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SUMMARY REPORT

Expert Conference:

Understanding the international treaty-making process

April 2022

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EXECUTIVE SUMMARY

Following Dr Mukwege's call for action at the 2021 G7 annual summit, the Mukwege Foundation launched the *Red Line Initiative,* a global campaign to explore the need for an international convention for the elimination of the use of sexual violence in conflict, including as a method of warfare. The *Red Line Initiative* is rooted in the belief that sexual violence in conflict and as a method of warfare represents a violation of our shared humanity that can no longer be accepted as an unfortunate, but unpreventable part of armed conflict.

In March 2022, with the financial support of the United Kingdom's Foreign, Commonwealth and Development Office, the Dr. Denis Mukwege Foundation convened a two-day conference with leading experts that explored different aspects of the international treaty making process, existing treaty frameworks, including their enforcement mechanisms, as well as lessons learned from other past and ongoing treaty making campaign experiences.

The first session addressed the role and mandate of the International Law Commission in the treaty making process and within the broader United Nations system. The experts highlighted the importance of understanding the procedures by which the ILC carries out its work and how the ILC interacts formally with states and informally with civil society. The experts stressed the importance of considering the timing of launching a treaty campaign.. Finally, the experts emphasized the value in taking a creative approach, which could involve exploring developing "softer" instruments and/or working to support and influence other similar ongoing campaigns.

The second session provided an overview of the existing treaty frameworks and their enforcement mechanisms under international humanitarian law, international human rights law, and the Genocide Convention. The experts suggested conducting a risk/benefit analysis regarding how best to address existing legal and enforcement gaps relevant to CRSV. They highlighted states' consistent non-use of most enforcement mechanism procedures currently available and offered insights to explain this behavior. Similar to the first session, the experts suggested that careful attention be paid to the prevailing political climate in order to avoid backsliding on the existing high standards relevant to states CRSV obligations.. Finally, the experts encouraged the *Red Line Initiative* to engage with CRSV related initiatives and efforts being undertaken by other UN bodies outside the treaty bodies..

During the third session, lead campaigners from the successful Landmines Ban treaty and the ongoing Crimes Against Humanity convention discussed their experiences with the treaty making process, the current treaty development climate writ large, and lessons learned from their experiences that may benefit the *Red Line Initiative.*

The Mukwege Foundation wishes to express its sincere gratitude to the United Kingdom's Foreign, Commonwealth and Development Office and to all of the eminent experts who kindly shared their extensive expertise and insights. All expert panelists participated in their personal capacity and participation does not imply endorsement of the *Red Line Initiative*. The bios of the expert panellists can be found at the end of this report. Please visit the following link to view the recordings of the presentations and discussions in their entirety: bit.ly/treatymakingprocess.

INTRODUCTION

Following Dr Mukwege's call for action at the 2021 G7 annual summit, the Mukwege Foundation launched the *Red Line Initiative,* a global campaign to explore the need for an international convention for the elimination of the use of sexual violence in conflict (CRSV), including as a method of warfare. The *Red Line Initiative* is rooted in the belief that sexual violence in conflict and as a method of warfare represents a violation of our shared humanity that can no longer be accepted as an unfortunate, but unpreventable part of armed conflict. Rather, it must be prioritized as a wholly unacceptable tactic that has no place in modern warfare.

The importance of addressing this issue cannot be overstated. CRSV destroys family ties, communities, and social norms, and inflicts harm over generations. It robs victims and their families of their life potential and disrupts schooling and livelihoods. Sexual violence used as a method of warfare not only causes additional distinct and destructive harms at all levels of society, but is also a method to carry out other international crimes and a recognised early warning sign of the risk that those crimes may occur, notably with respect to forcible displacement and genocide. Yet, despite its devastating impact, early warning and prevention efforts remain fragmented, states are not held responsible for violations, and survivors are too often left without assistance or reparation in the aftermath. The *Red Line Initiative* seeks to address these systemic deficiencies through an international instrument that draws a red line against the use of CRSV, including as a method of warfare, and establishes a clear framework for strong and timely action.

Over the past 8 months, the *Red Line initiative* team undertook research and consultations with leading legal experts. From that process, developing an in-depth understanding of the international treaty making process, as well as an overview of the existing international legal frameworks and enforcement mechanisms potentially applicable to CRSV, were identified as key priorities for the year 2022.

