



HILAC Lecture: Can International Law Meet the Challenges of Today's Lawless Conflicts?

On 17 March 2016, Dr. Lyal S. Sunga provided a lecture in the context of the Hague Initiative for Law and Armed Conflict (HILAC) Lecture Series at the T.M.C. Asser Instituut. Dr. Sunga, Head of the Rule of Law Program at The Hague Institute for Global Justice and Visiting Professor at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, addressed a wide array of challenges that present-day 'lawless' conflicts pose for international law.

Dr. Sunga started out by briefly explaining that he used the term lawless conflicts to describe armed conflicts in which certain parties behave as if law does not apply. He cited a number of examples of such conflicts which involve serious violations of international law by multiple warring parties. Some of these conflicts project globally through terrorism; they affect not just the countries where the armed conflicts take place, but through terrorist acts also have an impact in other countries. Dr. Sunga argued that while terrorism is not a new phenomenon, today's terrorism is qualitatively different from terrorism in the 1970s and 80s. While terrorist organisations in these decades operated within a single state and could be countered by traditional domestic law enforcement-approaches, today 80 percent of the terrorist attacks are perpetrated in armed conflict situations.

Dr. Sunga posed the question why terrorism receives so much attention in light of the relatively low number of terrorism-related victims. He outlined a number of factors that distinguish terrorism from other 'big killers', arguing that these factors contribute to terrorism receiving the amount of attention that it does. Terrorism deliberately maximises civilian casualties, aims to intimidate, to incite hate and further attacks. The number of casualties from terrorism is increasing, it has a strong psychological impact and it fuels xenophobia, hate and further violence. Furthermore, some of today's terrorist organisations target economic institutions and manage to evade detection and anti-terrorist financing control. In contrast to earlier terrorist organisations in the 1970s and 80s, Islamic State has managed to secure stable and substantial revenue from various sources. Moreover, it has acquired state-like features and attracts comparatively large numbers of new recruits. In the future, it could potentially deploy dirty bombs or chemical weapons. Therefore, while the number of terrorism-related deaths may be comparatively low, contemporary terrorism has a large destructive potential.

Today's lawless conflicts involve serious international law violations, with states that previously adhered to international humanitarian law (IHL) now sometimes violating its rules. Dr. Sunga mentioned a number of examples, before touching upon the dilemma in which these states sometimes find themselves: with the other side not playing by the rules of IHL, why should we? Dr. Sunga resolutely argued against violating IHL, citing not only political and moral but also strategic reasons. Importantly, IHL provides the minimum standards of humane treatment that, when violated, could weaken both the respect for international law in general and the reputation of the violating state, which in turn negatively impacts its capacity to achieve its (military or other) goals.

Coming back to the question of whether international law can meet the challenges of today's lawless conflicts, Dr. Sunga noted that the Geneva Conventions are not particularly well suited to asymmetric conflict situations where one party deliberately violates IHL. He further touched upon some of the issues involved in the international legal framework regarding terrorism, noting that while the Special Tribunal for Lebanon found that a customary international law definition of terrorism in times of peace exists, states still disagree on a number of issues, especially on lawful exceptions to the prohibition on terrorism, such as the use of force to throw off colonial domination. Although specific ways in which terrorism may be committed are criminalised under international law, Dr. Sunga argued that a comprehensive legal definition of the crime of terrorism is still absent. A comprehensive definition of the crime of terrorism would promote coherence, interstate cooperation and the effectiveness of counter-terrorism measures. Given that amending the Rome Statute of the International Criminal Court to include terrorist offences might be politically unfeasible at present, he suggested that establishment of a permanent hybrid court to prosecute terrorism on the basis of both international and national law might garner greater support from the international community.

Dr. Sunga concluded his lecture by suggesting possible avenues for making international law better equipped to meet the challenges of today's lawless conflicts. He suggested to strengthen international norms and implementation, to update the Geneva Conventions with an eye for the challenges asymmetric conflicts pose, to improve mutual interstate cooperation to fight terrorism through, *inter alia*, the adoption of a definition on the international crime of terrorism in a comprehensive convention, to update the Rome Statute so as to cover terrorism or to set up a permanent hybrid terrorism court, to recognise that certain rights cannot be derogated from at any time, and, more broadly, to intensify diplomatic, political and strategic cooperation through the UN and regional collective security arrangements.

The lecture was followed by a lively Q&A session, moderated by Dr. Christophe Paulussen, Senior Researcher at the T.M.C. Asser Instituut and Research Fellow at the ICCT.

The video of the lecture can be found at the [International Crimes Database](#).

