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The struggles of the Central African Republic and Hungary's role in solving the problems

VECSEY Mariann[1]

This essay introduces the most important historical facts about the Central African Republic (CAR) to the reader. It researches the roots of the current situation. The essay reviews the first six months of the international intervention. It also describes the changes of the planned European Union (EU) mission, and the role of Hungary.
Keywords: *Central Africa, Seleka, EU, anti–balaka, Operation Sangaris*

In December 2013 fighting intensified in the Central African Republic. Samantha Power, the United States (US) Permanent Representative to the United Nations (UN), said the following about the situation, stating it is "the worst crisis most people have never heard of." [1] The ongoing events in the country have long antecedents. Since it became independent from France the fighting has been continuous, with one coup following another coup, and for decades there has been anarchy in the country. [2] The UN, and the EU, including Hungary, are now involved in the situation, as they have accepted the mounting of an EU mission. [3] Naturally in CAR, like in Mali, a variety of African organisations and interested countries are present. The ongoing events in the Central African country threaten the stability of a volatile region, which is why solving the situation is important for the international community. However CAR suffers from internal problems.

The events in the country have already had an impact on Hungary, because it will deploy troops to the EU mission in CAR. The author considers it to be very important to be familiarized with the country and the fights mainly because of this planned deployment. I would like to introduce the events which led to the current situation in the country, its political situation and the international intervention.

Historical background

The history of the region goes back thousands of years, but to understand the current crisis I will introduce it from the end of the 1800s. It is important to note that the area has a violent history, for example people were sold into slavery here. The currently existing neighbouring countries also belonged to different colonial empires. Chad and the Republic of Congo belonged to France, the Democratic Republic of Congo was the Belgian king's private colony, Sudan and South Sudan were ruled by Britain and Egypt, Cameroon at first was a Portugese domain, then it belonged to the Dutch, then became a German colony and finally it was ruled jointly by Britain and France. [4] During the fights for possession of different colonies there was a rivalry among Germany, Britain and France for the Central African area. [5] In this fight France was successful and attached the area to France in 1894 under the name of

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Ubangi–Chari. [6: 78–79] In 1910 the area became part of the Federation of French Equatorial Africa. The people who had been exploited by the companies of the colonizing countries revolted in 1928. The three year long fight was not successful, and after the squashing of the rebellion the locals were forced to work under even more brutal conditions. [5]

World War II brought the first noticeable changes: Charles de Gaulle asked for help from the African people and 3,000 people took part in the war. After this, de Gaulle organized the French Union. The first CAR person in the organization was Barthelémy Boganda, who was elected in 1946. Boganda founded the Social Evolution Movement of Black Africa (French: Mouvement pour l'Évolution Sociale de l'Afrique Noire — MESAN) and later on became president of the Grand Council of the Federation of French Equatorial Africa. In this position he supported the coming together of all the tribes to form one nation, but his ideas were rejected. In 1959 Boganda died and after him David Dacko became president. He stayed in his post when the country gained its independence on 13 August 1960, and got its name: Central African Republic. Dacko started a one party regime in the country, and kept the influence of the French companies high in the economy of the country. Because of this the economy of the central African country started to diminish rapidly. [7] Dacko won the elections in 1964, but because of the national bankruptcy and the countrywide strikes in 1965 Jean–Bédel Bokassa led a coup and ousted Dacko from his presidency. The Bokossa era did not improve the situation in the exploited country either. In 1972 Bokossa proclaimed himself president for life and later, in 1976, as emperor and named the country the Central African Emipre. [8] During his rule, Bokossa had a hold on the income of the country's diamond exports. Under the rule of Bokossa the country piled up its debts. In 1979 David Dacko, who was supported by France, led a successful coup. During his second period as president he could only remain in power with the help of French military support, but in 1981 General André Kolingba led a successful military coup, and set up a military dictatorship in the country. In 1986 because of the pressure of the international community a civilian government was formed, but Kolingba remained the real leader of the country. [9]

During the 1990s the democratic movement became stronger in CAR. Because of this Kolingba had to end the one party regime in 1991, and held the first democratic elections in 1992. Ange–Felix Patassé won the elections. [10] The Patassé government inherited a bankrupt state and an unruly population. In response to the turmoil and three attempted coups the government trod all over the personal rights of the citizens executing supposed criminals without trial, and postponing the planned municipal elections, giving bankruptcy as the reason. In 1997 the government, the opposing parties and the religious communities signed the Bangui Agreement, which included the initiation of a wide range of reforms intended to improve conditions in the country. [11]

The agreement did not bring peace to the country. In 1997 France withdrew its troops from CAR, but the UN started a peacekeeping mission only six months later in the country with the name of UN Mission to the Central African Republic (MINURCA). [11] The mission consisted of 1,350 troops, mostly from African countries. The tasks of MINURCA were to re–establish stability and security in the country, plus arrange and monitor democratically successful elections. The mission started in April 1998 and ended in February 2000. [12]

In the elections in 1999 Patassé was re–elected, but the governmental period was not free of tension. In 2003 General Francois Bozizé led a coup supported by foreign countries especially Chad, which led to the end of Patassé's presidency. Bozizé's interim government wrote a new constitution in 2004, but it did not bring significant changes to the situation of

the country. However, it was enough to secure Bozizé's success in the 2005 elections. [13] During the Bozizé regime development of the armed forces did not occur and the president's relatives were placed in important positions of authority. [2]

In 2004 fighting flared up again between the armed forces and one of the strongest opposition organisations, Union of Democratic Forces for Unity (French: L'Union des Forces Démocratiques pour le Rassemblement — UFDR), which was led by Michael Djotodia. The headquarters of the organization was in the north–eastern part of the country. The location was important because of the closeness of allied Chadian and Sudanese militias, the lack of governmental power in the provinces and the biggest diamond mines of the country being in that area.[2] [14] Besides this an important fact is that Djotodia had the support of the local people, because the Muslim minority of the mostly Christian country is concentrated in this region. Besides UFDR other organisations appeared in the area, for example Lord Resistance Army (LRA) which conducts its operations mostly in Uganda. [2]

In 2002 France started an operation to support the African led missions (FOMUC, MICOPAX) in the area, by the name of Operation Boali. [15] The international intervention shook Bozizé's position, and in the "bush war" from 2004 until 2007, he could only hold on to power with French support. During the three year long fight Bozizé had to face loose and uncoordinated allied groups consisting of a few hundred warriors. In the absence of a well trained and equipped armed force, the task of solving the situation remained with the international forces. The fighting started to tail off during 2007 and eventually finished in 2008, with separate agreements with all of the organisations who took part in the fighting, but the agreements were soon violated. Bozizé just wanted to keep his position, and there was no improvement in the country. [2] Because of the fighting nearly 100,000 people fled to neighbouring Chad, which was already unstable because of its internal policy problems and the Darfur conflict. To stabilize the region, the European Union established EUFOR CHAD, in which Hungarian soldiers took part. [16: 394–407]

The Seleka

In 2012 fighting flared up again between militia groups and the armed forces. The reason for the fighting was the violation of peace agreements signed during 2007—2008. The militia groups, which had taken part in the earlier "bush war", learned that they could only be successful as a united force against Bozizé. At the beginning of the fighting this union consisted of two groups, Convention of Patriots for Justice and Peace (French: La Convention des Patriotes pour la Justice et la Paix — CPJP) and Patriotic Convention for Saving the Country (is a combination of French and Sango words: Convention Patriotique pour le Salut du Kodro — CPSK), but later on UFDR, Democratic Front of the Central African People (French: Front Démocratique du Peuple Centrafricain — FDPC) and The Alliance for the Revival and the Rebuilding (French: L'Alliance pour la Renaissance et la Refondation — A2R) joined too, increasing the number of the allied militia groups to five. [2] The personnel of this united organisation was estimated to be between 1,000 and 3,000, which was a significant force against the undermotivated, undertrained and disorganised armed forces. [17] The name Seleka was used first in December 2012. The name means "alliance" in a local language.

2 The events in Darfur had a significant effect on the stability of the country.

Seleka, a mainly Muslim organisation, was successful in the north of the country because of the support of the mainly Muslim local people, but soon advanced into the southern parts of the country. Bozizé did not want to solve the situation in the country with negotiations. As a response to this the president of Chad, Idriss Déby, seeing this unwilligness to negotiate by Bozizé, withdrew Chadian troops from the country to stop the crisis before it destroyed the stability of the region. However, in December 2012, not far from Bangui, Chadian soldiers from the MICOPAX mission stopped the advancing Seleka, and under Idriss Déby's pressure negotiations started with the Bozizé government. [2] An agreement was made in January 2013 which brought noticeable changes, introducing a ceasefire and permitting Bozizé to finish the governmental period until 2016. But soon after Seleka accused Bozizé of violating the agreement. [17] In March 2013 Seleka units continued their advancement on the capital and occupied it on 24 March. After this, Bozizé left the country. [18]

The fleeing of the president made it possible for Seleka to name one of its leaders as president, so in March Michel Djotodia took over leadership of the country and proclaimed himself president. He became the first Muslim president of the mainly Christian country. [1]

The Djotodia government

After Djotodia gained power anarchy broke out in the country, which led to continous fighting between Seleka and a variety of Christian groups, with the fighting leading to the desolation of villages. The African Union started its African-led International Support Mission to the Central African Republic (MISCA, French acronym for *Mission internationale de soutien à la Centrafrique sous conduite africaine*) mission in July 2013 with 2,500 troops and started to restore law and order to the country. [19: 7] Djotodia swore the presidental oath in August. The international community was optimistic, and expected the stabilization of the country by the new president, because Djotodia organized and led the Seleka union. However Michel Djotodia wanted to secure his position first, and turned to Islamic countries like Sudan, Qatar and the United Arab Emirates. But neither the neighbouring countries nor the international community would recognise a new Islamic state. [2] The UN called the attention of the international community in August to the possibility that the ongoing events in CAR could shatter the stability of the whole region. [20] Djotodia disbanded Seleka in September, but the majority of the troops did not lay down their weapons, and the militia groups did not finish their fighting. After this the Seleka organisation resisted every kind of external leadership, and demolished villages, looting and massacaring the inhabitants. Because of this violence approximately 400,000 people fled their homes, and about 68,000 sought refuge in neighbouring countries. The actions of the mainly Muslim Seleka called into existence Christian anti–balaka[3] groups, who can be accused of vigilantism, looting and killing. Christian groups were determined to restore law and order to the country with these methods. [1] The result was a deepening of religious tensions in the country. In October 2013 the UN decided to give support to the African Union led mission in the country, which had deployed in July. [21]

On 5 December 2013, the UN Security Council accepted resolution 2127, in which it allowed French intervention in CAR. [22] At the beginning of December 250 French troops

3 Anti–balaka, that is to say the anti–machete groups, are named after the weapon favoured by the Seleka.

were deployed to CAR from neighbouring countries to reinforce Operation Boali,[4] which was based at Bangui airport. With these reinforcements there were now 650 French soldiers in the country [15], with an additional possible reinforcement of 350 troops based in Cameroon. At the beginning of December they decided they would increase the size of the contingent to 1,200 troops. [23] Before the French intervention, like in Mali [24] the country asked for international intervention, with, in this case Prime Minister Nicolas Tiangaye, asking for help from France. [25] On 7 December news arrived of an increase in the number of personnel of the African Union (AU) mission to 6,000 troops. [26] On 10 December the first two French soldiers died during the fighting. [27]

On 5 December the fighting intensified, but it was already on the edge of genocide. On 18 December France had 1,600 troops so far in Operation Sangaris, which was conducting operations in CAR from the beginning of the month. France called on the European Union to support the intervention. Some European countries, for example Belgium, Germany, Spain, Poland and the United Kingdom were already supporting the French intervention in different ways, although they had not sent any troops to the operational theatre. France wanted to change this policy. [28]

On 23 December 2013 the EU banned weapon trafficking and the recruitment of mercenaries to CAR. This ruling was in connection with a UN Security Council resolution accepted in early December concerning the banning of the support for fighting in the country by direct or indirect methods. [29]

On 10 January 2014 President Michel Djotodia and Prime Minister Nicolas Tiangaye resigned because of international pressure, as the international community found it atrocious that the leaders of the country were not capable of putting a halt to the fighting between the Muslim Seleka and Christian groups. [30]

The Samba–Panza government

After the leaders of the country resigned on 11 January a new interim period started in the Central African Repulic. Alelandre–Ferdinand Nguedet became the president of the Temporary National Council of CAR, [31] of which the most important task was the nomination of an interim president. On 20 January the Temporary National Council nominated Cathrine Samba–Panza, the mayor of Bangui and a neutral politician, to be interim president. [2] It will be her task to organise the oncoming elections, which were brought forward because of the events in the country, to the second half of 2014. Samba–Panza has made great efforts to restore peace to the country, and this is shown by the composition of the interim government: Seleka and the anti–balaka groups could name ministers to it. Samba–Panza's power is guaranteed by the international forces in the country and the compromise between Seleka and anti–balaka groups. This compromise could be a real effort to restore peace, or only just a playing for time, with fighting continuing in the country. Although Seleka and other militia groups withdrew from Bangui on 26 January 2014, the fighting among local groups still had a death toll. [2] In January 2014 the EU decided to deploy a mission to CAR, consisting of 500 troops. The two tasks of the mission were to guarantee the security of the nearly 100,000 refugees at Bangui airport, and to take over some of the French force's responsibilities, so

4 Operation Boali is a French mission in the Central African Republic. It started in 2002. The task of the mission is to protect and secure M'Poko airport in Bangui.

that Operation Sangaris would be capable of bigger efforts in the area of Bangui. Besides the planned EU mission, president Samba–Panza asked for military help from the UN, but this proposed intervention has conditions attached to it, made by the Secretary–General of the UN in November 2013. If these terms are fulfilled, a 10,000 personnel contingent will be deployed. [32]

On 31 January there were 1,600 French troops in CAR, with an additional 6,000 African troops in the MISCA contingent, consisting of experienced peacekeeping nations, who have already dealt with similar problems, for example Burundi, Chad and Rwanda. [33] Both missions have the same tasks: to restore peace to the country and the protection of inhabitants from militia groups. [34] An additional task is the disarmament of the militia groups, which is highly difficult, because besides firearms they have to collect such weapons as machetes and knives from the warriors too, if they want to put a halt to the fighting. This activity can cause a new problem: the disarmed groups can be attacked by groups who still have their weapons. [2]

Some drew comparisons to the actions committed by the anti–balaka groups with those of the Rwanda genocide of 20 years ago. The fighting in CAR has seen nearly 2,000 deaths, but its dimensions have not reached the level of the Rwandan events in 1994, [35] but on ideological grounds it is similar: it is rooted in ethnic and religious hate. [2] For their protection foreign people were transported home by their parent countries, and a quarter of the 4.6 million population has either fled their homes or been relocated, under the supervision of the UN, to a safer area, usually in a neighbouring country. [36]

At the beginning of February UN Secretary–General Ban Ki–moon called for the reinforcement of the French forces who are staying in the country, and the bringing forward of the deployment of the UN mission because of the critical state in the country. In the opinion of the Secretary–General, the current security situation in the country could lead to genocide, so it is important to increase the number of the peacekeeping troops in the country. Besides this, negotiations started about the integration of the MISCA mission under UN leadership. [37] In February CAR was threatened by severe starvation. Muslim tradesmen, who were being harrassed by Christian militia groups, were leaving their homes in ever increasing numbers, and as a result at the beginning of February around one and a half million people needed emergency food aid according to the UN. But most of the food supplies could not cross the border from Cameroon, because drivers would not undertake the hazards of the journey since the security situation of the country had deteriorated so much. [38]

In the middle of February a mass grave was found, and the accusation of genocide was raised again. The violence grew bigger after Michel Djotodia resigned, despite the units of Operation Sangaris conducting operations in more areas countrywide and the personnel of the MISCA mission being raised. The predominantly Muslim Seleka brought up the possibility of the partition of the country, but president Samba–Panza does not intend to negotiate the giving up the integrity of the country. In connection with the events the possibility of a UN mission was raised again, but until its deployment the Secretary–General asked France to increase the number of its troops in the country. [39]

There were constant negotiations about the establishment of the 500 personnel mission already pledged by the EU. The deployment of the mission was planned for March, but the EU received six more months to reach operational readiness. [40] It is planned that the commander of the mission will be French, which will be of course an advantage in the co-

operation with the French forces already deployed to the country, as in Mali, where it made communication and cooperation among the missions easier. [41]

In the middle of February a decision was made regarding reinforcement of Operation Sangaris, with France intending to send 400 more troops to the country, thus increasing the number of troops in the peacekeeping operation to 2,000. Besides this, France admitted that the peacekeeping mission would be longer than the planned six months. They need to continue the operation to put an end to the violence. [42]

On 20 February UN Secretary–General Ban Ki–moon asked for the deployment of 3,000 more troops to CAR, and held out the prospect of establishing a UN mission, with around 12,000 personnel in order to protect civilians and to restore stability to the country. In addition, the personnel of the planned EU mission was raised to 1,000 and the MISCA mission now had 6,000 troops in the country. Besides the reinforcement of the operational forces, the UN Secretary–General suggested inmediate financial and logistical support for the government of CAR and the AU forces, who carry out operations in the country. [43]

Operation Sangaris started negotiations with Seleka and anti–balaka groups about the laying down of arms. According to the results from the end of Ferbruary France considered mainly the Christian militia groups an obstacle on the road to peace. The anti–balaka groups were willing to lay down their weapons when Seleka had already done so. [44] But this was not enough a strong enough assurance for anti–balaka groups. They have forced the majority of the Muslim inhabitants to leave, and demolished their homes and shops. The World Food Programme called the international community's attention to this problem because the neighbouring countries who have received the refugees, are slowly being overloaded. [45]

At the end of February the French Parliament voted to extend and enlarge the French mission's mandate. [45] Operation Sangaris, in light of its lack of results, has not been successful as the security situation in the country has hardly changed. Because of this, the UN started talks about establishing a mission with a strong mandate and nearly 12,000 personnel. The mission would take over the currently operating MISCA, and start its tasks on 15 September after bringing it up to its full complement. However, analysts are sceptical about the establishment and the operating ability of such a mission. France would support a UN mission, but the approval of the United Kingdom and the United States of America is not definite, because of the high cost. [46] Besides the UN, the EU has also pledged a mission of 1,000 troops, which would secure the airport. But the establishment of the mission was delayed because the forces and equipment were not forthcoming [47] but as of May 1 the first 150 EU troops have arrived in CAR and have started the handover and take over of Bangui airport from the French mission. [48] Some sources think that the reason for the holding back of forces was the current situation in Ukraine, because the Eastern European countries did not want to send away troops. [49]

Operation Sangaris and MISCA are not enough to restore stability in the country, despite the fact France has extended its former mandate, and we have to reckon with more reinforcements in the future. It was a big loss when Chad withdrew its troops from the country, as they were considered as useful allies, mainly because of their experience in peacekeeping activities. The Chadian government had to redeploy its troops, becase they having been accused of supporting Seleka militia. [50] The UN subsequently gave the go-ahead for the establishment of a mission which would start by taking responsibility for the AU led MISCA mission. [51] The EU pledged 1,000 troops is expected to be mainly French troops with a minimum from

other nations, but the Ukranian situation resulted in the establishment of this mission only beginning, as already mentioned, on 1 May, 2014. [48] The organising and bringing up to full strength of the UN mission is uncertain. A year earlier, in Mali, the international organisation had to face problems rectifying the personnel and equipment shortages, and CAR does not have the same level of strategic importance as its fellow western African sufferer. So the quick deployment of the UN mission is unlikely, though CAR needs a force which is strong, capable of solving the problems and has the right mandate to stabilize the security situation in the country. [52]

Hungary

In accordance with the EU decision at the end of January 2014, EUFOR RCA was to be established with a planned personnel of 500, and its task would be the protection of the 100,000 refugees staying at Bangui airport. [40] But because of the deterioration of the security situation in the country, the number of personnel was increased to 1,000, and its tasks changed, with the operational area not only being the airport, but Bangui and its surroundings too. [52] Several large EU countries namely Germany, Italy and the United Kingdom did not commit to sending troops to the EUFOR RCA and this reduced the volunteering of other countries. Despite this, Estonia, France, Latvia, Poland, Portugal, Romania, Spain plus Georgia (a non–EU country) pledged soldiers to the mission. The mission should have been deployed by the end of March 2014, and it would have had six months to reach operational readiness, but the start of the mission was postponed until the beginning of May because of the crisis in Ukraine.

Hungary decided to send some soldiers to the mission on 20 February 2014. The government decided to send a maximum of 6 soldiers, all staff officers, and they would discharge their duties in Bangui and in the operational headquarters of the mission, in Greece. The decision stated that the length of the deployment would be no later than 31 December 2014, or until the end of the mandate should that be earlier. The Hungarian mandate was at the end of March for 9 months, of which the development time would be 3 months and operational time 6 months. The resolution says that Hungary considers taking part in the EUFOR RCA mission an obligation for EU members, and wants to reinforce the Common Security and Defence Policy by taking part in the mission. [53]

This pledge is the result of the NATO withdrawal from Afghanistan, which means a huge decrease in the desired 1,000 troops being deployed at operational level, and the country has to find new opportunities, but CAR role is small compared to the missions in Afghanistan.

Summary

The situation in CAR is the result of a long process. The fighting has been continous since 1960, when the country gained its independence, but we can relate the present conflict to the fighting which flared up at the beginning of the 2000s. The escalation of the conflict is tied up with the events which happened in March, 2013, but the main reason is that the successive governments have not resulted in any development in the country. There were several international peacekeeping missions in the country, but none of them have been successful. The current mission, not for the first time, arrived late, only when the fighting between the Muslim and Christian groups reminded the international community of the Rwandan genocide.

The intervention has not brought significant changes to the country, with the situation having deteriorated further, and more disasters threatening the inhabitants.

While France, the AU and the UN seek a solution, only the EU has showed itself supportive, but mainly because of French pressure. The establishment of the UN mission would be vital for the country, but it is not definite that it will have full personnel and equipment, because the country does not have any strategic importance. Because Operation Sangaris has not been as effective as France had hoped, the country wants to solve the rapidly worsening situation with the reinforcement of the troops already stationed in CAR. The EU has wanted to remain in the background in CAR, as in Mali, but the seriousness of the situation calls for a more active role. The task of the 1,000 personnel contingent will be the protection of Bangui and its surroundings including the airport, with the deployment of the mission, having been postponed twice because of the Ukranian crisis starting this week (1 May 2014). [48] Hungary has also pledged a contingent to the EUFOR RCA, so we have to follow the struggles of CAR.

