq Al-Aiedi, *A Bitter Legacy: Lessons of De-Ba'athification in Iraq*, International Center for Transitional Justice (March 2013).

Carmen Pombo Morales

Fundación Fernando Pombo, Madrid
cpombo@fundacionpombo.org

Ana Maria Ovejero Puente

Universidad Europea de Madrid, Madrid
anamaria.ovejero@uem.es

The role of business lawyers in human rights compliance

Currently, both the promotion and the effective protection of human rights are a priority for the international community. This is a consequence of globalisation for two reasons. First, people are increasingly aware that they belong to a global political community and they expect this community to be governed according to the principles of human rights. Secondly, the emergence of new players, aiming to exploit the grey areas of national or international law, make it necessary to rethink the rules in this new international order. The international community should want to be conscious of where deficits in essential human rights guarantees exist and, if necessary, introduce mechanisms to encourage and promote effective compliance with these rights, in a fair manner, in all areas of human development.

In the past 30 years, multinational companies have emerged as key players in international trade, with a major role in international and national economic development, obtaining the power to shape our contemporary and increasingly international society. The expansion of multinational businesses impacts upon the enjoyment and development of human rights for everyone involved in multinationals

throughout their value chain, including producers, distributors, suppliers and consumers. As globalisation has shaped the business world, communities have developed an equally global means of communication that has allowed for the expression of global public opinion regarding multinationals' compliance with social responsibility principles when conducting business abroad.

Although the UN attempted to address the impact of globalisation with its Code of Conduct for Transnational Corporations (1990)¹ and its Rules on Liability of Transnational Corporations (2003),² the fact is that until 2010 the international community did not begin to make significant progress toward addressing the human rights issues caused by globalisation.

In 2010 the movement gained momentum with the UN's recognition of the conceptual framework 'Protect, Respect and Remedy: A Framework for Business and Human Rights', also known as the 'Ruggie Principles' or 'Guiding Principles' (the 'Guiding Principles').³ These Guiding Principles are based on an international consensus regarding practices that companies should adopt with respect to human rights. Since the Guiding Principles place expectations on companies to comply with human rights