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Special tasks for professional disaster management bodies related to the identification, designation and protection of critical infrastructures in Hungary

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One of the most particular priorities is to make available and operate systems and services, which guarantee the continuity of everyday life in the 21st Century. In order to ensure the efficiency of protection it is necessary to give effect to several physical, human and IT measures, which have integrated a complex framework through the legislation of critical infrastructure.
After the legal harmonization in the European Union, Hungary has begun to create its own system for critical infrastructure protection, within the first concrete step was when the Act 165th of 2012 on the identification, designation and protection of critical infrastructures and its Government Decree on the implementation came into effect. This study aims to summarize the main steps of the public proceedings related to identifying and designating critical infrastructures. In connection with the legislation I will present the function and prime assignments of the professional body for disaster management.
Keywords: *critical infrastructure protection, legislation in Hungary, sector authorities, disaster management.*

Introduction

Critical infrastructure protection is not a newly defined term, because it was always especially important to protect values and institutions which are essential to life and to maintaining an active economy. A new kind of approach was born in the first years of the 21st Century. After the terrorist attacks in 2001, 2004 and 2005 European societies were frightened of terrorism and searched for complex and common answers to the events. From 2004 there has been a comprehensive approach on critical infrastructure protection, with wide legislation on the level of the European Union by the 2008/114/EC Directive (called European Programme for Critical Infrastructure Protection — EPCIP) and many of the conclusions by the European Council, European Parliament and European Committee. Based on this Directive Hungary began to prepare for the implementation of the new obligations in 2008.

In 2012 — parallel with the review of EPCIP in the whole European Union — we built a framework for critical infrastructure protection with ten sectors and 42 subsectors, which has made it possible to assign the process of identification and designation related to critical infrastructure in details. [2] [3] The first results are the four Government Decrees — they came into effect on the 1st January 2014 — which create concrete legislation for designation in the sector of agriculture and food, energy, water, as well as public safety and security. [5–8]

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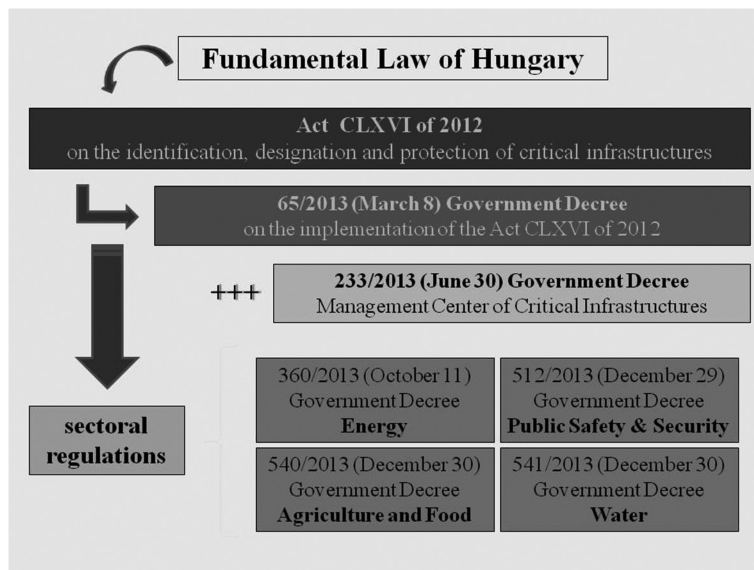

Figure 1: Legislative background of critical infrastructure protection in Hungary.[2]

The substance of the identification is to present the risk analysis of the examined infrastructure element. This is an obligation for every operator, according to which they must compile a so–called *identification report*,[3] taking into consideration sectorial criteria. In this document will be the justified and defined designation proposal, as well as the beginning and finishing date of the examination. The deadline to render the first identification reports is the 180th day after the sector Government Decree came into force. If an operator does not meet the obligation above, but the authority stated by the law looks reasonable and makes the report, then the authority obligates the operator to make the necessary document. Submission must be accomplished to *sector–designating authority* which is defined in the related Government Decree, and which will launch public proceedings to examine the possible designation of the infrastructure.

The main aim of public proceedings is to examine sector and cross–cutting criteria, including horizontal criteria as well. During the 90 days long designation process the *sector–proposing authority* has 30 days to look over the identification report and to send its recommendations and professional opinion to the sector–designating authority. Based on the identification report and in the interest of examining the fruition of horizontal criteria, professional disaster management bodies must be involved as *consulting authority*. It has 15 days to adopt an authority statement about the fulfilling of horizontal criteria. The final *decision* taken by the sector–designating authority in the proceedings may be directed:

- designation and registration of the critical infrastructure element; or
- repeal designation and erasure of the former critical infrastructure from register; or
- rejection of the proposal for designation or cancellation; or

2 Made by the author, based on [1–8].

3 Such document, which presents the activity, physical and IT security and threats to the infrastructure at the time of the examination, can confirm or confute the conditions of designation as critical infrastructure.

- making a new identification report within 90 days, marked with mistakes and deficiencies; or
- approve that the operator has no identified potential critical infrastructure element. [3]

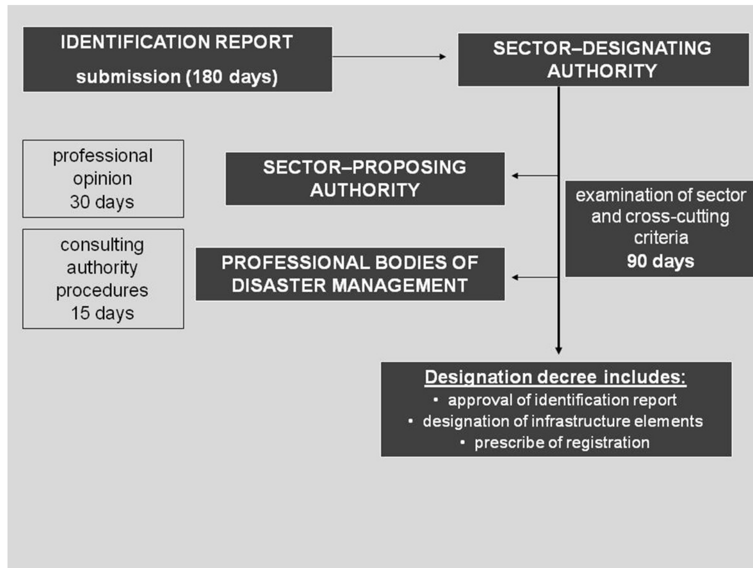

Figure 2: Identification and designation process of potential critical infrastructures.[4]

In case of designation sector–designating authorities are responsible for specifying the obligation for operators with a deadline, for making an *operational security plan (OSP)* and appointing a *security liaison officer (SLO)*. Both of them are stated in the EU Directive as obligatory elements in the system of critical infrastructure protection.

SLO — and conditions necessary for its activities — must be provided by the operator, unless such person is employed. The main task is ensuring communication and cooperation between the operator and authorities, in order to protect critical infrastructure elements. In Hungary we have special regulations for it, which are the following in general:

- certified no criminal record;
- relevant professional qualification (different by sector);
- other qualifications prescribed by government regulation (different by sector).

After 1st September 2014 qualification requirements will change. Besides the relevant professional competence it will be necessary to have some kind of special knowledge related to disaster management, like:

- higher education in law enforcement, defence management or industrial security management;
- specialization for fire protection, industrial security or civil protection;
- at least 5 years experiences in the field of industrial safety in professional disaster management bodies. [2] [3]

4 Made by the author, based on [2–3].

In connection with OSP the obligation must be fulfilled according to the deadline marked in the decision. It could not be less than 60 days after entry into force. There is the same exception rule as above, if the designated critical infrastructure has a security document which includes the required content elements of OSP, than it can substitute that. The mentioned content elements are defined in the 2nd Annex of the 65th Government Decree 2013 as follows:

- an exact description of critical infrastructure elements;
- organizational tool system that ensures their protection;
- provisional measures to be taken for the different risk and threat levels;
- existing or under development procedures for security solutions;
- potential extraordinary events or accidents.

The protection and continuity of the critical infrastructure element must be organized in accordance with OSP. Based on the above, OSP must be modified if activity changes and has affected protection system. [3]

Tasks of the Hungarian professional disaster management bodies [2] [3]

Duties and powers related to critical infrastructure protection are new activities in the disaster management system, which needs to create working and continuous relations with all bodies involved in the procedure. This kind of function affects all levels of the organisation; the coordination role has the central body (National Directorate General for Disaster Management — NDGDM) and the marked parts of public proceedings are carried out by directorates (county level) and offices (local level). Activities in detail will be presented according to this structure.

1) The role of the National Directorate General for Disaster Management

The subordination of the Ministry of Interior — as central authority — it carries out five categories of tasks related to critical infrastructure protection.

Registering authority, excluding European and national critical infrastructures of the defence system. Thereby all important data of operator and SLO, every OSP (as amended), as well as all decisions on critical infrastructures are available. Because of the obligation and right of Privacy NDGDM provides data for the involved bodies in the identification, designation (or withdrawal of designation) procedure:

- in order to ensure the operation of the procedure;
- to the coordination of supervisions and control;
- in order to accomplish on–site inspections; as well as
- to conduct official controls — upon written request — for authorities which has responsibilities under the law.

One year after the decision about the withdrawal of designation had become final, or after the decision about rejection of designation becomes final it must delete data from the registration and inform the operator in writing at the same time.

Supervisions and control coordinating body, excluding European and national critical infrastructures of the defence system. It prepares the annual audit plans of controls, which consist of suggestions from cooperate authorities. During the planning of supervisions — organized with more partner authorities — it pays particular attention for the critical infrastructure elements taking place every three years. After it NDGDM must draw up a summary report about the results of coordinated control. If during any kind of control it is found that

the operator fails to comply with its obligations, on the initiative of the participant authorities the sector–designating authority can:

- call the operator to fulfil the requirements;
- oblige to modify or make new OSP;
- impose a fine.

Management of emergency situations: NDGDM is entitled to request data from concerned authorities if any type of extraordinary event listed in the OSP has occurred. Giving response, organizing rescue, management, as well as informing public, assessing damage and reconstruction take place with the coordination of NDGDM. Involvement of necessary forces and tools to the efficient and successful intervention occurs on the proposal of the sector–designating authority. It is important that in treatment of events taking place, mainly forces of disaster management bodies (fire–fighter staff), and the local–level management of the situation is ensured by the professional disaster management system. There is a suitable example from Hungary March 2013, when widespread extreme weather conditions caused traffic jams on highways, prolonged blackouts and damage in buildings as well. It was necessary to handle the situation in many places, and after the weather improved to resolve the consequences of the multi–day–long power outages in Eastern Hungary.

Proposing authority: with regard to high priorities of public policy, public safety, public protection, constitutional protection, national security and counterterrorism. NDGDM has the obligation to pay special attention during public proceeding for the operating environment and specificities of potential critical infrastructure elements. If the injury, loss or destruction of the examined element can:

- have impact on the maintenance of public safety;
- influence the protection of public and property, or the functioning of the national economy;
- offend interest and principles regarding constitutional protection, national security or counterterrorism.
- NDGDM must suggest the designation of the element as national critical infrastructure toward the sector–designating authority.

Coordination of cyber security measures: contributes to maintain cyber security, analyses and evaluates events related to cyber security. It is an essential government expectation to handle challenges arising from cyber space efficiently, therefore the highest possible level of information security must be guaranteed. NDGDM operates the so–called IT Security Management Centre of Critical Infrastructure Protection (CIP), which is under accreditation, and it will soon the Hungarian CIP Computer Emergency Response Team (CERT). The main aim of the Centre is to protect services provided by national critical infrastructures from attacks arising from the internet and to ensure the coordination of preventing and eliminating interventions from global cyberspace.

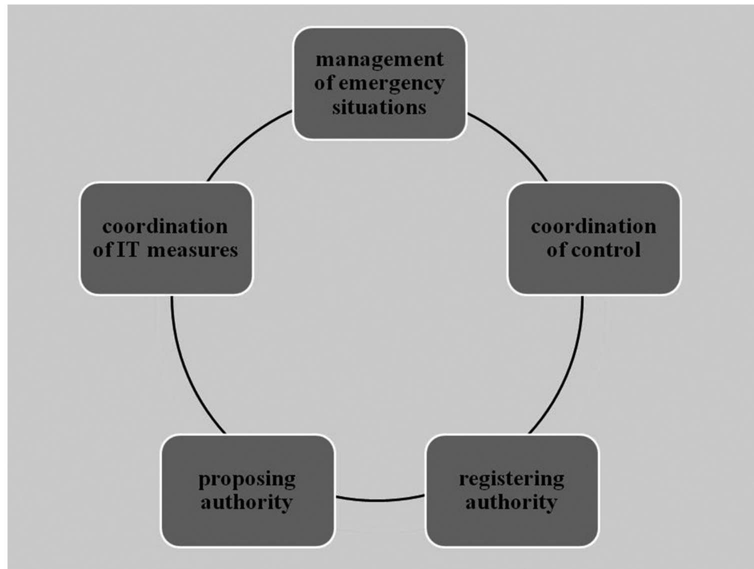

Figure 3: Integrated tasks of NDGDM.[5]

2) The role of county disaster management directorates and offices

As mentioned above, the vast majority of tasks in public proceedings are carried out by the county and local level, because the first–instance authorities are the offices, and the second–instance authorities are the directorates in the field of sectorial designation procedures, except public safety and security sector, where disaster management bodies (county level) are the first–instance.

Consulting authority: in the processes disaster management is responsible for examining horizontal criteria, and it needs to involve further bodies to compose opinions about them.

This kind of proceedings aims to adopt an authority statement — after examining scope and competence —, which is justified in detail if any horizontal criteria[6] are met. It has an important role in the process having regard to the fact that it is enough to meet one sectoral and one horizontal criterion to designate a potential critical infrastructure element. It is an integral part of the procedure to involve the competent government office in order to examine political effect's criterion, as well as the assigned national organization for environmental protection and nature conservation management due to environmental effects criterion.

Sector–designating authority: disaster management directorates — in the field of public safety and security sector — are responsible for designating critical infrastructures of Constitution Protection Office, Hungarian Prison Service Headquarter and its bodies, National Security Special Service, National Protective Service, National Police and its bodies, Counter Terrorism Centre. In this case the request of consulting authority does not take place.

5 Made by the author, based on [2–3].

6 It is determined in the 2nd Annex of the 65th Government Decree 2013 — based on EU model: casualties criterion, economic effects criterion, public effects criterion, political effects criterion, environmental effects criterion

An important segment of the process is the obligation to make an identification report by disaster management bodies as well, taking into consideration that disaster management system elements can also be critical infrastructure in the sector of public safety and security. The sector–designating authority is the appropriate level of the national police.

Summary

Critical infrastructure protection is an extremely diverse activity, thus duties and powers delegated to disaster management bodies have particular importance. In order to ensure the legal and professional implementation it is essential to devote appropriate emphasis to training and further education, as well as follow–up headlines. Nowadays disaster management practise complex preventive activities, which has expanded by the scope of critical infrastructure protection, with public proceedings, consulting tasks, self–identification and managing emergencies. It is highly important that this kind of task can be realized in such an environment, which meets the requirements of the European Union, and national — otherwise more stringent — legislative as well.

Critical infrastructure protection is a new challenge for the EU, for Hungary and for the national disaster management system also. It is a newborn specialty with little experience. The significance of the identifying and designating procedures cannot be questioned, as they are about essential services ensuring fluency of everyday life. Taking into consideration that it is an on-going process to create legislation for the further sectors (transport, health care, finance, industry, IT, government), the expanding legislative environment will play a key role in the future. Meanwhile the deadlines of presenting the first identification reports are expiring, the number of designated critical infrastructures will rise gradually, which results in an increasing dynamism of public proceedings as well.

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New Approaches for Maintaining the Peace at Political Demonstrations — Communication and Dialogue as Important Strategic and Tactical Tools of Public Assembly Management

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The unsustainability of the traditional, force – and coercion–based strategies and tactics used in public assembly management has been recognized in many European countries. This paradigm shift has been confirmed by the events that occurred in Kiev, in the period of November 2013 and January 2014. The improperly chosen public assembly management strategies and procedures applied during the Maidan square events have not only shook public order fundamentally, but also led to consequences which may hurt the state sovereignty and territorial integrity itself. The democratic rule of law, the pressure of the mass media — complete with the modern theories of social psychology developed in relation to the behaviour of the crowd — force giving up the practice previously used by the law enforcement organizations implementing public assembly management. As the first–line defender of the freedom of assembly and freedom of speech, European law enforcement organizations recently had to look for new methods, and had to organize their practice used in public assembly management along entirely new concepts. Backed up by the results of social science, the police strategies and tactics based on communication, dialogue, and facilitation gather ground in Europe more and more. In my study I would like to introduce these new principles used in public assembly management.

Keywords: *Dialogue Police, communication based public assembly management, dynamic–risk assessment*

Introduction

In 2010, in North Africa (Tunisia, Alger, Egypt, Libya) and in some other states of the Middle East (Jordan, Yemen, Syria, Bahrein) the world witnessed a chain reaction–like series of events — referred to in history as the Arab Spring – which had severe consequences, and have not come to a conclusion for the citizens of the countries concerned. [1: 1–2] The initial goals were the same in all countries concerned: to defeat the authoritarian, dictatorial and corrupt leadership of the state. Participant parties began the so–called democratic revolutions based on different motives with one thing in common: the originally peacefully mass protests, which were reactions to some provocative developments, turned into armed clashes and revolutions with violence everywhere, which led to the collapse of the reigning authority

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almost every time. The mass movements primarily aimed at changing the structure of society, the masses demanded a democratic state where previously they had no example for it. Regarding goals and ambitions however, the Arab Spring has not brought a definite success, because either the old despots were replaced by new repressive authorities collapsing then in a similar manner (for instance Egypt), or civil wars developed taking many human lives, as is the case at the present in some countries (Syria, Libya).

The consolidation of the Arab Spring's events were not able to bring peace to the world, nor are the masses going to the streets today to protest all over the world. The global media regularly broadcasts disturbing videos from the streets of the cities of Turkey, Brazil, Thailand, [2] Venezuela [3] and Bangladesh. The people marching in the streets are demanding their political and civil rights and for transparent and/or free elections, and even confront law enforcement forces tasked to maintain public order. However, these police operations — though occurring in countries located geographically at substantial distance from each other — have in common the fact, that the law enforcement agencies primarily attempt to restore the lost order by using coercive force and equipment, by dispersing the crowd, and are not bothered by using more oppressive tools, such as water cannons, tear gas and rubber bullets.

Similar occurrences could not be avoided in Europe either, violent and destructive street demonstrations have appeared in our region of Central Eastern Europe as well. In February 2014, in Bosnia, political demonstrations took place attracting big masses, and leading to clashes between the crowd and the law enforcement forces, resulting in many injured on both sides. [4]

In November 2013 in the immediate vicinity of our country, in the streets of Ukraine and of its capital city, Kiev, a series of demonstrations — leading to riots — took place resulting in serious consequences and many fatalities. The bloody and shocking videos broadcasted by television and social media serve as a warning to political and police leadership of all countries, namely where does the strategy of public assembly management lead, if it is solely based on the use of pure coercive force, on handling the masses as an enemy to defeat, and on the lack of communication between the opposing parties.

The past decade, however, has brought significant changes in many countries in the field of securing political demonstrations by law enforcement agencies. Previously, almost all European law enforcement agencies focused their public assembly management strategy/tactics on dominance and on the intensive use of coercive force. Constrained by their tasks, the heads of law enforcement agencies and the leaders of public assembly management operations primarily aim to preserve the public order and disrupt illegal acts. Previously, for this purpose, they were ready to deploy any applicable tool and regulation, but this strategy has proven to be wrong, causing, in many cases, serious street fights with an escalation of violence, and sometimes several day–long riots (for example the riots in the autumn of 2006 in Budapest, Hungary, and in Paris, France in 2005) leading to — beyond significant financial loss — the injury of the police officers in service and of the demonstrators, and to death in some tragic cases. [5: 43] Several law enforcement organizations had to learn the lesson from their own mistakes, namely that it is not possible to apply whatever measure — even in the name of the majestic goal of maintaining or restoring public order — without being accountable later for their acts on a political and on a judicial level. Modern democratic societies have become more and more critical towards law enforcement agencies (police and gendarmerie), emphasizing that they should aim at — as the defenders of human rights and

fundamental freedoms — ensuring and enforcing these rights, restricting them only to the extent strictly necessary. For this purpose, the respective state power should provide guarantees for the protection of the rights concerned. [6: 15]

Due to the severe consequences, more and more researchers began to study the behaviour of the crowd, the interaction of the demonstrators and the police in the crowd, the process of escalation of the violence, seeking to find solutions on how to avoid demonstrations turning into street battles and fights with the police, and into destruction.

Study results on the behaviour of the crowd

During the nineteenth century many nations of Europe were shaken by social events that — almost without exception — began with movements of the masses awakened to existence, which turned into combat and revolutions on the streets of the big cities, or even into a takeover of power (for example the Paris Commune in 1871). The democratic state has fewer options for protection, when social movements produce phenomena similar to natural threats. [7: 65] Those in power observed terrified that their social systems, in which they strongly believed, collapse under the onslaught of the aggregated masses. [8: 17–18] They tried to find an explanation hectically to the behaviour of the masses considered dangerous by them, studying especially the criminal–forensic side of it and striving to suppress these types of movements at any cost. [9: 1]

Of the early researchers it was the work of the XIX. Century's French researcher Gustave Le Bon, which provoked the biggest reaction. It is still dominant today regarding our ideas about the crowd. Le Bon gives primarily negative characteristics to the crowd, considering its behaviour fundamentally irrational and violent, and looking on it as the potential destroyer of the existing civilization. In his opinion the individual loses his individuality in the crowd, while his conscience melts into the so–called "unified consciousness" and is able to commit things, which he would never do alone, or even would condemn. [10: 18–26]

Using the negative judgement of Le Bon, law enforcement agencies considered the crowd a potential danger, as an "enemy", and this approach determined the sort of tools applied against it. [11: 9]

Subsequent studies have started to examine the crowd from other aspects, and came to a different conclusion, than Le Bon. According to Floyd Allport, there is no type of collective psyche, or consciousness of the group besides individual consciousness. [9: 2] With their experiment Festinger, Newcomb and Pepitone attempted to demonstrate that in certain situations, individuals prefer to join a group where there is the possibility for deindividuation, namely the loss individuality, responsibility and self–control. [8: 145–146] According to Zimbardo, the person who identifies himself with his evolved role in the crowd, becomes a psychopath. [8: 147] The theory of the so called "pop up norm of the group" elaborated by Turner and Killian states, that the behaviour of the crowd has to be examined not only from the aspect of the individual, but from the aspects of his social relations, and his social background. [9: 1–4]

Searching for the reasons of the riots that evolved in 1980, in the district St. Pauls in Bristol, a British researcher S. D. Reicher finds, that the individual is present in the crowd as a communal human being, meaning that the community category becomes significant and important in the given time and place (belonging to a certain nationality, social group, geo-

graphical area, political thinking, etc.), and will determine how he/she will behave during the event, and not his/her personal characteristics. [9: 15–16] He also notes that in many cases it is the nature of the police action itself, which generates the transformation of the initially peaceful situation into a violent act. [12: 128–129]

Sociological studies have altered the picture of the crowd, as the "hordes" seeking only to destroy civilization were replaced in the public consciousness by the image of the demonstrating political community wishing to freely express its opinion. This community demands space for itself on the streets, and the citizens of the state expect the authorities to support them at least in giving the possibility to express their opinion.

Principles of democratic public assembly management

In their studies E. Bleich, C. S. Caeilo and Luehrman categorize the law enforcement policy on public assembly management in two ways. According to their statement we can talk about a repressive/oppressive kind of public assembly management, if the applied political, legal or law enforcement regulation, or the relating statement, motion, policy and procedure punishes/disciplines the demonstrators, or puts the participants of the mass events at a disadvantage in other ways. In this case we are talking about a high–profile public assembly management.

The practise of public assembly management is a facilitating one, if using the same tools the concerned state authorities express their understanding towards participants, or provide tangible political, economic and social benefits to the demonstrators and to their communities. [13: 272–273]

In modern democracies, the right to peaceful assembly goes together with the freedom of speech. [14: 9439] The police are responsible for giving support, so demonstrations can achieve their lawful goals. To this aim, law enforcement agencies — instead of applying force and coercive means — have to increasingly use solutions based on negotiation and communication in order to manage demonstrations peacefully. [15: 27–29] However, in itself it is not enough to succeed. Researchers, based on their studies, have made various recommendations and suggestions to achieve this goal.

1. Notification, forming of knowledge

Researchers devote a significant role to intelligence, which has the aim of acquiring information in connection with groups expected to be present at demonstrations, and related to important persons. This information has to be shared with all the police officers assigned to carry out securing tasks, so as they can be aware of the values, objectives, tactics of the concerned people, as well as of the locations considered significant, iconic by them. Knowledge on groups enables being able to distinguish between the symbolic acts of protest and the behaviour accomplishing categories of crime or pure violence. [16: 36–37]

Moreover, information has to be collected on the interests of people, of communities, of owners of enterprises (restaurants, shops), and of transport companies living and working in the area of demonstrations as well. [17: 47] Aspects of these groups are usually not taken into account by the planners of police operations, however demonstrations and police activity may seriously harm their interests as well. The owners of restaurants and shops of busy downtown streets can lose significant income, when the police close the roads and streets hosting trade

units for long hours, in order to carry out the securing tasks of a “march”, or — using the expression of Hajas Barnabás — of a dynamic demonstration. [18: 163] In this case, the person responsible for the securing tasks can argue, that the protection of the fundamental right overrides economic interests, however it also has to be examined, whether there is a possible solution to minimize these losses. When choosing the direction of crowd–dissipation it cannot be a negligible aspect, that the dissipation by the police should not intersect such area where on the terraces in front of restaurants and bars law-abiding customers are having fun. In such cases inevitably damage is caused to property, which may even lead to the violation of civil rights.

2. Facilitation

As we have previously stated, one of the primary responsibilities of law enforcement agencies is to ensure human rights and fundamental freedoms, consequently they have to ensure, in every manner, that participating persons in the demonstration can hold their program calmly and in peaceful circumstances, which enables them to deliver “their message” to the recipients, who can be either participants in demonstrations, state authorities, private or public companies. This directive must be followed by the police as long as the public order does not break up, or as long as the demonstration itself does not injure substantially the rights of other people. According to the opinion of S. D. Reicher, C. Stott, J. Drury, and O. Adang if the police have a supporting approach while carrying out securing tasks, and do not look on the crowd as enemy, it will be able to gain the sympathy and the cooperation of the crowd. [19: 409–410] Facilitation has to be applied from the time of being notified about the event and must be kept during the negotiations between the parties, and the demonstration as well. Hajas Barnabás says, that, “if the organizers’ request cannot be satisfied, it is not enough simply to reject it, but instead of a negative response the police have to give support to the accomplishment of the goals with a positive and creative attitude.” [18: 316]

3. Differentiation

Even in the most peaceful crowd can be present persons who — intentionally, or unintentionally — conduct an unlawful act by their behaviour. If the quality or the weight of the violations exceed a certain limit, the police must intervene. In the past law enforcement agencies did not deliberate too much, and applied the tactical elements of crowd dissipation without any other consideration. In the framework of the current Hungarian legal regulation it cannot be handled in any other way, because if a demonstration loses its peaceful nature, it must be disbanded by the police, as according to paragraph 14 (1). of the Act 1989. III. on the right to assembly “the event is disbanded by the police, in case the practice of the right to assembly is contrary with the provision of paragraph 2 (3) [20] of this law, if participants appear at the event armed or equipped with dangerous tools, and if the event subject to notification is held despite a prohibiting decision of the police.” Referring to this legislation various demonstrations have been disbanded recently. However, examining similar cases it can be stated, that in case a minority group conducts behaviour considered unlawful by law, the assembly itself will not lose its peaceful nature, and the law–abiding majority of the demonstration has the right to proceed with their event until they are not involved in or apparently do not support the breach of the peace. [18: 151] If the crowd is handled by the police as one unit, and all

its participants are considered rule–breakers without differentiation, it may practically lead to a development, that others, too — who had no intention to commit unlawful acts, or who would condemn these acts in a normal situation — turn against the police.

Physical confrontation with the crowd has to be avoided by the police, and for this aim those tactics have to be developed, which can serve as a solution to isolate the illegal minority from the law–abiding majority, and which can ensure, that the police officers assigned to carry out the securing tasks can act appropriately against them. [16: 42–43] From the point of view of the police this is not that simple.

4. Communication

A key factor of preventing violent cases and clashes with the police is communication between the parties. The continuous coordination of positions, interests and goals will allow both parties (namely the police and the demonstrators) to be fully aware of what they can expect from the other party, and what to prepare for. Information on each other's ideas can reduce the initial tension between them. [21] An important element is that the crowd should not consider the activities of the police illegitimate, and should not presume that the police are unlawfully preventing them from achieving their legitimate goals. For this purpose the two parties need to stay connected before, under, and after the demonstration, and have to ensure avoiding misunderstandings by continuous communication, as well as to satisfy/deliberate legitimate needs. The responsibility to cooperate belongs to both parties. Pursuant to this, if during the demonstration organizers would like to alter the previously announced route, the police have to consider the possibility of allowing the request, if there is no justifiable obstacle to do so. Naturally, the other party has to understand the reasons of the police as well, for instance when the police intend to modify the march–route of a mass demonstration on the basis of respectable reasons.

Successful communication is based on trust, in the absence of which parties cannot count on the cooperation of the other side. The trust has to be established, but on the other hand it has to be maintained also. This is not as easy as one would think. To develop a good relationship takes time, and there have to be lots of dialogue started well before the event.

Conciliatory talks are good to establish personal acquaintance, to share the idea and to present intentions and goals of the parties. The readiness to compromise is required from both sides.

Communication has to be maintained during the event even in the most difficult situations, and cannot be interrupted even when the police decide to introduce more severe measures. Through dialogue can and has to be mitigated the disagreements between the parties, and both parties are expected to return to a legal status as soon as possible. [16: 38–39]

In order to continuously maintain dialogue, a special police tactical unit has been established in many countries (Sweden, UK, Denmark, Germany, etc.), which is at the disposal of the participants of the demonstration on the spot. Their job is to keep connected with the participants, the organizers and leaders of the police operation. They share information about the on-going event with the demonstrators, and inform them about the plans and intentions of the police to a necessary extent which does not jeopardize the operation. In return for the dialogue the police are delivered information by the commanders of the operation about the activity, the mood and the ideas of the participants. [15: 31–35] The aim is to create a situation, where the parties cannot be surprised by each other's activities. [17: 86]

5. Utilization of the capacity of the crowd to maintain order by themselves

An important aspect of cooperation is that the organizing group of the demonstration shall be deeply involved in the maintenance of the order. To recruit stewards from the demonstrators creates the opportunity to avoid only the police — as the embodiment of the reigning power — ensuring the maintenance of all the rules (to prevent the entry of glass vessels, alcoholic beverages, and other items that can be dangerous, to check the clothing), and thus decrease the natural tension between the parties in this way. Organizers are able to undertake this task, and to handle it with less risk due to their personal relations. The other aspect of self–maintenance of the order means, that the peaceful part of the crowd tries to prevent the activities of the minority committing illegal actions. This can be done by a good word, or by asking assistance from the organizers or — as a last resort — from the police. If the crowd is cooperating, it will try to prevent — for its own sake — all activities that may undermine the exercise of its rights. [11: 17]

6. Dynamic risk analysis

In the course of police operations, the leaders must continually assess the actual situation, and — on the basis of the available information — the level of risk. The number of deployed police forces and the ordered measures have to be always adjusted to the actual level of the risk.

Even recently we have met the practice considered wrong by me, that is to say that in the surroundings of the concerned event the commander of the operation sets up and deploys the entire available police force and toolkit already from the very beginning of the standby period. This has several disadvantages. In the surroundings of the event the visibility of a nearby stationed, high numbered police force, possibly wearing equipment for the disbanding of the crowd, can be a provocation in itself with its mere presence for those present or moving in the area, who can be either demonstrators, football fans, or outsiders with a negative opinion. This antipathy can transform into violence.

Another negative effect is that the level of stimulus–threshold of police officers exposed to fatigue, and to possible verbal confrontation can be reduced both physically and mentally, meaning that they temporarily “burn out”. As a result, by the time they are actually deployed, they become exhausted, and will not be able to completely fulfil their tasks, or tend to conduct behaviour which provokes the opposite parties, or they can even commit unlawful acts (unjustified verbal or physical violence). The police will be less tolerant, and have less of a positive attitude and empathy towards the other party. [22: 23] The solution could be, if police officers were sent to the territory depending on the mood of the crowd. If the crowd has a peaceful atmosphere, then a small number of police without protective equipment has to be located in the vicinity of the crowd, but when the crowd’s mood changes negatively, then depending on the problem more police officers with more severe equipment have to be directed to the place. Naturally in the background, not visible to the crowd, police subunits in total gear and with coercive means (water cannon, service horses, service dogs, etc.) can be placed. [23]

The low–profile public assembly management is not equivalent with the deployment of police officers who do not wear protective equipment! Especially not, when the analysis shows a high risk, because in such cases the commander of the operation exposes himself to

the accusation, that he was not careful enough in ensuring the physical integrity of the staff. According to article XII. (3) of the Fundamental Law of Hungary “every worker has the right to healthy and safe working conditions, which respect dignity.” [24] Article 2 (3) of the law 1993. XCIII. on Labour Protection also puts the responsibility on the employer for fulfilling the requirements of safe working conditions, which do not endanger health. [25] The order 70/2011. (XII. 30.) of the Minister of Internal Affairs on labour protection rules and labour health care activities of the law enforcement agencies under the supervision of the minister of internal affairs also states that “the command of the superior cannot endanger disproportionately the life and the physical integrity of the subordinates.” [26] Taking into consideration the rules above, the superior, who sets his colleagues without protective equipment against protesters places them into a situation classified as being in a high risk category, another example might be opposite football fans that have a negative attitude towards the police. To find the solution the fact has to be considered, that the level of applied equipment in public assembly management and in protection has to be always in proportion to the actual risk level.

Low–profile public assembly management means — versus the previous point of view — that taking account the actual risk, only the least amount of police officers is placed close to the crowd. According to researchers’ views, people in the crowd observe with suspicion the activity of the police embodying state power, even in case of the best relation–and partnership. Any of their gestures and manoeuvres can provoke — unintentionally — an effect in people, which can lead to the letting off of anger. The more the number of the police officers surrounding the protesters, the more they will feel, that the police want to put them under pressure, suggesting that “we are here, and if you do not behave, we are ready to deploy every means in order to keep control of you”. And here we return again to high–profile public assembly management. People feel, that they are restricted in their freedom, which may generate fear or aggression, and these feelings can lead to confrontation again. It is almost the same if they wear protective equipment during the oversized presence of the police, or not. The focus is on how the demonstrator feels, and how his subjective feeling of security is.

It can be concluded that taking account all above aspects, and integrating them into the public assembly management strategies/tactics can significantly contribute to the peaceful conduct of political demonstrations and to the prevention of the escalating violence.

Of course, social scientists can demonstrate only the scientific background of the crowd’s behaviour, and the effective management of it for law enforcement agencies, while the method of its practical implementation and its tactics has to be elaborated by law enforcement professionals.

Findings

As it can be seen from my statements the modern–age image of the crowd is very different from those elaborated by Le Bon and his supporters. As a result of the studies it can be stated that behaviour of people gathered in one group is not irrational, on the contrary, it is predictable and follows certain regularities. If we can recognize these regularities, and integrate them into the public assembly management procedures of law enforcement agencies, as well as into their training, we can prevent events that we experienced in the autumn of 2006 on the streets of our capital city. [7: 74] Of course, this requires a long experiment, which takes time, and may even lead to a dead end. However, you should keep in mind that any of the above

views guide the professionals applying public assembly management strategies and tactics along a “citizen–friendly”, democratic approach.

High–profile public assembly management, which is based on the repression/over–restriction, on the deployment of the highest number of coercive means, on a robust police attitude, and on enforcing the interest of the police by a prevaricate of the legal acts, can only be the tool to break off violent riots. During peaceful demonstrations the “rough deal” methods are replaced by a low–profile approach to public assembly management based on the above principles, and keeping in mind human rights and fundamental freedoms and their realization.

To achieve these aims, the Hungarian police also began to develop and apply procedures based on communication. A good example is the management of the student protests, which took place at the end of the year 2012, where one could witness a high level of tolerance on behalf of the police. In relation to this, positive feedback arrived to the police not only from the demonstrators, but from the Ombudsman of Fundamental Rights [27] from human rights organizations [28] and from the “civilian” media as well. [29]

In January of the year 2013 the National Headquarter of the Police started to develop the tactical concept of the Hungarian dialogue–police [30] which can provide an additional guarantee that during political demonstrations police will be able to apply solutions that will help to avoid the escalation of violence, as well as to ensure the right to assembly.

I believe that the police of our country are on the right track in meeting all the requirements of modern democratic public assembly management, and the expectations of the citizens.

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Modern Slavery in the UK: Hidden Behind Silence Migrant Domestic Workers in the United Kingdom Contemporary Bearings, Legal Impediments and Feasible Solutions

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Slavery, a term once used only for the past, has re–emerged in new era of globalization and transnational movement of persons across borders. Migrant domestic workers (MDWs) are immensely dependent upon the employer, which consequently creates "slavery–like" conditions for many migrant domestic workers. Using the United Kingdom as an example of migrant's rights in a developed country, we are able to view the stringent separation of migrant domestic workers' right's both nationally and internationally. Legal impediments, specifically the overseas domestic worker visa "no–change" of employer visa, thoroughly impedes the domestic workers right to change employer and thus keeps them in fear, resulting in silence. On an international basis, the United Kingdom has also not ratified the International Labour Organization Domestic Workers Convention No.189. Therefore domestic workers are not covered by its protective regulations. From analysis of data gathered during a research trip to London, this paper presents the concluding evidence of working condition problems of migrant domestic workers and provides applicable solutions for future improvement.

Keywords: *migrant domestic workers, United Kingdom, modern slavery*

Introduction

When the term "slavery" comes up in conversation or in textual incidences we immediately associate this concept with something that has transpired in the past. Slavery though as a concept has existed since the beginning of time.

Particularly drastic events in western history such as the Thirteenth Amendment in 1892 of the Abolishment of Slavery in the United States and the United Nations 1956 Supplementary Convention on the Abolition of Slavery movements affirmed slavery to be over. The dangers of associating the infinite and transcendent word of slavery distort distinct modern conceptual visibility in itself. Slavery in fact still exists today, only slightly shaded in the light of the market economy. The idealistic justification for a new type of slavery has emerged, a modern slavery (MS) set on the stage between the stark separation of core and peripheral countries, a place where individuals compete for the goal of self–interested sufficiency and promise of a better life. As was in the past, slavery is no longer only defined by forced labour

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and restricted movement. Slavery now comes in many shapes and sizes; each tailored to the global financial system. Slavery exists not only in the least developed areas, but in the most developed areas too. In many countries of Africa [1] and Asia, and in Europe too. The most aggravating thing is, that slavery does not only include adults, but even children too. In many countries of the world child slavery is a big problem. Children usually work for free, or for little payment, or as soldiers in the war–torn countries.

Many people suffer from the effects of MS, one of the most vulnerable groups is domestic workers.

"The International Labour Office (ILO) estimates that there are at least 52.6 million and perhaps as many as 100 million domestic workers worldwide. Most of these (83%) are women, and on a global scale domestic work accounts for over 7% of all women's waged work." [2]

Modern institutions, for instance the global financial and economic systems, both construct and generate the conditions for MS. These institutions have unlocked restraints in the movement of finances, ideas and most importantly, of persons. While institutions have been established to protect the fundamental rights of the movement of persons across borders, such as United Nations' conventions, other institutions have either been slow in response or have been bluntly unresponsive. International customary law is essential in the movement of persons and is only achievable if nation–states bind and adhere their national constitutions to international treaties for reciprocal jurisdictional action. Westerners do not typically perceive an advanced democracy, or developed country for that matter as having a problem with slavery and turn a blind eye to evident MS. Hidden behind freedom herein lays the silence of MS.

A legal framework for migrants abroad, in this case domestic workers, is compulsory in order to protect their human rights. Without these rights, the migrant domestic workers is stunned at the brink of immobility. Unsigned international treaties by states inhibit the progress of rights of MDW's. This means important treaties which protect the MDWs are not in effect in countries where the bulk of most migrants live and work. National laws, especially in developed countries, are incurably fragmented and porous. Reciprocal law action is needed to both foster the beneficial relationship between MDW's and their employers. Concomitantly, each one has the potential ability to co–exist side by side. By acknowledging the practice of modern slavery and applying laws to the MDW's situation, legal allegations and protection can be put into practice

This paper aims to addresses two dispositions: the modern definition of slavery based on the 21st Century globalized world order and the legal ill–responsiveness of developed countries' national legislation in protecting migrant's rights. It will examine the ill–treatment of MDW in the United Kingdom (UK). This is a sector of the labour market which is not extensively researched. Our paper seeks to combine field research by conducting extensive interviews with experts and MDWs in addition to knowledge from previous studies, and connects this to information to previous studies.

In the latter, our paper will give recommendations for the United Kingdom for the protection of migrants' rights.

Historical Definition of Modern Slavery

As citizens of the 21st Century, we must remind ourselves of and address the issue of modern day slavery through campaigns, research and legal government support. First off, we acknowledge the current international conventions that define of MS:

- The Slavery Convention of 1926 states that “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” [3]
- International Labour Organization Forced Labour Convention (No. 29) of 1930 defines forced labour as “all work or service that is exacted from any person under the menace of any penalty for which the said person has not offered himself voluntarily.” [4]
- Universal Declaration of Human Rights, 1948, says: “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” [5]
- Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery, 1956, lists “modern forms of slavery as debt bondage, serfdom, forced marriage and the delivery of a child for the exploitation of that child are all slavery like practices and require criminalisation and abolishment.” [6]

Application of Definition towards Migrant Domestic Workers

In the 21st Century men and women are sold as commodities with little or no legal rights and at the complete mercy of their employers. In search of a better life for their families, thousands of migrants cross borders in pursuit of work around the world. For our research purposes, we distillate domestic servitude and compare their situation to the statutory definition of contemporary MS.

Hence we define MS as:

- forced to work through mental or physical threat;
- owned or controlled by an employer, through action or threat of mental or physical abuse;
- dehumanised, treated as a commodity or bought or sold as “property”;
- physically constrained or restricted freedom of movement.

The International Labour Organisation Convention on Domestic Work defines domestic work as, “work performed in or for a household or households” and domestic workers are individuals who regularly perform domestic work within an employment relationship. [7]

Some of these conditions are quite prevalently found among MDWs. The term “migrant domestic workers” refers to foreign national women and men who are brought to the UK by their employers for the purposes of working in a private household. [8] Migrant domestic workers are noted to have experienced one or many conditions of MS. The current ideas of “MS” lie on a thin line between understanding what constitutes slavery and bad working conditions. In the context of our findings, we associate Migrant Domestic Workers as immensely dependent upon the employer which consequently creates “slavery–like” conditions for MDWs. During our research we found reoccurring and consistent “slavery–like” conditions being applied to domestic workers. To conceptualize our discoveries, reoccurring problems exist for MDWs such as:

- taking of passport or working without legal documents;
- lack of educational knowledge in term of legal rights within the hosts country;

- broken pre–arranged arrival contracts;
- working for less than the minimum wage;
- inability to work at other work if needed;
- free time; working more than 40 hours/week;
- helplessness (no acquaintances, family members or friends for assistance);
- lack of language skills of host country;
- fear of repression from host government, country's government or employers;
- house arrest (inability to leave employers' home);
- inadequate accommodation;
- unable to access medical care.

Therefore we conclude that Migrant Domestic Workers as a group are highly threatened, vulnerable, ill–treated and forced to face "slavery–like" conditions.

International Legal Implications and the UK

Upon the ending of the Cold War, the world order shifted from a bipolar to a unipolar world order, thus creating large income inequalities between developed "core" and "peripheral" countries. This immense gap, created from a mixture of globalisation and shifting economic power created a diffusion of world migration flow of migrant workers into both developed and neighbouring developing countries. [9] Legally on paper, migrants have not been held against their will, thanks to the UN Convention to Abolish Slavery since 1956, however informally these laws have not been exercised. Advanced developed countries today are still luring in migrant workers based on attractive economic gains and a possibility for a better life for their families.

The European Convention on Migrant Workers in 1977 instigated the movement for the European Union to address the rights and treatment of aliens not the territory of member states. Subsequently, it deals with the social and economic rights of workers and gives specification to some provisions of the European Social Charter (ESC). The convention was a valuable step in moving Europe into the next millennium during a time of substantial labour market migration in Europe (1966).

The judgment of the European Court of Human Rights (ECtHR) Siliadin vs. France in 2005 dealt with MS and managed to resurface old fears and helped attract great attention of international organizations, NGO's and parliamentary debates worldwide. The ECtHR recognized the extreme vulnerability and abuse suffered by migrant domestic workers, and held that this could be "forced and compulsory labour". [10] In the Siliadin case, a young migrant woman was brought to France from Togo to work and be educated, but ended up being kept in appalling "slavery–like" conditions instead.

The key elements from this case constituted the fact that she worked against her will, she was unpaid, and feared that she would be arrested. Her employers nurtured this fear and her situation was classified as servitude, because she had to work in slavery–like conditions. She worked very long hours, had no income, was vulnerable and isolated, had no private space, no free time, and no freedom of movement and no legal documents. Forced labour practices do not only exist in work such as the sex industry, they are also identified by academics as existing in key sectors of the UK labour market where workers are prone to extreme exploitation; construction; agriculture/horticulture, contract cleaning and residential care. [10]

The ILO introduced the prohibition of forced and compulsory labour in its 1998 Declaration of Fundamental Principles and Rights at Work. [11] Yet until recently, the European legal community perceived the problem of slavery, servitude and forced and compulsory labour to be something of a reminder of the shameful past.

We also ask the question of "how does modern day legislation protect from the arising new forms of slavery"?

In contextual theory, since the signing of both the United Nations Slavery Convention in 1926 to the United Nations Declaration of Human Rights in 1948, slavery ended and individual human rights are protected regardless of citizenship, both signed by the UK. [3] Nonetheless in reality and practice, new forms of slavery were created with the help of a contemporary, globalized world. This was recognized by a high proportion of countries in the world and thus resulted in the adoption of the current ILO in 2011, and entered force in 2013. A historic adoption of international standards provided universal rights for working conditions across the world including: the right to decent work, entitlement to minimum wage and to choose the place where they live and spend their leave. [12]

The ILO recognized that, "domestic work continues to be undervalued, invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and work, and to other abuses of human rights" (Preamble of ILO Convention 189 2011). The ILO C189 Domestic Workers Convention was a remarkable leap towards abolishing slave–like conditions for migrant workers. The UK refused to sign the treaty and therefore is not obliged to adhere to international standards and rights for domestic workers.

In addition to not signing or ratifying the ILO treaty, the UK also did not sign the United Nations International Convention on the Status of Migrant Workers and their Families in 1990.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a tool of international customary law used to define rights of migrant workers, protect workers from discrimination, and to grant equal access to the labour market. The convention was in pursuance of protection of the basic rights of migrant workers due to their increasingly vulnerable status. The preamble exposed the already conscious need to protect migrant workers from weak national legislation. This apparent necessity appears in the preamble, "convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection." [12] Even more disturbing is the fact that no other Western migrant–receiving State has ratified the Convention, even though the majority of migrants live in Europe and North America.

The EU and Labour Migration

"The EU Charter of Fundamental Rights provides in Article 5 that no one shall be held in slavery or servitude, or be required to perform forced or compulsory labour." [13]

The concept of immigration remains an important objective of current EU migration regimes. Current migration and immigration policies of the EU are simply devoid of migrants' perceptions and needs. Numerous migrants with higher education were engaged in low–

skilled jobs or were unemployed. They report that no one was interested in their prior education, while many do not have their education recognized. This means that they cannot engage in the profession they were trained for which is a common situation of keeping the migrant work force in lower positions in the European labour market. [14]

Even when migrants manage to formally arrange formal education and work in their sector, their abilities and qualifications remain devaluated.

Britain and Labour Migration

With the huge increase in demand for cheap labour in the home, employment agencies across the UK have been quick to respond. These "conditioning lives" of migrant workers further reinforce existing stereotypes of British colonization. The number of MDW's has been continuously increasing, with around 10,000 new foreign nationals arriving legally every year to work in Britain's homes. [15]

The Housekeeper Company, based in Manchester, supplies foreign housekeepers to families all over the UK: "over the last few years more and more women are juggling careers, children and the home and want to maintain high levels in all of them" — says Julia Harris from the Housekeeper Company.

The concept of immigrants as disadvantaged groups, held by British stereotypes and colonial history helps marginalize them: "British people say slavery is still happening in Africa, but they never know it's still in their own country as well" — says a MDW in a BBC report.

Exploitation and abuse in the UK

Many migrants put up with bad conditions because of the threat of deportation. To maintain their legal status they need a working domestic visa, naming their employer and their place of work. [10] The employer has to sign a declaration every year in order for the visa to be renewed. So, it is the worker's right to stay in this country and this depends on their boss. Migrants across Europe experience bad relationships with their employers, mainly because they often do not know their rights, and due to the uncertainty and vulnerability of their position, which allows employers to take advantage of them. The logic of constant conditioning keeps migrants on the outskirts of integration. Segmented labour markets and visa regulations (for instance diplomatic visa of no change employer) do not allow easy movement from one to the next, especially when migrant workers are tied to one specific employer.

"But with only a limited number of jobs some employers are pushing the boundaries and domestic workers are even more open to exploitation" — says the Kalayaan Centre. [15]

National Legal Impediments and the UK

Sovereignty of national jurisdiction and constitutions sometimes take precedence over international law and treaties. In theory, UK law for migrant domestic workers permits the same rights to MDWs as to any other worker. Yet there are two exceptions in the UK which discriminate against MDWs: the National Minimum Wage (NMW) and Working Time Regulation (WTR). [16] Introduced by the European Working Time Directive, as a safety measure, restrictions on the length of the work week were introduced, yet excluded "domestic servants".

In addition, certain sections of the 1998 Working Time Regulations exclude domestic workers from rights to paid annual holidays, daily and weekly rest breaks. The 1974 Health and Safety at Work Act (HSWA) does not apply to the employment of domestic servants in a private household. Therefore Health and Safety inspectors do not have any powers to enforce provision of HSWA. Most importantly, the Overseas Domestic Worker Visa (ODWV) was dissolved in 2012. This act is an inexpensive and effective tool of protecting MDW's rights and the recent repeal possibly increases the trafficking of domestic workers through illegal routes.

Dependency on the employer remains the sole biggest problem for migrant domestic workers. National UK legislation, in particular visa registration and renewal, take away the basic rights of migrant workers. Since the reversion of the UK government back to the old ODW visa system, migrant domestic workers are treated as inferior to the rest of the working population. Working hours for domestic workers in the UK are not covered by the 48–hour restriction and an employer could legally work the individual domestic worker up to a maximum of 78 hours a week. [16] Domestic workers are exempt for paying income tax and national insurance. These taxes are required to be paid by the employer, but in reality this rarely happens. Health and safety legislation also excludes MDWs from private households. Lastly, workers are required to present itemized pay–slip documents and written statement of terms and conditions in order to renew their visa. The employer therefore has the power to withhold these documents in exchange for further exploiting the MDW. This puts the employer into a position of power over the MDW because of the necessity of visa documents, provision of health care and overall livelihood.

Methodology and Data Gathering

This research uses a mixture between empirical, qualitative research (primary data) on the one hand and existing, secondary data on the other to assess relevant measures to improve the MDWs situation in the UK. The collected data includes interviews with both experts employed by NGOs, the workers' union, charity organizations, and MDWs who in the course of their working life in the UK experienced some kind of abuse, grave mistreatment or a situation of slavery–like working conditions. The data gathered by conducting interviews has been used to learn about MDWs specific vulnerabilities as workers and to learn about new relevant aspects not covered by other scientific reports.[2] [17: 35] [18: 22]

The heart of the data gathering process of this project was a several day field trip to London, UK, which took place in October 2013. In total 6 interviews with experts and 8 interviews with MDWs were conducted during that time.

All interviews realized during the course of this research project used the interview type of the Problem–Centred Interview (PCI), elaborated by Andreas Witzel and Herwig Reiter.[3] [19] [20] By using this specific methodical approach, both exploration of the field (the domestic labour sector) as well as close examination of the problem (MS in the domestic labour sector) was achieved. Focussing during the interviews on the different forms of ill–treatment

2 Qualitative research methods can help to develop an understanding of certain problems and therefore can be used to detect improvements to certain situations or to develop strategies for change. The latter is the case in this research.

3 The interviews had been conducted, with minimal modifications, according to the proceeding Witzel and Reiter advise. For the analysis of the narration part of the PCI other methodological papers have been used additionally: [21: 208], [17: 66]

allowed us to draw detailed conclusions about the main problems MDWs have to face. This knowledge together with the information provided by the experts interviewed enabled us to develop our recommendations.

Key Findings

Domestic work in UK households nowadays is often carried out by migrants. Each year a stream of about 20,000 domestic workers flows into the UK. Developed countries, such as the UK often have a high demand for a cheap, low qualified workforce to take care of tasks in households such as housekeeping, or to take care of children, disabled people or elderly family members. [22: 95] Since domestic work is usually perceived as low–level work where no special education or extraordinary skills are needed and per definition takes place in private, it is mostly hidden from public view or control, MDWs are especially vulnerable to exploitation. [23] [24: 10]

Key findings of this research harmonized and substantiated by other research findings and publications are presented in this chapter. The problems are presented thematically clustered.

Broken Contracts

The position of MDWs is weak in many ways. One of the biggest problems for them is that they have no or little chance to demand the employer fulfil their obligations fixed in the labour contract. It is a common problem for many workers that the job they have to do differs a lot from what has been arranged during the job interview or written in the job contract. [7: 14] Several times during our research we learned about the problem of the employing family assigning new tasks not agreed upon previously. These sometimes included very physical, demanding tasks, such as gardening or cleaning the premises during winter time; or tasks which are unacceptable without mutual understanding, such as taking care of disabled children or babies 24 hours a day in addition to other household chores such as cleaning, cooking and ironing. The MDWs often do not dare complain about these extra tasks because of their fear of being dismissed or ill–treated. Poinasamy points out that very often the workers lack information about their contracts and their rights: “the fact that the vast majority of domestic workers are women, adds an additional layer of vulnerability to their situation. Women in general have less access to information about their employment rights, because so many of them work part–time, and many work within private homes, giving them less sustained contact with a formal workplace, and less access to information about terms and conditions, and opportunities for training and advancement.” [22]

Payment

It is also a very common problem that employers will not pay the MDW on time. Even worse are cases where payment is completely refused.[4] There seems to be the common practice among employers to pay less than agreed upon in the contract or at the job interview. In our cases the predominant share of workers is paid below the UK minimum wage. This observa-

4 In a study conducted by interviewing a total of 212 MDWs the amount of unpaid workers sums up to 3%: [7: 17]

tion is consistent with the results of other studies: "with regard to wages, almost no worker with whom we have spoken is paid the minimum wage." [7: 17] According to the study conducted by the NGOs Kalayaan and Oxfam GB in 2008, 70% of the interviewed MDWs were paid less than £250.

Holidays and working hours

Although in almost every one of our cases regulations including weekly days off and holidays were arranged, all of the interviewed MDWs had to fight for the right for free time at least once. In some cases conditions were very harsh with no time off at all. Other studies confirm this to be a common problem. According to a research conducted in 2012, the overwhelming majority of interviewed MDWs have no days off (in the job with the first employer) and no holidays at all. [16: 13]

In one of our interviewed cases, the struggle for the (promised) holidays even led to the MDW becoming redundant. In our cases it is common for MDWs to be expected to be on standby 24 hours a day. In severe cases working hours are extremely long, leaving only 4 hours of sleep a day.[5]

Limitations of personal freedom

From what we can deduct from our cases it seems to be common for employers to confiscate the legal documents, such as passport and visa documents, making it almost impossible for the MDW to quit the job by running away or to even leave the house. In the study conducted by Marissa Begonia in 2012 this phenomenon is very widespread: "of those migrant domestic workers employed with their 1st employer, 26 of the employers [out of 30] with–held their passports..." [16: 16] Another method very common method to force the MDW into an obedient situation is to withhold the monthly (or weekly) payment. This makes it almost impossible, or at least very difficult for the MDW to quit the job without previous notice. The most frequent reason for the MDWs to leave their home country is the necessity to earn money to support the family back home. By withholding the payment, the MDW completely depends on the goodwill of the employer in their struggle to provide financial aid to the family. Another method of maintaining control over the MDW is to refuse to hand out payslips. It is also very common for the MDW, in certain cultural settings at least, to follow special dress codes or wear a veil. Very often it seems to be the case that this is forced upon the MDWs without their consent or even previous notice (e.g. during the job interview).

Restriction of privacy

A problem MDWs commonly have to face is the restriction or limitation of their privacy. In almost all our cases the workers have been not provided with a room for themselves at least once during their time working as MDWs in the UK. Often they have to sleep in common rooms such as the kitchen. Without a personal room most MDWs do not have a place where

5 The importance of this matter has been stressed in other research papers as well. For example: [16: 18] A statistic about working hours of MDWs is provided in the following report: [7: 17, Fig. 3]

they can store their personal belongings or enjoy privacy.[6] It also seems to be a common practice in families with small children that the MDW has to share a room with the baby or child. This is especially true in households where the MDW has to take care of the child. Another crucial limitation to a private sphere is the restriction some employers force upon the MDW of not being allowed to own a cell phone, to strictly limit the use of it, or to refuse requests of the MDW to get into contact with their relatives or friends in another way.

Psychological Abuse

Bordering these forms of mistreatment mentioned above there is the cluster of actions which can be labelled as "psychological abuse": in some cases there are reports of employers shouting at their workers or calling them names.[7] During the interviews we were provided with the chance to learn about some very degrading practices some employers perform for the sole purpose of humiliation or to punish their MDWs. In one case, for example we had to learn about one very degrading practice: the employer forced the MDW to eat from a plate on the kitchen floor next to a rug where the members of the household clean their shoes.

Physical Abuse and unhealthy physical treatment

The work of MDWs have to perform sometimes has a health threatening impact. In several cases MDWs had to sleep in common rooms where they are not provided proper beds and have to sleep on the floor instead. In severe cases the worker has to perform tasks under extremely harsh conditions such as to clean the swimming pool during the winter time. Some employers do not flinch from forcing their workers to perform tasks outside or on the premises during the cold winter time, and when they are in a physically sick condition. In some cases the workers we have interviewed reported that they were provided with insufficient amounts of food, food which is not nutritious enough, or food that is of bad quality. This observation has been made by other studies as well.[8] "Over 40 per cent of workers registered by Kalayaan in 2006 were not allowed regular meals. In some cases, the workers are not allowed to eat the same food as their employers, or were given very little to cook with. In other cases, the domestic worker is forced to eat the family's leftovers, a deeply humiliating experience." [7:16]

In some severe cases physical violence by the employer against the MDW, beating or ripping out hair etc. has been reported. Another study highlights this problem as well: the level of physical abuse reported by migrant domestic workers coming to Kalayaan is shocking. A quarter reported being hit or beaten by their employers. Sometimes this would happen regularly. Or else they would be beaten as a punishment for a small mistake such as burning food, or washing clothes in a way their employer deemed inappropriate.

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6 Another study illustrated this problem as well in a detailed way: [7: 16]

7 Another study illustrated this problem as well in a detailed way: [7: 16]

8 As illustrated in the following passage: "According to my survey with the 1st employer 18 (MDWs) were given food, 5 were not given any food and 7 were expected to eat leftovers and out of date food." [16: 15]

Sexual Abuse

From what has been reported during the interviews and from what we have learned from the expert interviews, sexual abuse is a common problem many MDWs have to face. However, it is hard to gather "hard evidence" and statistics about it, because sexual abuse is a very humiliating process and victims tend to try to hide it instead of reporting it to the police or even talking about it. Nevertheless we were able to interview one MDW who openly talked about her experience of sexual abuse by her former employer. Generalising the knowledge we gained from this case it seems that employers try to abuse their position of power they hold in over their worker. A situation where the MDW often lives in the same house with the employer might facilitate abuse: the MDW often has restricted privacy and cannot withdraw as easily. Workers living in their employers' homes are often unable to avoid sexual abuse because they do not have their own room, or if they do, they cannot lock the door. Some report having to sleep on the floor in their employer's room, again highlighting their vulnerability to sexual abuse.

Connection to Trafficking in Human Beings

Migration into the UK consists of a stream of both legal migration and illegal migration such as human smuggling and trafficking human beings (THB). THB is especially dangerous to the victim, because they usually do not obtain legal visa status, which excludes the MDW from certain rights and puts him/her into constant fear of deportation.[9]

MDWs often work under very bad conditions which are induced by their situation being invisible to the public or to regulatory bodies. It is the same case for trafficked workers as well; however, problems in those cases can be far more extensive. Because of the fear of losing their jobs or being deported back to their home countries, mere captivity in the place of work, or fear of punishment by the traffickers, trafficked persons have little or no means to report abusive situations to the police, or change their work place. "Whether or not a person is simply exploited financially or is the victim of trafficking may depend upon the degree to which the victim is dependent upon the employer. The term 'dependent' implies that the trafficker controls various aspects of the victim's life, including access to work, salary, housing, transportation, food, health care, contact with family and friends and free time activities." [25: 219] Victims of THB are often trapped in their exploitative situation. This also makes it difficult for governments to intervene and help these people. This situation is nutritious soil for exploitation and abuse of trafficked persons. [24]

Consequently, there is a positive correlation between sexual work and trafficking in human beings: "traffickers recruit their victims mostly in deprived, disadvantaged or poorly integrated sectors of society, offering them employment abroad. Many victims are lured with bogus offers of legitimate employment. Others agree on the type of work they are expected to perform, but are deceived by the actual circumstances they find on arrival in the destination country. Meanwhile some victims do not even realize that they are being exploited. This is particularly the case for victims who have worked under more exploitative conditions in sectors such as agriculture or textile manufacture in their countries of origin." [26: 23]

9 Rights a MDW with legal status aquires are sumed up here: [16: 6]

This suggests a possible connection between domestic work and commercial sexual exploitation. MDWs are potential victims for commercial sexual exploitation such as working in unauthorized brothels or other similar establishments and forced to do so by criminal networks and organizations. This indicates that trafficked MDW might not only have to face commercial exploitation (because of harsh working conditions), but also sexual or other forms of abuse when forced to work in other fields than domestic work. There are reports that show that criminal networks, dealing with the human labor force by trafficking persons and selling them on the illegal labor market, usually tend to relocate trafficked people regularly after some days or weeks. This technique or rotation prevents the victim from establishing strong social ties and contacts that might help him/her out of their miserable situation. It might be the case that those networks do not only change the work place of the victim within one sector, say domestic labor, but also between other sectors — a person working in a household might be forced to work after some weeks in the sex business, and after some time in domestic labor again. [27: 23] To prove these hypothetical thoughts, further research is needed.

Recommendations

In this chapter knowledge about the most common problems MDWs have to face will be intertwined with information received by interviewing experts as well as literature and data from other sources to elaborate on recommendations of how to improve the situation of MDWs in the UK.

Visa policy

In the UK before 2012 domestic workers had to apply for the ODWV. This type of visa granted protection to the domestic workers and recognised them as workers covered by the protective employment law. The visa had two categories: domestic worker visa in private households; and domestic worker visa in diplomatic households. MDWs in private households were provided more rights, such as the right to change the employer. They also could apply for settlement after 5 years working continuously as a domestic worker. MDWs in diplomatic households could not change employer. This causes a single–line dependency and hierarchical inequality.

From 2012 onwards a new regulation was established in the visa system: the new type of ODWV does not contain a permit to change employer. [28][10] “The migrant domestic workers from third countries can only be permitted to step to the country with ODWV, this type of visa has existed since 2003. Before 1998 domestic workers could come to the UK with their existing employer, but could not change employers, and had no route to settlement in UK. This meant that those who left an abusive employer became undocumented.” [2: 5] Although the old visa system could save MDWs from this single–line dependency, Immigration Rules guarantee the worker the following beneficial things: “you and your employer should already have agreed on the conditions of your employment. You should have a copy of the conditions.” [28]

During the MDWs interviewed by us, none of them had heard of these conditions. Some report that if the employer made a contract, they do not even have a copy of it.

10 Here it says: “Domestic workers include cleaners, chauffeurs, cooks, those providing personal care for the employer or a member of the employer’s family, and nannies. You must work in your employer’s household in the UK.”

The ILO Convention (No.189) mentions the point of these contracts: "each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements." [12]

In many cases during our interviews, the MDWs mentioned that the biggest problems were and still are the visa system. It is impossible to change employer and if a domestic worker is changing his/her employer he/she becomes undocumented and has to leave the country. The most common opinions are that the old visa system should be restored in order to change this desperate situation.

NGO work and legal education of MDWs

From what we have learned during our interviews both with experts and MDWs themselves NGOs play a major role in supporting the MDWs. Often MDWs are able to escape abusive employers, dangerous situations or sleeping on the streets only with the help of specialized organisations such as Justice for Domestic Workers, Kalayaan, the Passage, Caritas Social Action Network, Unite the Union and others. Besides the hands–on–work NGOs are doing, they represent the group of MDWs, giving them a voice to be heard by the broader public and policy makers. Another important thing is that MDWs should know the language of the host country in order to fight for their rights and to turn to a legal or international organization in search of support. Some of the NGOs mentioned provide language trainings to the MDWs. In every case during our interviews it became obvious that NGOs helped to learn about legal rights and to receive help in various ways. The Immigration Rules provide legal protection: "if your employer does not meet the requirements above, you should be able to take legal action through an employment or industrial tribunal or the civil courts." [28] It is obvious that without any English language skills and without the professional help of an NGO they will face big obstacles when turning to courts.

In order to help those NGOs in their work and therefore indirectly helping MDWs we recommend that those NGOs should be supported by government in financial terms and stronger cooperation should be realised.

Media campaigning

Modern slavery sparked the media's interest in UK after 2010. "The Anti–Slavery Day Bill" became a law in 2010. It was introduced in parliament as a "Private Members Bill" by Anthony Steen MP, for Totnes, South Devon, and passed through both Houses, unopposed although amended. The Bill defined Modern Day Slavery "... as child trafficking, forced labour, domestic servitude and trafficking for sexual exploitation." [29] Although there were several campaigns made by major British NGOs, the biggest campaign was and still is Anti–Slavery Day, which is supported mainly by many national and international NGOs and governmental institutions.[11] It is inevitably needed to put a greater spotlight on the issue of "MS", because the attention of society is important to improve the situation of MDWs. It is right to say, that

11 This campaign received the Media Award in the UK already three times, which means that the issue of slavery is in the spotlight of interest and is gaining political recognition in the UK.

the most effective and realistic campaigns are made by the domestic workers themselves. They are included in every case and they can tell the realistic part of the situation and give examples and ideas for the political powers to make suitable decisions. It is obvious that domestic workers need to catch the broader attention of society, and that they have to represent themselves in order to stay in focus, and in order to be heard.[12]

The key issue of this recommendation is to support NGOs representing MDWs with financial and logistical means enabling them to campaign in a profound manner.

Combating organized crime groups

Often the domestic work market segment is fed with a labor force by organized crime groups (OCG). Of course that does not necessarily indicate that MDWs always have illegal visa status in the UK. Their status can be either illegal or legal. OCGs often lure workers into jobs with exploitative characteristics — such as long working hours and physical abuse to name but a few. OCGs conduct the transportation, smuggling or trafficking of migrants into the destination country. They also arrange the rotation of the workers within the destination country: it is common that migrant workers have to change their working position every few weeks or months, so that they cannot establish strong social ties which might help them to improve or escape their exploitative situation. Since most of the migrant domestic workers are female (and due to the OCGs poly–criminal character) there is the danger that they have from time to time to work in the sex industry, adding sexual exploitation and abuse to their history of victimization. [30: 33] [26]

To improve the situation of migrant domestic workers it is necessary to combat OCGs that specialize on disguising themselves as job agencies or au–pair–agencies. To be successful in doing so, transnational and international cooperation is inevitable. The collaboration between different national agencies (such as specialized police units) and international organizations such as the EUROPOL or INTERPOL is recommended.

Another approach to help this situation is to provide information to potential MDWs while they are still in the country of origin about the threat of organized crime. Prevention campaigns can inform the public about this issue and advise migrants to gather information before they engage the services of a job agency. It is recommended that UK based organizations collaborate with organizations or governmental bodies in the countries of origin of migrants, such as India, the Philippines or Indonesia to name but a few.

National Minimum Wage

In our interviews it became clear that almost all MDWs were promised at least once during their working life that in the UK the National Minimum Wage (NMW) would be paid by the employer who later broke that promise by paying less than the NMW. The legal problem is that MDWs, living with the employers, according to the Immigration Rules are not entitled to minimum wage. The Immigration Rules of the UK say that “if you are a member of your employer’s family, live in their home and help run a family business or help with household

12 One of the most important representatives of migrant domestic workers is “Justice for Domestic Workers (J4DW)”, an NGO established on March 15, 2009. It is an organisation for MDWs who work in private households in the UK.

chores, you are not entitled to the National Minimum Wage if you share in the family's tasks and activities." [2: 5]

So if the employer's family can prove that the employee is one of their family members, the MDWs are not entitled for the National Minimum Wage, and also the family will not pay the income taxes and national insurance for the MDWs. In reality MDWs might face difficulties proving that they are not family members, or if they are really family members they have no chance to be paid the NMW anyway.

It is a single–line dependency, the domestic worker has no possibility to move, or to earn more money and starts to depend only on her/his employer. This legal regulation therefore needs to be reviewed and changed. MDWs have under all circumstances to be guaranteed at least the NMW.

Working hours and Health and Safety at Work

"Domestic workers are not covered the by the 48–hour restriction on weekly hours and on night work set out in the Working Time Regulations." [16: 3] Many of our interviewees (MDWs) experienced exploitative working conditions at least once. This is contradictory to what the relevant ILO Convention (No.189) mentions. [12][13]

The Health and Safety at Work Act excludes MDWs from its coverage. [31] This means that MDWs are not guaranteed healthy and safe working conditions, and they could not turn to the national law to protect themselves. The ILO Convention (No.189) mentions the regulations for working conditions for MDWs. [12][14]

By ratifying the ILO convention, chances are high that the unfavourable legal situation of MDWs in the UK might change and with that the general working conditions for domestic workers

Conclusions

Although formally abolished, there are forms of mistreatment of people still today, which come close to what is generally connected to the term "slavery". "Slavery–like conditions" describe best what reality is for many MDWs in the UK. Being not entitled to many rights, which are commonly granted to citizens of the UK, not covered by protective regulations of certain legal acts, many domestic workers have to face a very harsh reality. The most pressing conditions in need of improvement MDWs commonly have to face include:

- the breaking of agreements between the MDW and employer, set down in the employment agreement by the employer, with little chance for MDWs to claim their rights;
- payment which is below the NMW;
- no or vanishing few holidays and extremely long working hours;

13 The convention says: "Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work."

14 "Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers."

- limitations of personal freedom of MDWs, by removing passports, or merely confining MDWs in the house;
- restrictions of privacy by not providing a separate room to sleep in for the MDW;
- psychological abuse by shouting at the MDWs, calling them names, or other sometimes very degrading behaviour;
- physical abuse by hitting the workers, or making them eat sickening food, or threatening their physical heath in other ways;
- sexual abuse, which is hard to escape from, since it is just to assume that most sexual assaults will not be reported to police because of fear of deportation, fear of losing the job, and the non–availability to choose another employer.

We therefore recommend a change to the current visa regulations of the UK for MDWs. Currently MDWs do not have the right to change employer, and therefore to escape exploitative situations. It would also be very helpful to increase the legal status of future MDWs by lowering the barriers for working permits and visa for the UK for the domestic work sector. It should become easier and cheaper for MDWs to apply for this type of visa. Various NGOs carry out valuable work in order to support MDWs in the UK who are facing abuse and exploitation. In order to support their work, financial and logistical contribution from the governmental side is indispensable. This also enables those NGOs to campaign to obtain public awareness on that issue. Special safe houses fit for the needs of MDWs should be established where MDW receive protection, support, legal advice and temporarily a safe place to sleep. The national regulations assuring the NMW and the working hours for every worker need to be adapted to include MDWs without conditions. Additionally the UK needs to sign and ratify the ILO Convention C189 as a strong instrument in protecting MDWs in the UK from exploitation and abuse.

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Second Harmonic Generation in the Background of Photon Counting

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This article will show an application of photon counting using an experiment with a Second Harmonic Generation (SHG) to take a look at the basics of single photon communication. This will be an opportunity to open the way for long distance single photon laser communication between unmanned robotic vehicles. This article also gives an insight into a similar, but smaller setup towards the application on unmanned robotic vehicles. In this work measurements by SHG from Si (111) sample have been done with all polarization configurations with the help of a MIRA 900 type Ti: Sapphire laser. The other part of the experiment was carried out with an SR 400 photon counter device which was used for counting the impacting pulses with the help of a photomultiplier tube (PMT).
Keywords: *Second Harmonic Generation, photon counting, laser communication, photomultiplier tube*

Introduction

Photon counting is a process for laser communication applications in the field of laser physics. Photon counting is becoming a very important process in long distance quantum communication experiences. It was already demonstrated between two islands of the Canary Islands that quantum communication with single photons over 100 km is possible. [1]

Future laser communication needs smaller laser devices to achieve communication with quantum secrecy on board unmanned robotic vehicles. Most of today's laser physical devices are too large and heavy to install on small unmanned robotic vehicles; in addition to needing high energy to operate.

Second harmonic generation (SHG; also called frequency doubling) is a nonlinear optical process, in which photons interacting with a nonlinear material are effectively "combined" to form new photons with twice the energy, and therefore twice the frequency and half the wavelength of the initial photons. SHG contains a very special field in nonlinear optics and it is also a special case of sum frequency generation.

Basics of Second Harmonic Generation

To understand the basics of SHG, the conduction must be based on the fact, that the polarization is aligned with and proportional to the E electric field in an isotropic dielectric, linear and homogeneous medium that can be expressed by the following equation:

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$$P = \varepsilon_0 \chi E \quad (1)$$

where ε_0 is the electric constant, and χ is the electric susceptibility of the medium. [2]

In an anisotropic material, the polarization and the field are not necessarily in the same direction. Then, the ith component of the polarization is related to the jth component of the electric field according to:

$$P_i = \sum_j \varepsilon_0 \chi_{ij} E_j \quad (2)$$

where ε_0 is the electric constant and χ_{ij} is the electric susceptibility tensor of the medium.

This relation shows, that a material can polarize in direction x by applying a field in direction z, and so on.

In general the power series of applied electric field E should be expressed by the polarization of the medium. As it has been already realized, the electric polarization induced in the medium. [3]

$$P = \varepsilon_0 \,[\chi^{(1)} \cdot E(\omega) + \chi^{(2)} : E(\omega)E(\omega) + \chi^{(3)} \vdots\, E(\omega)E(\omega)E(\omega) + ...] \quad (3)$$

where P is the nonlinear electric polarization in the material, ε_0 is the electric permittivity of free space (F/m) and $\chi^{(i)}$ is the i th order susceptibility tensor of the medium. [3]

Types of SHG

Second harmonic generation occurs in two types, denoted I and II. In Type I SHG two photons having ordinary polarization with respect to the crystal will combine to form one photon with double the frequency and extraordinary polarization. In Type II SHG, two photons having orthogonal polarizations will combine to form one photon with double the frequency and extraordinary polarization. For a given crystal orientation, only one of these types of SHG occurs.

Investigation of the SHG principles (including the PMTs and photon counting systems) has been done to understand the phenomenon itself. SHG is a phenomenon where an input wave in a nonlinear material can generate a wave with twice the optical frequency. [2] In special cases the SHG phenomena will allow a very high axial and lateral resolution that can give productive signals from tunable nanostructures. [4] There is also an aim to study the polarization dependence in SHG, because it provides information on the orientation of molecules composing or absorbed on the surface.

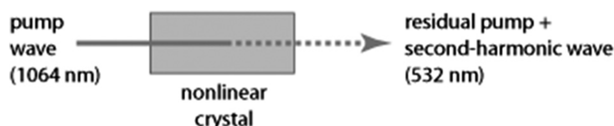


Figure 1. Typical configuration for frequency doubling: an infrared input beam at 1064 nm generates a green 532 nm wave during its path through a nonlinear crystal. [5]

SHG has a great importance in the field of metal nanoparticles. SHG is a surface sensitive optical probe where the metallic nanoparticles (like gold) are very good substrates for measurements because generally metallic nanoparticles have very large optical resonances. [6]

For centrosymmetric systems SHG is forbidden, because of symmetry considerations and thus strongly depend on small deviations from the symmetric shape as well as from broken symmetry at interfaces. It is important to know that metallic nanoparticles show localized surface plasmon resonances (LSPRs). It leads to strong absorption/scattering and local field enhancement near these kinds of structures. [7] These nanoparticles have linear optical properties that have been dominated by collective oscillations of the conduction electrons. It has already been demonstrated on gold nanorods by spectral studies that SHG strongly depends on the incident light polarization direction. Its excitation spectroscopy clearly proves the role of LSPR in the SH signal enhancement.

The setup of SHG

In Fig. 2 the optical second harmonic generation setup and the MIRA 900 Ti:Sapphire laser are aligned. The MIRA 900 Ti:Sapphire laser is a pulsed laser with 82 MHz frequency and has 100 fs repetition rate. The laser is sensitive to temperature changes so it must be realigned many times. To find the strongest and clearest signals, it was obligatory to find the best focus on the sample and it needed to avoid any unwanted light interaction. The power of the laser must be also optimized. The photomultiplier tube (PMT) has been connected to the preamplifier and finally to the SR400 photon counting system.

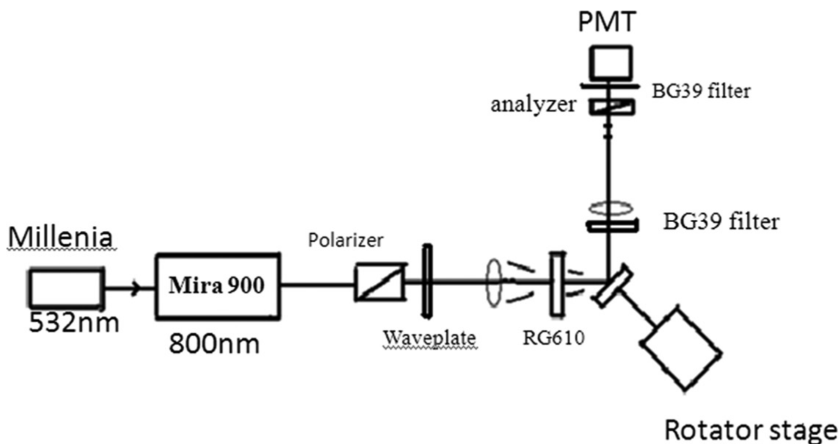
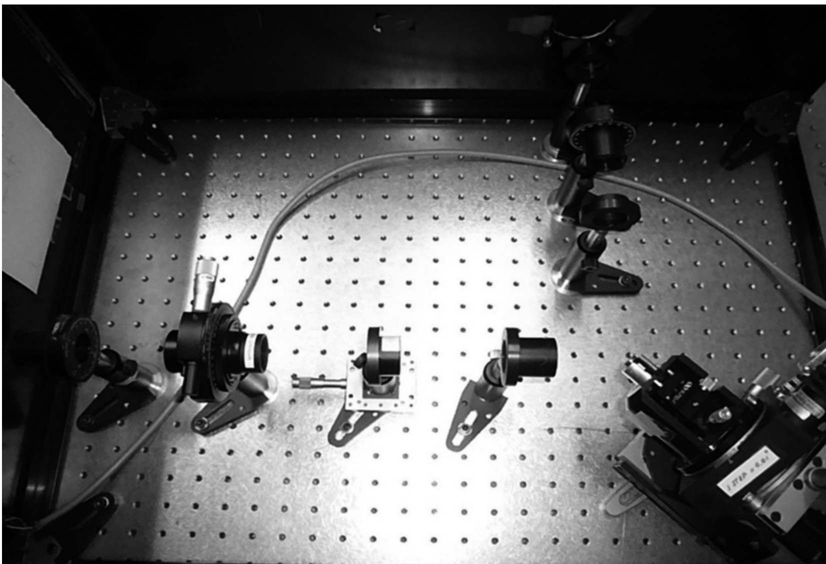


Figure 2. Sketch of the optical second harmonic generation setup. (Made by author.)

A PMT is useful for light detection of very weak signals. It is a photoemissive device in which the absorption of a photon results in the emission of an electron. These detectors work by amplifying the electrons generated by a photocathode exposed to a photon flux. The laser polarization is checked with the Brewster angle (horizontal). The Mira 900 Ti:sa laser (800 nm) is pumped by the Millenia Pro laser (532 nm). The driving engine is a Neodymium Yttrium Vanadate (Nd:YVO4) laser crystal. It is capable of producing 5.5 Watts of 1064 nm

laser beam. Frequency-doubling converts the 1064 nm light to a green 532 nm light that becomes the output of the laser. The Millenia is pumped by two diode lasers located in the power supply. The system contains a polarizer and an analyser for checking the signals at all polarization configurations. If the vibrations of the polarized light are parallel to the plane of incidence, the light is said to be p polarized and if the vibrations of the polarized light are perpendicular to the plane of incidence, the light is said to be s polarized. Next to the sample we also have to use some special short wave pass filters to avoid any other noises. The setup contains a half wave plate too, which retards one polarization by half a wavelength, or 180 degrees. This changes the polarization direction of linear polarized light. The sample reflects the incident light by 45 degrees. After it passes through another lens, that makes the beam parallel, it passes through the BG39 type blue filters to let only the 400 nm wavelength light be detected by the PMT. In Picture 1, the SHG setup can be seen just like in the sketch above. The rotator stage holds the sample and it can be used to rotate the sample holder to make the measurements by 1 degrees step size.



Picture 1. The second harmonic generation setup. (Made by author.)

Principles of photon counting

Inside the PMT photoelectrons emitted from the photocathode are accelerated and focused onto the first dynode to produce secondary electrons. However, some of these electrons do not strike the first dynode or deviate from their normal trajectories, so they are not multiplied properly. This efficiency of collecting photoelectrons is referred to as the collection efficiency (CE). The ratio of the count value (the number of output pulses) to the number of incident photons is called the detection efficiency (DE) or counting efficiency, and is expressed by the following equation:

$$\mathrm{DE}(\%) = \left(\frac{\mathrm{Nd}}{\mathrm{Np}}\right) \cdot 100\% = \eta \cdot \alpha \cdot 100(\%) \tag{4}$$

where Nd is the count value, Np is the number of incident photons; η is the photocathode quantum efficiency (QE) and α is the CE. [8] Quantum efficiency is the production probability of photoelectrons being emitted when one photon strikes the photocathode. In our case the QE of our PMT is approximately 25% at 400 nm and the PMT gain (G) is 10^7. Detection efficiency also depends on the threshold level that brings the output pulses into a binary signal.

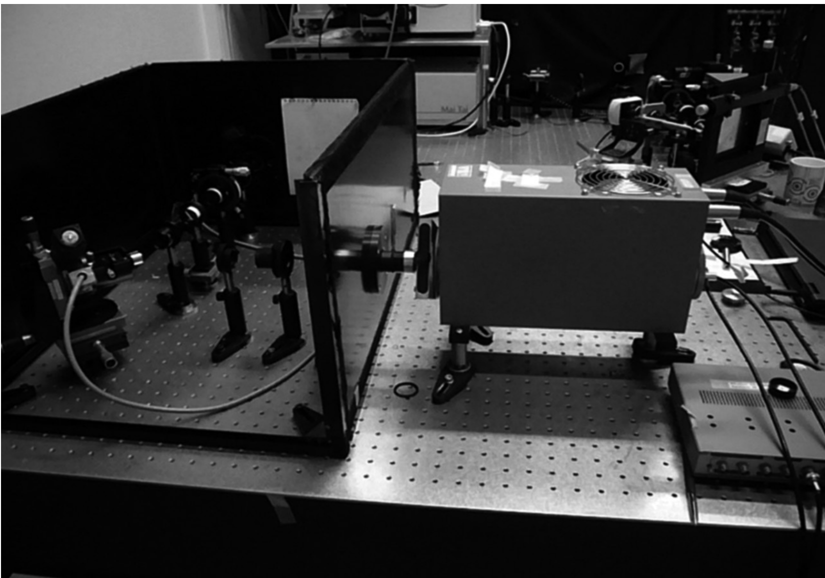
The dark count (DC) of the PMT is the number of residual counts arising from radioactive decays of materials inside the PMT, and from cosmic rays. The primary noise source is thermionic emission of electrons from the photocathode. To dramatically reduce the dark count rate, the thermoelectric cooling of the PMT is extremely important. A standard PMT works with good efficiency at –20 °C. At this temperature the dark count rate can be reduced from a few kHz to a few Hz. The dark count rate also depends on the cathode type and it is highest for cathodes with high sensitivity at long wavelengths. [9][10]

PMTs will specify their noise in terms of the rate of output pulses. The noise is specified as an anode dark current (DCu). Assuming the primary source of dark current is thermionic emission from the photocathode, the dark count rate is given by the following expression:

$$DC(kHz) = \frac{6 \cdot \mathrm{DCu(nA)}}{\mathrm{G}} \tag{5}$$

where G is the gain of the PMT. [10]

Picture 2 shows the SHG setup connected to the PMT that is connected to an SR445 type preamplifier.



Picture 2. The second harmonic generation setup and the PMT. (Made by author.)

From the first dynode the number of emitted secondary electrons is approximately 20 in response to one primary electron from the photocathode. In general they can be treated by Poisson distribution, and the average number of secondary electrons becomes the secondary electron emission ratio δ. In the subsequent dynodes it holds true for multiplication processes. To create a group of electrons, a single photoelectron from the photocathode is multiplied by δ^2 and is derived as an output pulse from the anode due to the fact that a PMT has n stages of dynodes. The height of each output pulse obtained at the anode depends on fluctuations in this process in the secondary electron multiplication ratio stated above, so that it differs from pulse to pulse. [8] In Fig. 3 the operation of the PMT can be seen in a single photoelectron state.

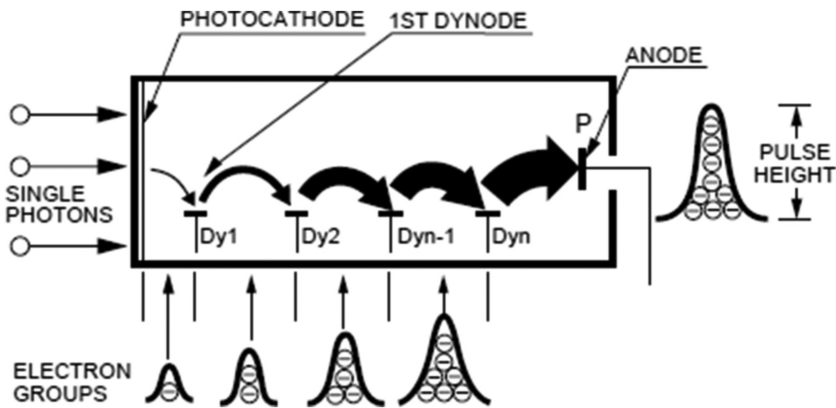


Figure 3. The operation of the PMT in a single photoelectron state. [8]

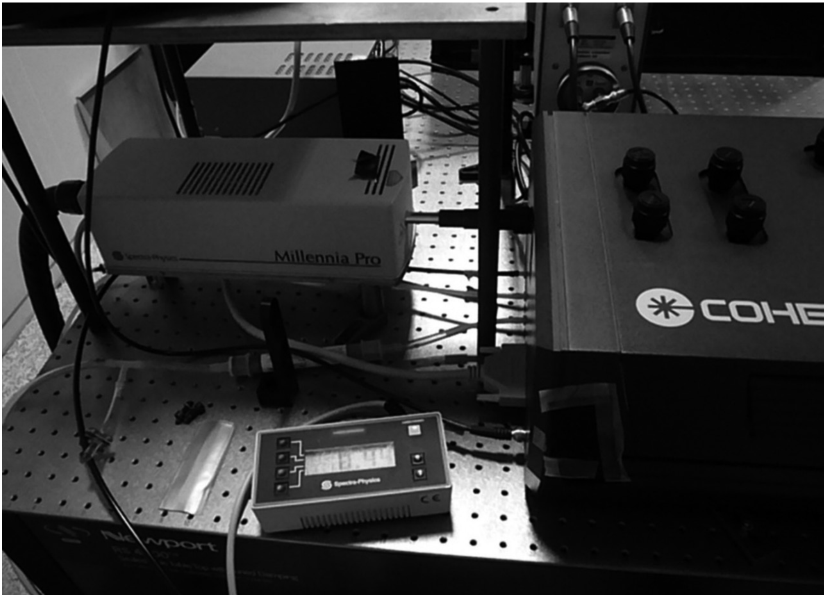
The Single Electron Response (SER) is also a very important definition that has to be discussed to understand the basics of single photon detection. Based on the situation that the maximum continuous output current (Imax) is much lower than the peak current (ISER), the PMT is operated near its full gain. This means that the PMT produces random pulses. Each of the pulses represents the detection of a single photon. The signal's pulse density at the cathode of the detector provides the measure of light intensity. The SER of the PMT is the output pulse for a single photoelectron. [11: 6]

The peak current (ISER) can be calculated from the following equation:

$$I_{SER} = \frac{\mathrm{G} \cdot \mathrm{e}}{T_{SER}} \tag{6}$$

where T_{SER} is the SER pulse width (fwhm), G is the PMT gain (standard PMT has 10^7) and e is the charge of an electron ($1{,}6 \times 10^{-19}$ C). [11: 223]

In Picture 3, the power controller and the Millenia Pro green laser can be seen, it is connected to the Mira 900 Ti:Sapphire laser.



Picture 3. Power controller of the Mira 900 Ti:sa laser. (Made by author.)

The SR 400 photon counting system

In Fig. 4 it can be seen that the SR400 combines amplifiers, discriminators, gate generators and counters all together. The channels inside the counter can count even at rates up to 200 MHz. There are two independent channels in the SR400 system. Each counting channel has its own gate generator which provides counting gates between 5 ns and 1 s. The counters named A, B and T are the fast counters. All three counters operate at rates up to 200 MHz. From a number of sources the input is selected for each counter and includes the two analogue signal inputs. These are the external trigger input and the 10 MHz crystal timebaser. Counter T can be present to determine the measurement period. [12] Fig. 4 shows a very similar photon counting system to that which has been used for the measurements.

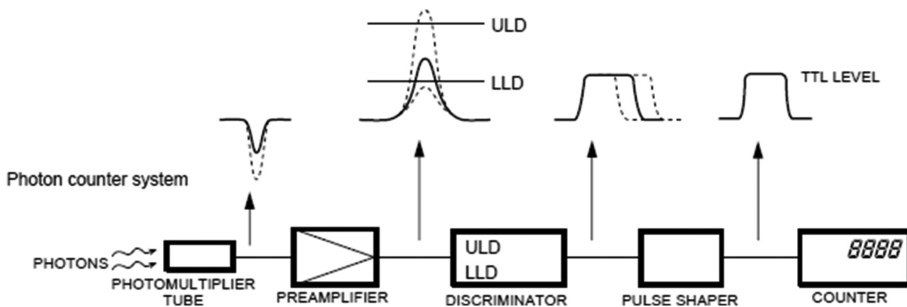


Figure 4. Typical photon counting system. [8]

In Picture 4, the display of SR400 photon counter can be seen which currently shows 27 impacted photons at a certain state of the rotator stage with 1 sec scan time.

Picture 4. SR 400 photon counter currently shows 27 impacted photons at a certain degree. (Made by author.)

To extend the events via the 2 gate generators (which are independent), the A and B counters may also be synchronized in pulsed experiments. The gate generator provides gates from 5 ns to 1s in duration with a delay from an external trigger ranging from 25 ns to 1s. In a single scan, 1 to 2000 count periods can be cycled through with the SR400 photon counter and it can detect pulses as low as 2 mV. [12] It is practical to set the pulse size to 10 mV to provide better noise immunity and to allow for some adjustment of the discriminator threshold. Between 10 mV and 300 mV the preamplifier should have enough gain to amplify anode pulses. The 100 mV is probably the best target value.

Analysis of SHG signals from Si (111) sample and results

The signals SH origin can be checked by measuring the intensity at a certain position of the sample (at a fixed rotation angle) by changing the intensity of the laser with a polarizer, step by step. At the same time we have to use a certain amount of special short wave pass filters after the sample to avoid any other noises like two photon luminescence. In this case after some measurements we can fit a linear function to the values and the exponent value (B) must be 2. If it is approximately 2, then we can be sure that the signals are really Second Harmonic.

The other way to check SHG is to use a monochromator. Also the background noises have to be checked by blocking the laser beam.

The discriminator compares the input pulses with the present reference voltage to divide them into two groups: one group is lower and the other is higher than the reference voltage. The lower pulses are eliminated by the lower level discriminator and in the same cases, the higher pulses are eliminated by the upper level discriminator. The detector system operates at negative voltage and this is the reason why the discriminator voltages should also be negative. The signals have been found to be the most optimal with the A level at –40 mv and the B level at –155 mv.

For expectation we have to use the theoretical model of (111) structures. For each polarization configuration we have to use a certain function to find what we expect. The following equations have been derived from the theoretical model of (111) structures [13]:

At SS configuration: $I^{2\omega}(\varphi) = (A \times \sin 3[\varphi - \varphi 0])^2$ (7)

At SP configuration: $I^{2\omega}(\varphi) = (A + B \times \sin 3[\varphi - \varphi 0])^2$ (8)

At PP configuration: $I^{2\omega}(\varphi) = (A + B \times \sin 3[\varphi - \varphi 0])^2$ (9)

At PS configuration: $I^{2\omega}(\varphi) = (A \times \sin 3[\varphi - \varphi 0])^2$ (10)

where $I^{2\omega}(\varphi)$ is the second harmonic intensity and φ is the rotation angle.

Table 1. This table shows the components of the surface nonlinear polarization of centrosymmetric crystals of classes m3m and 432. [13]

l	$P_l^s(2\omega)(111)$ Isotropic	Anisotropic
p	$E^2[-\chi^S_{x'x'z'}\sin 2\vartheta_2 \cos^2\psi \cos\varphi_2 + \{\cos^2\psi (\chi^S_{z'z'z'}\sin^2\vartheta_2 + \chi^S_{z'x'x'}\cos^2\vartheta_2 + \chi^S_{z'x'x'}\sin^2\psi\} \sin\varphi_2]$	$E^2\chi^S_{x'x'x'}\{\cos^2\vartheta_2\cos^2\psi\cos 3\varphi - \sin^2\psi\cos 3\varphi - 2\cos\vartheta_2\cos\psi\sin\psi \times \sin 3\varphi\}\cos\varphi_2$
s	$E^2(-2\chi^S_{x'x'z'}\sin\vartheta_2\sin\psi\cos\psi)$	$E^2(-\chi^S_{x'x'x'})\{\cos^2\vartheta_2\cos^2\psi\sin 3\varphi - \sin^2\psi\sin 3\varphi + 2\cos\vartheta_2\cos\psi\sin\psi \times \cos 3\varphi\}$

We can determine the P(2ω) for the volume and surface layers of the (111) planes for arbitrary polarization of the pump radiation. $X^s_{i'j'k'}$ are the components of the surface susceptibility tensor in the x'y'z' coordinate system; l is the polarization index of the SH radiation; E is the amplitude of the pump field in the nonlinear medium; φ_2, υ_2 are the angles between the surface normal and the wave vectors of this SH and pump respectively; k is the modulus of the wave vector of the pump radiation in the nonlinear medium. The polarization angle is ψ, the rotation angle is φ. [13]

The incident angle in our case is 45 degrees.

For s-polarized pump radiation (the angle $\psi = \pi/2$) the isotropic s-component of the nonlinear polarization vector equals zero. This implies that when the nonlinear interaction takes place in the s-s geometry, there is no isotropic SH for the crystals we are studying (the classes m3m and 432). This applies to the surface dipole and volume quadrupole SH to the same degree. [13]

The methods at certain polarization configurations are the following:

X is the first polarization position and the second can be P or S

1, $X = P \rightarrow \psi = 0$

2, $X = S \rightarrow \psi = \pi/2$

We can use these values for the table contents (see Table 1).

The following SHG measurements have been made with 1 sec scan time and 1 degrees step size using 800 nm laser beam. The power is 400 mW. It has been realized that the signals are also strongly dependent on the stability of the Mira 900 Ti:Sapphire laser.

Due to this fact the next step was to optimize the alignment of the laser (find the maximum power, where the laser is still stable and pulsed). Usually the maximum output power was 400-420 mW at 800 nm wavelength.

Fig. 5 shows the SHG curves at SS polarization configuration. The highest number of the impacted photons was around 2550. The number of impacting photons also depends on the certain position (in degrees) of the rotator stage. The size and the number of the certain peaks depend on the polarization configuration. With this configuration six, very similar peaks can be observed.

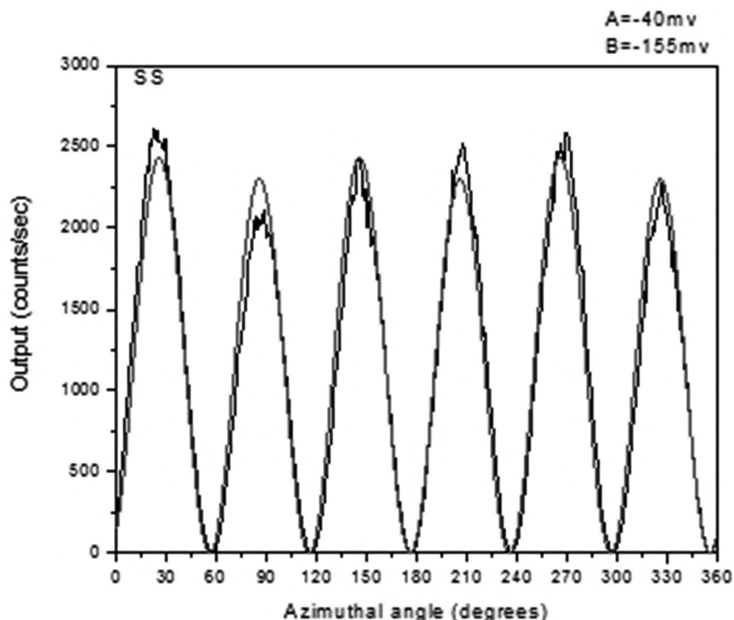


Figure 5. Second Harmonic intensity at SS polarization configuration in the function of rotation angle with the expectation curves using equation 7. (Made by author.)

The curve in Fig. 6 was made with SP polarization configuration, where three main peaks could be observed. At 178 degree position the highest number of impacted photons was detected.

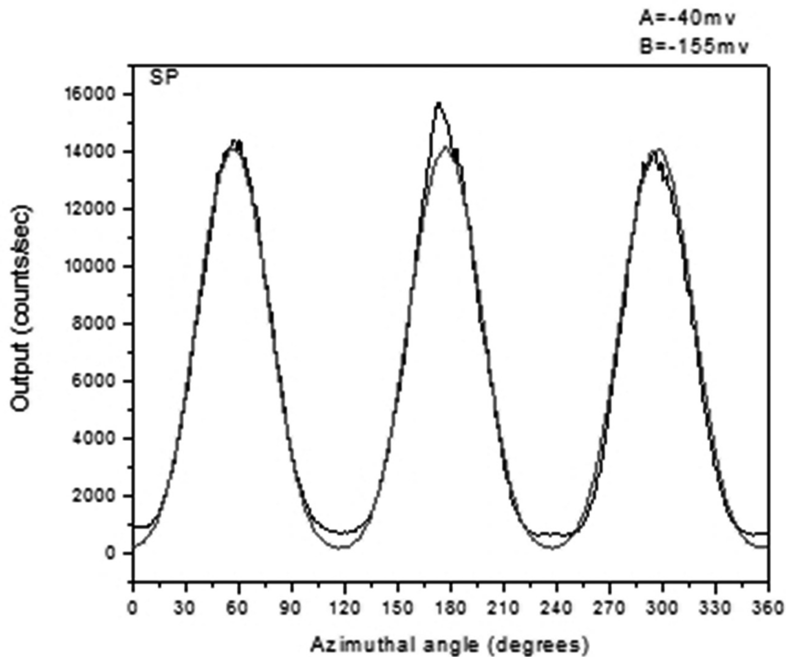


Figure 6. Second Harmonic intensity at SP polarization configuration in the function of rotation angle with the expectation curves using equation 8. (Made by author.)

In Fig. 7 the curve at PP polarization configuration can be seen. There are two small peaks at 120 and 240 degree position and three high peaks at 60, 180 and 300 degree position. The highest number of detected pulses was around 3200.

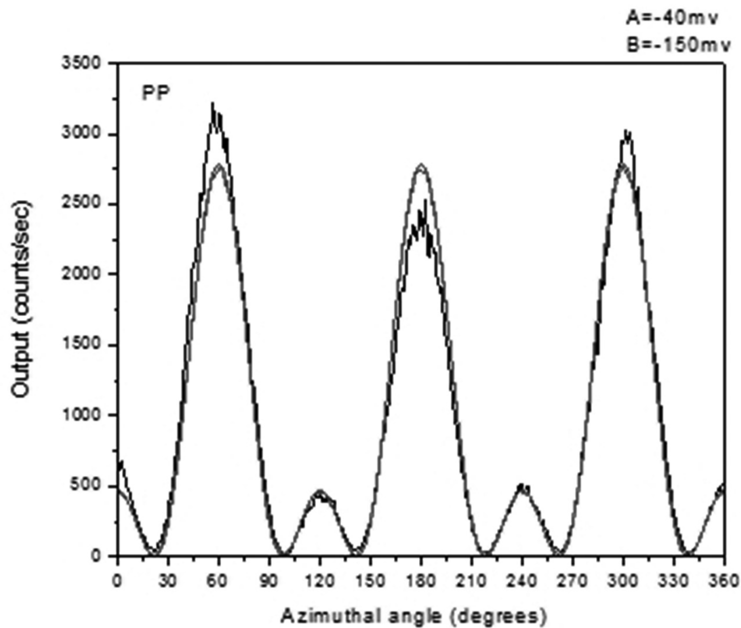


Figure 7. Second Harmonic intensity at PP polarization configuration in the function of rotation angle with the expectation curves using equation 9. (Made by author.)

Finally the SHG intensity at PS polarization configuration can be seen in Fig. 8. The maximum value of the detected pulses rates up to 1600 only at 150 degrees position.

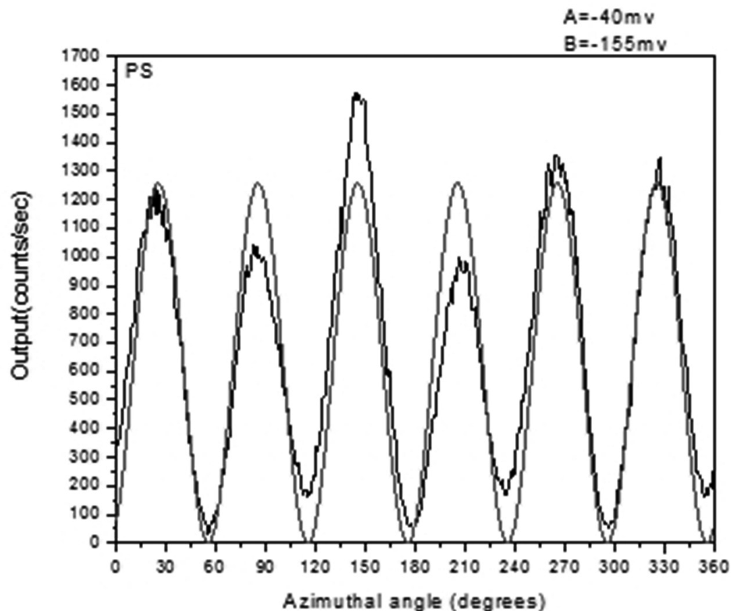


Figure 8. Second Harmonic intensity at PS polarization configuration in the function of rotation angle with the expectation curves using equation 10. (Made by author.)

Photon counting in a different way

A very promising task is to build such a setup that can be used for communication between robotic vehicles. In order to decrease the size of the whole setup, it is extremely important that there must be a different laser light source with another stable, but much lighter power supply. For this experiment the use of a single photon avalanche diode (SPAD) is one of the most practical ways to count the impacting photons. This has a higher QE compared to PMTs. Depending on the manufacturer, sometimes the QE of an SPAD can be even 80%. SPADs have some disadvantages, such as the light having to be focused into it precisely and it must be kept at a cold temperature. The cooling method can be achieved with small peltier batteries, which have been tried already with InGaAs avalanche photodiodes. [14] The communication between robotic vehicles (mainly in military applications) should be secret. To achieve this, an already published experimental setup could be used in the opposite way. [15] As earlier published, the development of the antibunching photon contains an optical delay system to detect only one photon. This experiment works with an Optical Parametric Oscillator (OPO) and with a nonlinear crystal that divides the impacting photon to form new photons with half the energy, and therefore half the frequency and double the wavelength of the initial photons. In this experiment the original wavelength of the initial photons was 400 nm.

Conclusions

Experiments with SHG have been done with the four main polarization configurations. It has been proven that photon counting with special devices is possible from one up to 300 million photons. With SP configuration the highest number of the initial photons was detected. The counter was able to count up to 16000 initial pulses. With the opposite (PS) configuration the lowest number of the initial photons have been detected. With this the count value was up to 1600. So at SP configuration we can expect 10 times more impacting photons on certain degrees than at PS configuration. Checking these results we can declare that the expectation curves match well to the individual polarization configurations except the PS configuration, but here the original signal was not as good as expected.

What has been shown here is a certain case of photon counting with the experiment of SHG. To apply the photon counting methods on robotic vehicles for photonic communications (such as the use of the antibunching photon), the other way around can be also an acceptable method with a different counter and with an SPAD. In the case of the antibunching photon with the use of an OPO the frequency must be half of the original wavelength to form new photons with half the energy, and therefore half the frequency and double the wavelength of the initial photons.

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Current Issues of International Law in Regulating Counter–Insurgency and Counter–Terrorism

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"Inter Arma Enim Silent Leges"
(In times of war the law falls silent)
Marcus Tullius Cicero

The study sheds light on the current tendencies and examines if the international law on warfare can successfully be applied in practical reality in the progress of counterinsurgency and counterterrorism efforts. There have been two phenomena identified recently in warfare which endanger the public security and public safety of the democratic states of the world: terrorism and insurgency. Both of them mean a threat and attack on the population and the government authorities. It has been queried in military literature whether these new forms of warfare should be handled by military engagements or law enforcement. This is, nevertheless, not just a dilemma concerning the strategy on how to combat against them, but should be, at the same time, all done in accordance with the international legal regulations. This study is going to outline how the international law based on the principles of traditional warfare can be applied to insurgent or terrorist groups. Special emphasis will be given to see if the relevant laws have failures in regulating these new forms of warfare, and if so, what changes should be proposed for the recent regulations of international law.

Keywords: *terrorism, insurgency, counterterrorism, counterinsurgency, international law, law of warfare, law of humanitarian treatment, human rights, international criminal law, legitimacy*

Introduction

This study tries to shed light on the current tendencies if the international law on warfare can successfully be applied in practical reality in the progress of counterinsurgency and counterterrorism efforts. There have been two phenomena identified recently in warfare which endanger the public security and public safety of the democratic states of the world: terrorism and insurgency. Both of them mean a threat and attack on the population and the government authorities. It has been queried in the military literature whether these new forms of warfare should be handled by military engagements or law enforcement. This is, nevertheless, not just a dilemma about the strategy on how to combat against it, but should be, at the same time done in accordance with international legal regulations. The international law of war developed by the end of World War II was basically modeled on traditional — symmetric — war-

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fare. After World War II the main form of warfare has become much more asymmetric, than symmetric. We can state that both insurgency and terrorism represent asymmetric warfare. Traditional warfare became rather exceptional, [1] but insurgency with the characteristics of terrorism became the rule during the last decades. The starting point of this study is that similarity between insurgency and terrorism seems to be more important than making sharp divisions between them. This is because international law from many aspects does not differentiate between the groups of armed forces, if they are insurgents or terrorists, or has other terminologies than military science. This study is going to outline how the international law based on the principles of traditional warfare can be applied to insurgent or terrorist groups. Special emphasis will be given to examine if the relevant laws have failures in regulating these new forms of warfare, and if so, what changes should be proposed for the recent regulations of the international law.

1. Attempts to Define Insurgency and Terrorism

Several definitions of insurgency and terrorism have been identified in military literature, which at the same time try to make distinctions between them. Phrases, like insurgency, irregular warfare, unconventional warfare, revolutionary warfare, guerilla warfare, terrorism are often used in military literature as synonymous terminologies. [2] This is because all of these forms of armed conflict represent asymmetric warfare. Further similarities, such as committing terrorist attacks, pursuing radical aims, intimidating civilians, etc., have been seen in these forms of warfare. It should be noted that *terminology of insurgency* could be used for armed troops in revolution, freedom fight, guerilla war and civil war, because the latter ones all have the political and military characteristics of insurgency.

Symmetric warfare has been identified as two opposing adversaries disposing of armed forces that are similar in all aspects such as force structure, doctrine, asset, and have comparable tactical, operational and strategic objectives. Traditional warfare took place in most cases between regular armies until the middle of the 20th century. Insurgencies — typified as *asymmetric warfare* — could be seen even before World War II, [3] but were not widespread. Asymmetric warfare — as opposed to symmetric warfare — means that the opposing party is unable or unwilling to wage the war with comparable force, and has different political and military objectives than its adversary. These new forms of asymmetric warfare are not just emerging political or military issues in our days, but a confused legal problem, too. In other words, terrorism and insurgency is not just an academic legal issue, and how the laws define them is significant. This is because sanctions, criminal consequences, investigating authorities, jurisdiction, military response, intelligence and law enforcement, etc. as the legal issues of terrorism and insurgency should sufficiently be regulated by international and domestic laws.

Insurgency has been defined with the following characteristics: [4]

- *Organized movement* of a group, which, at the same time, leads to a protracted violent conflict.
- The involved groups' aim is to *overthrow the constituted government, or fundamentally change the political and social order* in a state or a region, or *weaken the control and legitimacy* of the established government.
- The means of an insurgent group to reach their aims are *subversion, armed conflict, sustained violence, social disruption* and *political actions.*

- Their aim has been rooted in the claim for *autonomy* or *independency* for an ethnic minority, a *more democratic government*, or *political* and *economic rights* to a social class.

All the definitions of *terrorism* emphasize that terrorists use *violence* and *threats* against the population, property, places of public use, public transportation system, infrastructural and other facilities in order to reach a *general fear* in the society with *political, ideological* or *religious* aims. [5: 1] Terrorist attacks — as opposed to insurgency — are normally *unpredictable* and *random* in order to trigger psychological effects, i.e. *intimidation* and *government overreaction.* Terrorist groups are *clandestine* agents increasingly on a *transnational level.* It is an essential question as to whether on the basis of definitions of insurgency and terrorism we can make *clear differences* between them. Both of the insurgents and terrorists use violent acts, have political aims, and insurgent groups use not only guerilla warfare, but often commit terrorist attacks, too, or similarly to the terrorist groups, are financed by organized crimes. Terrorist groups, on the other hand, are often also well–organized, and tend to escalate the violent conflict.

Some differences between them, however, are *typical:* insurgent groups, for example, try to control one of the territories of the state, while terrorists normally do not, insurgents occasionally respect the law of war, but terrorists never, insurgents try to have the support of the population, while it is not important for terrorists, insurgents do not necessarily attack civilians, but it is the rule for terrorists. We can mention *examples of overlapping* in some groups that have characteristics of an insurgent group, but despite of this, they are considered terrorists. *Al–Qaeda* has a worldwide network, and regularly infiltrates insurgent groups in other countries, such as Iraq, Afghanistan and Syria. *Hamas* forms part of the Palestine Authority and *Hezbollah* has 11 seats in the Lebanese government, so they are in fact state authorities implementing social welfare tasks, too. [6] Hezbollah is evidently a terrorist group, and the military faction of Hamas has been declared as such by the European Union some months ago.

The *Kurdish in Turkey* and the *Chechen in Russia* have all the characteristics of an insurgent group, e.g. they form an organized group of an ethnic minority in a given territory of the state, claim autonomy or an independent state for themselves and use political means, military force against the government, however they have been on the blacklist of terrorist groups, due to the terrorist attacks they implement. Insurgent groups in the war in *Bosnia* and *Kosovo* during the 1990s with the same characteristics were considered as insurgents, but not terrorists. Both the *ETA* and the *IRA* have had a double face in their warfare: their strategy is similar to terrorists, e.g. they attack civilians and do not want to acquire territory, but they are typified at the same time by guerilla warfare, e.g. destroying bridges or attacking police stations.

Overlapping is even more complicated in the *Palestine Liberation Front:* its groups of a few members crossed the border of Israel and blew up objects and crowded places, took hostages, attacked villages and killed civilians. These Palestine terrorist groups controlled territories both in Lebanon and Jordan where they recruited members and had terrorist training camps, too, but they also implemented armed attacks in the area of Israel. The insurgent groups in *Afghanistan* and *Iraq* perpetrated terrorist attacks against the civilians through suicide bombings, exploiting international organizations, embassies, schools, markets, etc., as well as guerilla attacks by using traditional warfare against military bases of the Afghan army or NATO. It should be clear on the basis of these examples, that *insurgent groups use terrorist means too,* if they see it as more efficient than guerilla warfare, or, in many cases they did not

have any other choice than to do so, because of the special fields, e.g. high hills, or jungles, where they fight. It can happen sometimes that not only the insurgents, but also the *terrorists are supported by the civilians*, as was the case in Iraq, where the Sunni tribes cooperated with al–Qaeda until they became fed up with the frequent terrorist attacks. In Afghanistan, where al–Qaeda has been interwoven with the Taliban, and commits terrorist attacks together with them, al–Qaeda enjoys the support of the local tribes. Hamas and Hezbollah are also strongly supported by the populations in Gaza and Lebanon. It would be difficult, too, to find a terrorist group that does not pursue *concrete political aims:* al–Qaeda aims to establish a world caliphate based on fundamentalist Islamic culture and to destroy the West, Hezbollah supports insurgent groups in other countries, such as Iraq and Syria with political goals, and Hamas aims to eliminate the Israeli state. Even those terrorist groups, such as the Muslim Brotherhood, al–Qaeda in the Islamic Maghreb (AQIM), al–Shabaab, etc., whose ideology contain religious features on the surface, i.e. fundamentalist Islam, are deeply rooted in politics, when they aim to fight against secularization, or try to hinder a more democratic process in Muslim countries.

Local militias in African countries, e.g. Mai–Mai in Congo, Lord's Resistance Army (LRA) in Uganda, anti–balaka in Central African Republic (CAR), [7: 461] etc., often *do not follow any political aim,* even if they are supported by al–Qaeda, or other terrorist groups, they just use the advantages of a weak government that cannot efficiently control some areas of the state and try to distance themselves from certain crimes and violent actions against the civilian population. [8] Militias otherwise have all the characteristic of insurgents, but cannot be considered such, much rather simple *criminals.* In order to make a *distinction* between insurgency and terrorism, the most important point of view is as to whether they commit common crimes or use lawful armed force. When doing so, we have to face up to further issues: if the insurgents perpetrate violate actions, should they be considered terrorists? When insurgents seriously violate international law, for example attack civilians, civilian objects, kill prisoners, etc., they evidently cannot be identified as lawful combatants. The problem with it is that insurgents often go beyond this, and commit organized crimes, as well, e.g. drug trafficking, smuggling of weapons, taking of hostages, money laundry, etc., in order to finance their activities. This is because insurgents in most cases try to counterbalance their asymmetric position against a state's regular army, which necessarily leads to the violation of the law on warfare and the criminal law.

After having analyzed the differences, it should be clear that we couldn't identify any insurgent or terrorist group that would have only terrorist or insurgent characteristics. As we could see from the aforementioned examples, *there are no clear insurgent or terrorist groups in practical reality,* but non–state armed troops having more or less features of insurgency, terrorism or organized crime.

2. Challenges for Legal Regulations in Counterinsurgency and Counterterrorism

There are two legal statuses in international law with regard to armed troops: the *law of war* denotes those meeting the requirements of a regular army (having uniforms, or a distinctive sign, carrying arms openly, being under responsible command and respecting the law of war); the *law of humanitarian treatment* makes a difference on the basis of having a war-like

character, or not. Consequently, an insurgent group will be considered to be under the force of the law of war, and the law of humanitarian treatment, if they meet the aforementioned requirements. If not, they — similarly to terrorists — will be treated as *criminals.* When the insurgents are under the authority of the international law on warfare, they have to respect the law of war and the law of humanitarian treatment, and in return, they will be treated by the state's regular army as combatants of warfare. The armed conflict between the insurgents and the government army will be subject to a *military engagement* on the basis of the rules of war. If insurgents are considered criminals — when they commit terrorist and organized crimes, or crimes "only" against public safety, public order or the state power[2] — they will be under the authority of *law enforcement,* i.e. come up for trial based on the rules of the criminal procedure. When people offend or would like to remove the existing government other than by democratic elections, *it is always unlawful according to domestic laws.* The peaceful demonstration permitted by the public authorities is the only exception. In other cases, when citizens are unsatisfied with the government, and express it in *violent actions,* such as riots, conspiracy (Bolshevik Party in Russia), revolution (fundamentalist Islamists in Iran), freedom fight (Che Guevara in South America), guerilla war (Taliban in Afghanistan), civil war (Syria), military putsch (Chile), domestic laws normally regulate it as *crimes against the state power.*

On the other hand, however, the *international law entitles the state to use military force in self–defense,* when an armed attack has occurred within the boundaries of the state, even if the insurgent group is not under the law of war. (Article 51 of the UN Charter) The only limitation for the state in crushing the insurgency is to respect human rights and international criminal law. If the insurgency has been crushed, the state uses *criminal enforcement:* arrest, trial and punishment. It is possible that the government gives *amnesty* to the insurgents after the insurgency has been crushed, which reflects whether a political compromise has been made between the insurgents and the government. When the insurgency wins, and the insurgents establish a new state in the territory where the ethnic minority lives, or if they can overthrow the government, the other states, according to the international customary law, will *approve the new state or government,* provided it is operating efficiently. A new state or a new government rarely comes into existence in a lawful way — Hungary and Germany can be mentioned as examples in 1990 — the majority have been the result of revolution, insurgency, freedom fighting, or a military putsch. *Legitimacy* evidently lacks in the latter cases. International customary law expects, for this reason, the new state or the government to consolidate its legitimacy with an election or referendum.

Distinction between insurgency and terrorism in international law *is not in accordance* with the new challenges of asymmetric warfare. When governments have to face up to the problem of insurgency or terrorism they cannot achieve any decision on the basis of such legal issues, whether to use military engagement or law enforcement, because in most cases it would go *against rationality.* As mentioned earlier, there is no clear difference either in the theory or in the practice between insurgency and terrorism.

Military engagement is often *necessary* against terrorist groups, e.g. in Afghanistan or Iraq, where law enforcement would obviously be inefficient. Or, when bin Laden, who was a

2 Insurgents — according to the domestic laws — are always in an illegal position, unless they do not commit violent actions, e.g. in the case of a peaceful demonstration permitted by the state authorities, because every violent action against the state power, is regulated by the laws as crimes in most countries.

terrorist, not an insurgent, had to be liquidated, the special forces of the US Army implemented a military operation. Further examples would be when the Israeli Army in several cases attacked Gaza and South Lebanon and used its military armed forces, as a reaction to the terrorist attacks from these areas. The government can successfully use the armed forces of the police when a riot has broken out, for example, but against most terrorist organizations it would be a failure. It does not seem to be reasonable, either, from the side of the government army to respect the rules of war when insurgents or local militant gangs perpetrate terrorist crimes, even if they should be considered a regular army by the laws. The problem, from a legal point of view, is even more complicated when the insurgents or terrorists have been *captured:* should they be treated as criminals, and if so, which court will have the competence to proceed in the criminal case? Examples of the prisoners in Guantanamo Bay and Abu Ghraib led to a widespread debate in the US, if the human rights of the captured terrorists, such as the right to life, human dignity, and fair jurisdiction, should be respected, or not. Preconceptions can be made on the basis of this exposition that regulations of counterinsurgency and counterterrorism are fairly *vague* in international law, and should be adjusted to the *new challenges of asymmetric warfare.*

3. Characteristics of the International Law of War

The first attempt to codify the law of war happened in 1863, in the midst of the American Civil War. President Lincoln asked Francis Lieber, a jurist and political philosopher, to draft a code of warfare in order to regulate the armed conflict. The so called *"Lieber Code", which* served as a basis for the Geneva Conventions, regulates instructions for the Government Armies of the US in the field. Its 157 articles were concerned with martial law, military jurisdiction and the treatment of spies, deserters and prisoners of war. [9] The *recent sources of the international law regulating warfare* are as follows:

- Geneva Conventions and its protocols;
- Hague Conventions and its protocols;
- United Nations Charter;
- International Criminal Law;
- Treaties on Human Rights;
- Rules of Engagement.

Recently, the law of war has been regulated by international law, not by domestic laws. International law has *two main characteristics,* which determine the applicability of the law of war, too. One is that the provisions of the international law shall obligate a state, only if it has ratified an international contract, but only in the framework of this contract. For example, if a state has not signed the Geneva Conventions it is problematic to decide how to have it keep the rules concerning the prisoners of war.

Certain organizations of the European Union have authority to pass legal norms, and apply them through the courts, even if it is against the member states' domestic laws. The EU law is called, for this reason, a *"sui generis"* law. [10] International organizations, such as the United Nations itself, *do not have the right to regulate international affairs,* because only the international treaties, charters, conventions, etc. can do so. So, only the provisions of the UN Charter shall be applied and only to its signatory nations. Or, the UN Human Right Committee, for example, cannot make any obligatory decision in the legal cases of human

rights to the signatory nations, it can simply give recommendations to them. International law — as opposed to domestic law — has been based on mainly the *cooperation* among the nations rather than that of *law enforcement.*

The latter one is, however, the essential part of the domestic laws, because the state can enforce its will only if uses its political power thorough legislation, public administration, and jurisdiction. The legal norms passed by the parliament or the administrative authorities can be implemented only by the use of law enforcement, such as police, prosecutions, courts, prisons, etc. Sanction has normally been an essential part of the legal norms in the domestic laws: when the provision of the law is not implemented voluntarily, the sanction should be applied by the state authorities. Law enforcement has been the rule in domestic laws, and alternative means, such as the use of mediators in trials, or declarations in legal norms are rather exceptional.

The prevailing legal means in international law are several forms of *cooperation*, e.g. establishing ad hoc committees, organizing conferences, writing reports, recommendations, diplomatic negotiations, mediating peace, etc. *reprisal* and *retortion* can legally be used against a state, if it violated international law, so that lawful actions can be enforced. The most traditional sanction, *to start a war* against a state violates recent international law, so it cannot be widely applied anymore, just in exceptional cases regulated by international law. There are *two exceptions*, when despite the lack of law enforcement character the provisions of the *international law can be enforced.* The Security Council of the United Nations is empowered by Article 42 of the UN Charter to authorize member nations *to use military force* to deal with any situation that the Council determines to be a threat to international peace, a breach of the peace or an act of aggression. This provision can be used only when other means, such as diplomatic measures or economic sanctions have been or would be ineffective to deal with the threat. The other exception is the *International Criminal Court* that will open a criminal procedure against criminals who have perpetrated international crimes, even if the state, whose citizens are the criminals, is unwilling to, or cannot do so. The military leaders of the former Yugoslavia were punished in this way.

International law is generally considered *"soft law"*, which is its other characteristic. It means that legal norms of the international law are so generally formulated that in concrete cases it can be interpreted in several ways. The interpretation of the legal provisions depends to a great extent on the political power of the states that will apply them in practical reality. The US and Great Britain interpreted the provisions of the Article 51 of the UN Charter in this way, that they had the right of self–defense in attacking Iraq in 2006, however one of the essential conditions, i.e. the armed attack by Iraq against these countries was missing. There are *"ius cogens"*, not just "soft" legal norms, too, in the international law, such as the prohibition of the use of force, non–intervention, or human rights, for example, which means that these legal institutions have been interpreted in legal practice by the international organizations as a case law and will be implemented, if possible, in a strict way.

International customary law means those rules that have been widely and for a long term applied in practice. It is based on international treaties, conventions, agreements, charters, declarations, or covenants, and has a uniform interpretation. Rules of engagement issued by the commandant, for example, can be mentioned as customary law, because its provisions are not legal norms, but should be based on the international law on warfare. Acknowledgement of a new state by the other ones can be mentioned as an example of customary law. Human

rights are formulated as *legal principles* in international agreements. [11] This is a reason, why the interpretation of human rights is so important, either in the way of case law, as it has been a tradition in common law, or in the practice of jurisdiction similarly to the European continental laws.

4. The Law of Humanitarian Treatment and Human Rights

The Geneva Convention is called international law for the *humanitarian treatment of war,* but the Hague Convention is the *law of war.* At the moment, with one exception, every country of the world has already ratified both the Geneva and Hague Conventions, but not all of their protocols. The only exception is West Sahara, which has been occupied by Morocco, so it does not have an independent state–system to achieve any of its own decisions.

The Geneva Convention consists of 3 conventions and 3 protocols. [12] They regulate the treatment of the *wounded, sick* and *shipwrecked,* the *prisoners of war*, the *civilians* and the *victims.* The most important rules for the treatment:

- Prisoners of war (the captured combatants) cannot be attacked any more, but should be spared, and have the right to humane treatment, such as health care, clothes, food, personal property, decorations, badges of rank, payment for their work, correspondence with their relations, etc.
- Wounded and sick have the right to medical treatment, evacuation, but the dead have the right to medical examinations to establish cause of death, identification, collection of their bodies and remains, burial according to the rites of their religion.
- Civilians who do not take an active part in the armed conflict and the combatants who have ceased to be active, have the right not to be attacked, compensation for their injuries, death damages in property, and for being refugees.
- Violence to life, persons and human dignity, such as murder, mutilation, cruel treatment, torture, degrading treatment of the prisoners of war, the sick, the wounded and the civilians, also taking of hostages are prohibited.
- Carrying out executions is also prohibited, unless previous judgment pronounced by a regularly constituted court, with all the judicial guarantees. Prohibition of execution does not mean pure killing, rather the right to fair jurisdiction.

The provisions of the Geneva Convention shall be applied in the following cases:

- *Declared war* between the signatory nations.
- If the opposing nation is not a signatory, when it accepts the Convention.
- If *the armed conflict happened within the boundaries of the country* between the government army and the insurgent group, or two insurgent groups, provided it has a war-like character.

Enforcement of the provisions in the Geneva Conventions is less problematic, when there are two or more states in the armed conflict, however enforcement cannot happen in a direct way even in these cases. Using a *protecting power (mediator)* selected from those states that did not take part in the conflict, but agreed to look after the interest of a state that is a party to the conflict has been the most common way to manage the conflict. The “mediator” state has the competence to establish communication between the parties of the conflict, monitor the implementation of the Conventions, visit the zone of armed conflict and act as advocate for the prisoners of war. Geneva Conventions will be applied in the case of insurgency, too, if it

has a *war character*, which is a widely debated issue. It has been queried for example, how to know if an insurgency has a war-like character, or not, when this terminology has neither been defined, nor interpreted. Nevertheless, the *definition of insurgency* has not been identified by any international legal regulation, either. As mentioned earlier, there may be armed conflicts with war-like character between the government army and the local militias, when the militias cannot be considered by military practice as insurgent groups, but simply local criminal gangs. Can we draw the conclusion that the government army and the local militia do not have to respect the provisions of the Geneva Convention in such cases? On the basis of the relevant legal regulations, there is no answer to this question. It is another matter, if in the lack of clear regulations sufficient solutions have already developed in practical reality.

Further questions will be raised: if the insurgents, terrorists and organized crime factions can be treated as prisoners of war after they have been captured, in the way it is identified in the Geneva Convention, or, should they be sent to trial as soon as possible? Alternatively, who is entitled in such cases to investigate any suspicions of committing crimes, which might be the base of a criminal procedure against them? These are, however, not just theoretical questions. After the prisoners had been kept in Guantanamo for five years, it turned out that only a few of them were terrorists. Terrorist in Afghanistan, Pakistan and Yemen, for example, have been liquidated in targeted killing, without any judgment made by a court. The provisions of the Geneva Conventions do not determine the legal status of the opposing parties in internal armed conflict. The government is entitled to treat captured insurgents as criminals by its domestic law, even if they are under the force of the Geneva Conventions and ought to be treated as prisoners of war. It should be noted that there is no agreement among the legal scholars as to whether or not there exists international law of armed conflict that shall be applied in the case of internal armed conflict.

This challenge has been justified by the legal disputes in the US, when the Supreme Court in the *Hamdan case* (Hamdan was bin Laden's driver and bodyguard who was captured in Afghanistan and held in Guantanamo Bay) [13] declared that the armed conflict caused by al–Qaeda terrorist attacks does not have an international character, but happened on the territory of a party of the Geneva Conventions. For this reason, not all the provisions of the Geneva Conventions shall be applied, but only Article 3, that determines *the rights* of the unlawful combatants *to a fair trial. Human rights* should also be examined from the point of view of its relevance in counterinsurgency and terrorism. Human rights were first regulated by the Universal Declaration of Human Rights developed by the General Assembly of the UN in 1948. The most important agreement, the International Covenant on Civil and Political Rights came into force in 1976. Customary international law of human rights has also been created as a result of a consistent practice.

Human rights related to terrorism and insurgency are listed in international law, on one hand as *minimum standards during the investigation,* arrest, detention, trial and punishment, but also as *the right to self–determination,* which is the right of people to independent, democratic institutions free from outside interference, on the other hand. This is a question on how the human rights shall be applied in the affairs of wars, insurgencies, terrorism, and other armed conflict?

As we could see in the analyses above, the Geneva Conventions shall not be applied in every internal armed conflict, because of the vague legal regulations. Human rights, for this reason, have a *subsidiary role* in legal practice. When the Geneva Conventions cannot be ap-

plied, human rights having an *"ius cogens" character* in international laws cannot be violated by the state, non–state groups, or individuals, no matter what kind of armed conflict, and in which place it occurs. However, the US legal practice did not accept that every provision of the Geneva Conventions shall be applied to the prisons in Guantanamo Bay. The public authorities of the US struggled for 5 years to determine their human rights, especially the interpretation of torture. Prisoners were finally taken to trial, although not within a reasonable length of detention. Opportunities *to enforce human rights* do not show a uniform picture in international law. Neither the *UN Human Rights Council*, nor the *UN Human Right Committee* has the right to make decisions in the concrete cases, but investigate individual complaints, review fulfillment of human rights, analyze reports, give comments and opinions, mediate peace, etc. Only the *Security Council* has the right to take actions, such as economic sanctions, peace enforcement, and creation of International Tribunals for prosecution and punishment of human rights violators, against the states violated human rights in relations with the threat to the peace and breach of the peace, or acts of aggression. In spite of the fact, that neither the UN Human Rights Council nor the UN Human Right Committee has the right to make decision in the legal cases of human rights, they successfully developed a *case law system,* which serves as a base for the interpretation of human rights in the concrete cases.

The European Union has established the *European Court of Human Rights* (ECHR) that is entitled to make a judgment obligatory for the member states in human rights cases. The ECHR applied human rights in the legal cases of armed conflict several times. Right to life was interpreted, for example, when civilians were killed in the armed conflicts. The ECHR developed a strict interpretation in this matter: when combatants are among civilians and begin to attack the enemy, an offensive operation can be implemented, only if it is necessary to protect civilians, or, if civilians who are taking part in the attack do not react to the warning.

The *importance of human rights* in armed conflict has been growing, because the traditional law of humanitarian treatment cannot be applied in asymmetric warfare, like insurgency and terrorism. Human rights can serve as a limitation both for the parties involved in the armed conflicts, in the lack of sufficient legal regulations on warfare.

5. The Law of War (I.) (Ius in Bello)

The first Hague Convention was ratified in 1899, the second in 1907, but the conference where the third convention would have been negotiated, was cancelled due to the start of World War I. The *Hague Conventions* have three main parts:

- *Law of War* (ius in bellum) regulates the means and methods in war, such as injuring the enemy, attack, defense, military movement, treatment of spies, use of the white flag, capitulation, armistice, occupied territories and protected objects and zones.
- *International war crimes:* genocide, crimes against humanity and aggression.
- Regulation of *prohibited/restricted weapons.*

The law of war shall be applied to the combatants of armies, militias and other voluntary groups, if they wear uniform or distinctive signs (badge, armband) carry arms openly, operate under responsible command and respect the law of war and customs. Interpretation of this legal provision is fairly ambiguous, because besides the government armies it has been extended to other military groups, as well. It is easy to identify if the combatants of a military group meet the requirements of a *regular army.* If the military groups *do not respect* the law of war, the

government army does not have to do so either. In other words, if an insurgent group implements terrorist attacks against the government army, as occurs in Afghanistan by the Taliban, or in Turkey by the Kurdish for example, the government army will be entitled to attack the military group (insurgent group or militia) with means other than regulated by the law of war.

We could hardly mention such an example from the cases of last decades, when in asymmetric warfare the insurgent group respected the law of war. Consequently, these regular armies normally implement other military engagements than based on traditional warfare regulated by the Hague Conventions. *Targeted killing,* such as liquidation, combat drones, air bombing, or *special operation* and *intelligence* can be mentioned as this new type of military engagement. [14] It is important to query, too, that if Hague Conventions are not applied anymore in most cases, is there any law that would regulate these military engagements? If not, we can draw the conclusion that asymmetric warfare is *unregulated* by international laws, and the parties involved in the armed conflict are not limited by any rule, except international crimes, and human rights.

Enforcement of the law of war is also problematic. The *International Court of Justice,* or the *International Law of Arbitrary* will proceed, but only if the parties in the conflict will entitle them to do so. These courts, however, cannot make a judgment that can be forced upon the states. This is why only 200 cases were taken to these courts during the last 90 years. If these courts do not proceed in the case, consultation, diplomatic negotiation will be applied, ad hoc committees will be set up, or conference will be organized to give recommendations to the parties in the conflict. The state that violated the law of war should pay compensation to the victims and the state that suffered unlawful actions.

International criminal law called in the legal terminology *"delicta iuris gentium"* was born in 1945, after World War II, when the Nazi war criminals had to be punished. Earlier it belonged to the issues of state sovereignty to regulate an act as a crime.

The following crimes have been regulated by the international law as crimes: *genocide, crimes against the humanity, war crimes* and *crimes related to aggression.* Crimes against humanity can be murder, torture, slavery, deportation, imprisonment, sexual harassment, persecution of groups, etc. war crimes are regulated by the Geneva Convention, such as attacking civilians, killing wounded, or combatants when they surrender, humiliating prisoners of war, taking hostages, execution without judicial guarantees, etc.

The relevance of it is that these acts shall be considered as crimes, even if the domestic laws of the states do not regulate them so, and people regardless of being combatants of a regular army, insurgents, terrorists or civilians will be taken to trial before the International Criminal Court. The *International Criminal Court* was established in 2002 in The Hague, and at the moment 122 states are its members. The International Criminal Court *has the competency to open a criminal procedure against a person who committed international crimes,* if the person is the citizen of a signatory state, or, the crime was committed in the area of a signatory state. In other cases, especially if the host state is unwilling or not capable to investigate the case, the Security Council has the right to decide if the case will be sent before the International Criminal Court. At the moment there are 12 persons (from Uganda, Congo, Republic of South Africa, Darfur) who are under criminal procedures initiated by the International Criminal Court. The United Nations has the right to establish *ad hoc international criminal courts,* too. [15] Such courts proceeded first in the criminal cases of Nazis in 1945 in Nurnberg, and later against the criminals of the former Yugoslavia, Rwanda, Sierra Leone, Cambodia and Lebanon.

6. The Law of War (II.) (Ius ad Bellum)

The right of the states to *start a war* against other states was not prohibited by any law until the 20th century. The provisions of the Hague Convention passed by the Conference in 1907 required only the declaration of war before the state attacked the other one. The new legal regulation which shall apply to the "ius ad bellum" was passed after World War II by the *United Nations.*

"*Ius ad bellum*" is the right of states to use force against other states regulated by the UN Charter, but can be applied only in exceptional cases. The Article 2 (4) of the UN Charter *prohibits the member states to threaten or use force* against territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. The Article 2 (1) of the UN Charter declares the *sovereign equality* of the member states, which should be interpreted as the *prohibition of state intervention* in another context. Article 2 (7) of the UN Charter explicitly prohibits the United Nations from intervening in matters which are essentially within domestic jurisdiction. In other words, prohibition of the use of force and prohibition of state intervention is the rule in the UN Charter, which gives priority to the *pacific settlement of disputes* in the maintenance of international peace and security, such as negotiation, mediation, conciliation, arbitration, judicial settlements, etc. in Article 2 (3) of the UN Charter. These principles of the UN Charter are interpreted in the declarations of the General Assembly and the resolutions of the Security Council.

Regarding insurgency and terrorism, we need to know which cases shall be under the provisions of the *UN Charter,* and which ones will be subject to *domestic criminal law enforcement.* It is *the right of the Security Council* to determine the existence of any threat to peace, breach of the peace, or act of aggression, then to make recommendations, or decide what measures shall be taken (Article 38 of the UN Charter) The Security Council, as a first step, tries to apply *measures,* such as interruption of economic relations, means of communications, such as rail, sea, air, postal, telegraphic, radio, etc., and diplomatic relations. (Article 41 of the UN Charter) When these measures seem to be inadequate, the use of *demonstrations, blockade and other operations* by air, sea and land forces is allowed in the case of threat to peace, breach of the peace and aggression. (Article 42 of the UN Charter)

According to Article 42 of the UN Charter, the Security Council has the right to use *military force,* or may authorize a member nation to do so, if the Security Council determines a threat to, or a break of international peace, and aggression, provided the aforementioned conditions are met, and the diplomatic measures and economic sanctions seem to be inefficient to manage the situation. More resolutions of the Security Council during the 1970s interpreted *aggression:* using weapons and armed force, declaring war, invading, occupying or bombing the territory of the state, blockade, sending armed gangs, irregular army or mercenaries, etc. shall be considered aggression.

It is important that *only the Security Council has the right to use*, or authorize the use of *military force,* because the definition of the aggression given by the UN Charter is only in the form of an exemplary list of acts, which can be interpreted by the states involved in the conflict in more ways. Practical reality shows, that the states do not often admit that they have violated any international law, but often accuse the other one of provoking the conflict, and refer to it as a base of their reaction, or consider themselves victims of the aggression, but not the aggressor. Cases have happened when the state thought the political benefit from

attacking another state was more important than to respect international laws. The most pregnant examples of this are the several conflicts between Israel and its neighboring countries.

The resolution passed by the Security Council on the use of military force is based on unanimous voting of the members of the Security Council, which represents a strong support of the member nations on one hand, but can hinder achieving a decision, if the political standpoints of one or more member states are different. The Security Council consists of the strongest states of the Unites Nations, for this reason its resolutions are *not independent from the actual political interests* of its members. Furthermore, it has the exclusive right to interpret the generally formulated "threat to peace and breach of peace" or "international peace and security" legal terminologies. It has been *tangibly* witnessed that the basis of the resolutions of the Security Council display *how political views of its members influence the decisions.*

Article 51 of the UN Charter regulates the right to *self –defense.* When an armed attack has occurred, the nation may use military force in individual self–defense, or to protect the other nation, where the armed attack has occurred, in collective defense. This right to self-defense continues until the Security Council takes measures necessary to maintain peace and security. As opposed to Article 42 of the UN Charter, *there is no need for a resolution* passed by the Security Council in Article 51 of the UN Charter to declare if the member nations have the right to individual or collective self–defense in concrete cases. This is *fairly problematic,* because concrete cases can be interpreted in more ways. Perhaps it is not an exaggeration to state that *the states interpret the provisions of Article 51 of the UN Charter in the manner of their political goals* as it happened when the US and Great Britain attacked Iraq in 2006. It can be limited only by the resolution of the Security Council that declares a state as aggressor, for example Israel, when it used the right of self–defense in response to the terrorist attacks of Hamas. For example, Article 51 of the UN Charter determines the right to self-defense only if the *first armed attack* has occurred. *Anticipatory self–defense* has a wide interpretation in this provision of the UN Charter. It means that using military force to defeat the threat of an armed attack even before the first strike occurs can be justified on the basis of self–defense. The definition of armed attack has not been defined by the UN Charter, because after World War II it originally was modeled on traditional warfare, which was fairly ambiguous. As mentioned earlier, it has become a vague area in the second part of the 20th century.

After the 9/11 terrorist attack, the Security Council passed the *Resolution 1368,* reflecting the terrorist attack that occurred in New York, Washington, D.C. and Pennsylvania on September 11, 2001. The Security Council declared the terrorist attack of 9/11 a *threat to international peace and security,* and expressed that perpetrators, organizers and sponsors of this terrorist attack should urgently be brought to justice. This resolution also declared that those *responsible for aiding, supporting the perpetrators, organizers and sponsors,* will be held accountable. There have been *several interpretations* on the basis of Resolution 1368, which otherwise seems to be a declaration rather than a legal provision.

The first conclusion to be made on the interpretation of Resolution 1368 is that terrorist attacks have been taken *under the force of Article 42 and Article 51.* Based on these articles, the Security Council *authorized the member nations of the UN to use military force,* and at the same time declared the right of the nations to individual and collective self-defense in response to the terrorist attack of 9/11. The Resolution 1368 makes it clear, too, that military force is allowed to be used in the case of terrorist threat, but *does not specify when, where and how much force* may be used. The lack of such an interpretation is also problematic in

concrete cases. Israel for example, has regularly been attacked by Hezbollah and Hamas in the way of suicide bombing, explosions, taking of hostages and missiles. These are armed attacks, and terrorist attacks at the same time perpetrated by those terrorist groups that are strongly sponsored by the state. [16: 3–6] The Israeli state used military force against Gaza and Lebanon as sponsoring states, but it was not always supported by the Security Council. [17: 23–25] The reason expressed by the Security Council was that Israel used prohibited weapons, and *did not keep to the principle of proportionality* in its response, for example civilians casualties. The other side of the truth is that the Palestine combatants used human shields and put the military objectives in hospitals.

One thing seems to be sure on the basis of the Resolution 1368: terrorist attacks shall be under the force of the UN Charter. A further conclusion to be drawn is that not only the individuals and groups taking part in terrorist attacks should be responsible, but the *states, that sponsor the terrorist groups,* as well. The terrorist attack of 9/11 was evidently an international terrorist attack, perpetrated by the terrorist group, al–Qaeda, not the Afghan state. The US attacked the Afghan state, based on the Resolution 1361, which interpreted Article 51 of the UN Charter in the way that Afghanistan was a sponsoring state. President Bush gave Afghanistan an ultimatum to extradite bin Laden otherwise the state will be attacked by the US military forces. It is obvious that the Afghan state was a sponsoring state, even if they would not have rejected the extradition of bin Laden. That is, in the tribal areas of Afghanistan, which were uncontrolled by the state, al–Qaeda had (and still has) terrorist training camps and other terrorist facilities. Interpretation of Resolution 1361 *gave the right in this way to the US to use military force against Afghanistan,* however the terrorist attack of 9/11 was perpetrated by al–Qaeda, not the Afghan state. The military force in the form of *targeted killing* used by the US *against Pakistan or Yemen*, for example, *cannot be justified* on the basis of such interpretation of Resolution 1361. This is because it cannot be proved if these states in fact support terrorist groups in any way, or if so, they really want and are able to control the tribal areas. Regardless, neither of these states was directly involved in any armed attack or did not threaten or violate international peace and security in any way, which would serve as a base for the use of force against them. When the US and Great Britain attacked Iraq, *it was not based on any resolution of the Security Council.* The Security Council passed two resolutions in 1998 and in 2002, in which it declared that Iraq did not cooperate with the International Atomic Energy Agency, and is obligated it to do so. The US and Great Britain justified starting the war with Iraq in 2006 with the *right to self–defense*: they wanted to find the weapons of mass destruction and destroy them, capture the terrorists and assure that those who are in need can receive humanitarian aid. They also referred to the fact that they did not aim to violate its territorial integrity and political independency. This is, however an *extremely wide mode of interpretation* of self–defense, because Article 51 of the UN Charter can be applied only in the case of an *armed attack,* which occurred from the side of Iraq.

Resolution 1361 can be applied in the case, too, when a nation under terrorist attack *requests the assistance* of other nations, and can be considered collective self–defense. The incumbent government, as it happened in Mali, may ask another state to intervene, i.e. the government of Mali asked the French government to help crush the insurgent group in the Northern part of the country.

These examples show *how widely* the right to use armed forces can be interpreted in practical reality, and *can adjust it to the actual political benefit* of the politically strongest states. The

other question is when a state can use force in the case of insurgency, civil war, revolution, or military putsch which occurs *on the boundaries* of the given state. The state obviously has the right to regulate the use force in such cases in the constitution or in domestic acts, but it is questionable in international law, if other states or international organizations can intervene. These armed conflicts can easily lead to *undesirable effects,* such as illegal weapons trade, terrorism, wave of refugees, ethnic cleansing, etc., which threatens international peace and security. *Prohibited intervention* is interpreted by the Security Council as the *intervention in the internal cases of the state,* for example, support of terrorism, insurgency or internal armed conflict in the form of weapon transport, military base, military advisers, etc. It has often happened during the last decades that terrorist groups, for example, al–Qaeda and Hezbollah intervened in the Iraqi war and Syrian civil war, or Russia, too, with weapon transports to the Syrian civil war. As mentioned earlier, prohibited intervention cannot be punished in a direct way by international law, unless it jeopardizes international peace and security based on Article 42 of the UN Charter.

Intervention can be *indirect,* too, such as blockade, embargo, too, which can be lawful actions, in the case of threat of force and use of force. Article 1 of the UN Charter determines as one of the aims of the Unites Nations to respect and promote human rights and fundamental freedom. *Violation of human rights* can also base of a lawful intervention, as mentioned earlier, if it is related to international peace and security. According to international legal practice, only the Security Council has the right to take actions in these cases. One of these actions is *peace enforcement,* which means that the opposing parties of the civil war should be disarmed by using military force. This was the reason why the Security Council decided to use peace enforcement in Bosnia in 1992–1995 and in Congo in 2003, for example. International customary law acknowledges the right of the government facing an internal armed conflict *to conduct military operations against those citizens taking an active part in hostilities against the government,* in addition to law enforcement activities. This is the case when the armed conflict does not have any international character, as was examined earlier in this chapter.

7. Constitutional Rights vs. Efficiency Requirements

Counterinsurgency and counterterrorism require the so called *"comprehensive approach"* both on domestic and international level, which supposes military, intelligence, law enforcement, jurisdiction, and administrative means be applied at the same time. *Efficiency requirements* can be guaranteed only in this way. There are, however, contradictions between efficiency requirements and the *traditional principles* of Western democracy, such as the rule of law, constitutionalism, pluralism, human rights, freedom, openness, tolerance, etc. Western countries try to balance between *individual liberty* and *public safety* in their counterterrorism efforts. It should be noted that for the legislation of the EU only Islamic terrorism has any relevance, because local insurgencies or local terrorist groups do not exist anymore. As a reaction to the terrorist attacks in 2004 in Madrid and in 2005 in London, the European Union began more intensively to take part in counterinsurgency, and elaborated a *new strategy* for it. It is especially important for the legislation of the EU, because it should be in accordance with the basic principles and values of its charters.

Laws on counterterrorism should be based on the requirements identified by the European Union's public policy. These are as follows: quick, coherent, goal–oriented, cost–effective operations, and clear, unambiguous legal regulations. According to the *self–criticism* of the

European Union, the relevant legal regulation is often not capable to follow efficiency requirements of counterinsurgency, which led to inadequate and insufficient operations. There have been two emerging issues in this field: *competence* of international organizations vs. domestic public authorities, and the possible *limitation of constitutional rights*. Regarding the former one, it is problematic to share the competence of intelligence on an international and domestic level, such as collecting and analyzing data, law enforcement, immigration and border management, so that overlapping and the withdrawal of the competence of the member states can be avoided. It is still debated in the EU as to what extent certain constitutional rights, such as right to privacy, ownership, fair jurisdiction, human dignity and freedom, can be limited so that efficiency requirements of counterinsurgency can be achieved.

The EU Counter–terrorism strategy [18] determined four principles of counterterrorism:

- *prevention;*
- *protection;*
- *response;*
- *pursuit.*

Terrorism has interwoven with organized crime. Terrorist groups finance their activities from money laundering, drug trafficking, weapon transport, etc. The network of the terrorist groups has become even more complicated. Freezing bank accounts and property, blacklisting, for example, are important means of criminal procedure. New technology, such as the identification of body, face, eyes, ears, the verification and identification of visa, or checking chemical and biological weapons, bombs, cash, etc., will also be applied in prosecution.

8. Questions of Legitimacy and the Rule of Law in counter-insurgency (COIN)

Counterinsurgency has been thought, after the failures of the military engagements in the Iraqi and Afghan wars, to be a more complex issue, i.e. an *integrated set of military, political, economic and social measures.* It aims to end the armed conflict, and create and maintain stable political, economic and social structures, and resolve the underlying causes of the insurgency. This is called a *"win the population strategy"*.

The "win–the–population" strategy of counterinsurgency aims to gain the *support of the population*, and the incumbent government competes with the insurgent groups to reach this goal. The population will sympathize with the side that can offer better governance, i.e. security, welfare, economic development, rule of law, democratic elections, public safety, human rights, etc. *Legitimacy* forms an integral part of the "win–the–population" strategy. There have been several attempts in military literature to determine the contents of this terminology. The *traditional meaning* of legitimacy in the political sciences is the origin of the political power of the state. According to the Western view, the precondition of legitimacy is democratic elections. The legitimacy in theocratic states is based on religion and it is thought that the source of political power should be god, and the role of the government is to implement its will. Autocratic states are not considered as legitimate ones.

The meaning of legitimacy *in counterinsurgency* has been extended to a system of management means in the given situation of the counterinsurgency campaign. It has two parts: the security operation aims to minimize the armed conflict by killing only the most fanatic leaders, giving amnesty to the insurgents, declaring ceasefire or armistice, etc.

The Iraqi security operation, called "Anbar Awakening" was successful, because the brutal terrorist attacks frightened the Sunni tribes away from al–Qaeda, and they began to support the incumbent government. The Sunni tribes later were integrated into the police, and got amnesty. As a result, the number of the terrorist attacks dramatically decreased. Such a program was not successful in Afghanistan, where only 3% of the Taliban wanted to join the government forces. The militias in Congo, for example, formed part of the state's regular army after the militias had been crushed.

Detention policy of counterinsurgency should help the host nation to develop their jurisdiction so that they can open a legal procedure against the criminals, but not to send them to the courts of other countries. When the host nation does not have sufficient jurisdiction, as was the case in Iraq, or is reluctant to take the criminals to trial, the International Criminal Court should proceed.

It is important during security operations, when a foreign country or international organization implements it, to show that the country is *not occupied by enemies*, but is helping to establish security and basic public services. The other step of the counterinsurgency campaign is the *stability operation.* It aims to establish the *basic institutions of a well operating government*, such as legislation, public administration, jurisdiction, law enforcement, democratic voting system, social welfare system, infrastructure services, open media, etc. The *rule of law* has a great importance during the security and stability operations. The general constitutional interpretation of the rule of law outlines security, predictability and lawfulness. The *military doctrine of the rule of law* in the counterinsurgency campaign covers *concrete legal requirements*, such as accountability to laws, supremacy of law, equality before the law, fairness in applying law, access to law, separation of power, participation of the population in decision making, procedural and legal transparency, state monopoly on the use of force and resolution of disputes, stable law, etc.

The rule of law is also related to the question of *"reciprocity"* or *"examplarism",* which means two options for counterinsurgency to choose: the reaction to the criminal actions of the insurgents will mean reprisals using unlawful engagements, or to respect the rule of law, even if the insurgents do not do so. No doubt that the latter one will succeed in the long term, because of the support of the population. Application of the rule of law is especially important, when the incumbent government establishes *jurisdiction*, because some efficiency requirements can be assured only in this way. If, for example, the criminals of the insurgency will not be taken to court, will be punished in a brutal way, executed without judgment of the court, tortured, humiliated, etc., the stability operation will lose its legitimacy in the eye of the population. *Efficient legislation* can be guaranteed only by the use of the rule of law, because only the rule of law can achieve the principles of democracy, such as participation in the decision–making process, free elections, transparency, integrity, accountability, etc. which are the guarantee to avoid development of dictatorship.

We have to emphasize, however, that the aim of the counterinsurgency campaign is not to establish a *western–type democracy,* but a government that can provide the basic state functions taking into account *local traditions,* as well. For example, most Muslim countries would reject the equality of women and ethnic minorities, as legislation and jurisdiction are often based on Islam. The incumbent government in Afghanistan established a court–system, as a part of state power, but the population did not rely on it, rather it turned to the "jirga", the tribal council that decides in legal disputes, and has a legislative function, as well. During

the move from the "kill and capture" strategy towards the "win–the–population" strategy the incumbent government has to face certain legal problems.

Targeted killing is used against the leaders of the terrorist and insurgent groups in the form of combat drones, air bombings, special operations, intelligence, because otherwise it would be impossible to capture them. They can often successfully hide in the population, e.g. terrorists in the tribal areas of Afghanistan and Pakistan that are not controlled by the state, or in the high hills, e.g. Tora Bora in Afghanistan, or in the desert. Neither law enforcement, nor traditional military engagement will be a sufficient means to capture them.

Targeted killing, however highly sufficient a means with a great political benefit, e.g. liquidating of bin Laden, is still an unlawful action, unless considered a military use of force authorized by the Security Council, or based on self–defense. This is because even if these leaders are not under the force of the law of war and humanitarian treatment, they have human rights that cannot be violated in any way. Targeted killing is against certain human rights, such as the right to life and fair jurisdiction. Furthermore, it occurs fairly frequently that *civilians* are also attacked in targeted killing. This has been debated even in military doctrines as to in which situation civilians can be attacked. As mentioned earlier, the European Court on Human Right elaborated its interpretation for such cases, which hardly can be applied in practical reality. According to the American approach, to be a member of the war–fighting apparatus is enough for the military forces to attack them, but the opinion of the Red Cross is that direct causal relationship is needed for the combatants to attack. In most cases of targeted killing it is, however, almost impossible to separate civilians from the terrorists, especially in crowds, bombing, or buildings. It is a custom, for example in Afghanistan that the guests shoot at the weddings in the air, which can be mistaken for an attack. The drone combatants, special operations, and the air bombings cannot target only terrorist persons, as opposed to "traditional" liquidations implemented by the intelligence agencies. It has become a practice of warfare that civilians killed and injured in targeted killings will be compensated by the government of the military forces that is responsible for the targeted killing. [19: 10] Targeted killing is a best example for the *dilemma* of whether to prefer efficiency of the military engagement or respect the laws on war. From a legal point of view, this problem seems to be unresolved. Many lawyers suggest the armies introduce non–lethal weapons, such as directed energy beams, malodorants, calmatives, etc. in these cases. These kinds of weapons can incapacitate persons, while minimizing fatalities and injuries.

Summary

A general conclusion can be drawn based on this study that recent international law on warfare cannot sufficiently be applied in practical reality. The reason is that warfare has changed a lot during the last decades, in other words, traditional symmetric warfare has increasingly been replaced by new forms of asymmetric one, such as terrorism and insurgency. A further problem we have to face is that if terrorism, which is typified in most cases as a clandestine non–state actor with international character, connected occasionally to state authorities or directly supported by the state, should be considered a criminal issue, even if terrorist groups are similar in their methods to warfare. Counterterrorism, that is, often requires military engagements, too, besides law enforcement, so that it should be efficient. International law is fairly contradictory when on the one hand it refers to terrorist groups as subject to the crimi-

nal law of domestic laws – which seems to be increasingly insufficient in concrete cases – but does not admit the right to use the force based on the law on warfare on the other hand, even if use of military force has been required.

There have been important efforts in establishing cooperation among the states in counterterrorism in the field of criminal law, such as prosecution, investigation, trial, or punishment, and administrative law, too, such as cross border management, border checking, immigration, etc. These new forms of counterterrorism, however, can be successful only if terrorist attacks occur in the areas of Western countries. [20] Not insurgency, only terrorism has been typical in these countries. Criminal law regulating warfare has had an increasingly international character, which means on the one hand it is going to be less and less subject to a domestic monopoly. The International Criminal Court and the ad hoc criminal courts have already had a great relevance in this matter. Terrorism and insurgency in Muslim countries pose other problems than in Western countries. Failed states, or those that cannot effectively control some of their areas, have been a hotbed of terrorism and insurgency. Neither of them can be defeated with pure criminal means.

Military engagements by the incumbent government against terrorism and insurgency are normally allowed, because domestic laws entitle the government to do so, but it is quite problematic in international law, when other states and international organizations, such as the UN, NATO or the EU intervene in the states struggling with terrorism and insurgency. The moment when the incumbent government cannot or is unwilling to cope with the problem of terrorism or insurgency, the intervention of another state becomes necessary, is a vague issue. Terrorism vs. insurgency can be differentiated in very difficult ways in the military sciences, and in military practice as well, due to overlapping. Terrorism has greatly interwoven with insurgent groups, or supporting states, and insurgent groups often have a double character: guerilla warfare and terrorist attacks at the same time, furthermore in many cases both of them are related to organized crime. [20]

International law, respecting the principles of national sovereignty and non–intervention, admit the right to use force against other countries only in exceptional cases, i.e. in self–defense or if the Security Council decides so, based on the violation of international peace and security. It is not an exaggeration to state that state–intervention in such situations has been subject to political issues rather than that of international law. This is because the provisions of the latter one can be interpreted in many ways, due to its generally formulated legal norms, and also, the politically dominated character of the Security Council.

A further problem with the international legal regulation on warfare is that it cannot differentiate between terrorism and insurgency due to the lack of any legal definition. Laws, instead, make a distinction on the basis that if the armed conflict has occurred between regular armies, or not, or if it has a war-like character. Terrorism and insurgency in our days rarely operate in this traditional way, but have special features. It is also problematic in international law on warfare that it cannot differentiate between terrorism and insurgency for a lack of sufficient legal definition. Laws, instead, make distinctions on the basis of the armed conflict having occurred between regular armies or not, or having a war-like character. [21]

When special military engagements, such as targeted killing, use special forces, liquidations, intelligence, etc. should be implemented in counterterrorism and counterinsurgency, cannot be decided in concrete cases, as to whether the law on warfare, i.e. Hague Conventions and Geneva Conventions shall be applied or not, it would be especially important to

make clear if these military forces have to respect these laws on warfare, or not, both in their relations with enemies and civilians.

With the lack of sufficient regulations of international laws, human rights will be applied in these military engagements. Human rights, however, are not the best legal institutions to make sufficient legal decisions in military issues. For example, it cannot be answered clearly, based on human rights, when civilians and civilian objects can be attacked by military forces, which is the most emerging issue of counterinsurgency and counterterrorism.

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