In March 2022, with the financial support of the United Kingdom's Foreign Commonwealth and Development Office (FCDO), the Mukwege Foundation convened a two-day conference with leading experts that explored different aspects of the international treaty making process, as well as the existing treaty frameworks and their enforcement mechanisms.

This report sets out the key insights and recommendations that emerged from the expert conference.

THE EXPERT CONFERENCE

The conference covered three primary topics, namely: 1) an overview of the mandate and role of the International Law Commission (ILC or Commission) in the United Nations (UN) system; 2) an overview of the existing treaty frameworks and their enforcement mechanisms under international humanitarian law, international human rights law, and the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)[1]; and 3) lessons learned from recent and ongoing campaigns to establish new international treaties. A panel discussion was organized for each topic. Panellists and moderators were selected based on their relevant expertise and experience.

The Mukwege Foundation wishes to express its sincere gratitude to the FCDO and all the experts who graciously shared their expertise and experiences. All expert panellists participated

in their personal capacity and participation does not imply endorsement of the *Red Line Initiative*. The bios of the expert panellists can be found at the end of this report.

In the following sections, the main issues raised during the panel discussions are presented, with each section ending with the panellists' key recommendations and insights for the *Red Line Initiative*. This report summarizes the conference and as such is not able to capture all the important points raised by the expert panellists. Readers are encouraged to visit the following link to view the recordings of the presentations and discussions in their entirety: bit.ly/treatymakingprocess.

A. The mandate and role of the International Law Commission

The first expert panel addressed: 1) the history, role, and mandate of the ILC in the UN treaty making process; 2) the ILC's practice of work; 3) how the ILC interacts with states, UN bodies, and civil society; and 4) recommendations for the *Red Line Initiative* team to consider.

1. Overview of the ILC's mandate and role

The work of the ILC is rooted in article 13 (1) of the UN Charter, which tasks the UN General Assembly (UNGA) to "initiate studies and make recommendations" for the purposes of "encouraging the progressive development of international law and its codification.[2] In order to effectively discharge this obligation, the UNGA adopted a resolution establishing an international law commission, to which it annexed the statute of the commission (ILC Statute).[3]

The ILC is currently comprised of 34[4] members who, while serving in their personal capacity, are nominated by individual governments and elected by the UNGA.[5] ILC members work *pro* bono and must possess "recognized competence in international law."[6] The UNGA is to ensure that the commission as a whole is representative of the world's "main forms of civilization" and "principal legal systems".[7]

The ILC has a two-pronged mandate to promote[8] the "progressive development" and the "codification" of international law.[9] As originally conceived, these two concepts were distinct in substance and procedure.[10] For example, in the ILC Statute, "progressive development" is defined as "the preparation of draft conventions on subjects which *have not yet been regulated* by international law or in regard to which the law has *not yet been sufficiently developed* in the practice of States."; whereas "codification" concerns "the more precise formulation and systemization of rules of international law in fields where *there has already been extensive State practice, precedent and doctrine*." [Emphasis added].[11]

In practice, however, the ILC found that it was difficult to maintain a clear distinction between these two prongs. As explained by expert Jalloh: "The practice confirmed that the more precise formulation and systemization of an existing customary rule could easily lead to the conclusion that another new and complementary rule should be suggested for consideration by states." The ILC therefore adopted a "composite" view, as far back as the early 1950s,, whereby it draws freely on both elements of progressive development and codification in its work, guided only by the specific needs and context of the topic under consideration.[12] That composite approach has generally worked well, and for the most part, is accepted by states to the extent that the outcomes of the Commission's work have been taken forward.

Working with its supervisory body, the UNGA 6th committee, the ILC has produced important draft articles and instruments that have guided state regulation across a number of fields in

international law, including the law of the sea, the law of treaties, international criminal law, and the law of state responsibility. Draft articles initially developed by the ILC have served as the basis for 23 multilateral instruments.[13]

1. Understanding the ILC's practice of work

Under the ILC Statute, the Commission has a formal relationship with other UN bodies, reflecting its place within the broader UN system. This is also reflected in how the ICL receives proposals for its consideration regarding the progressive development and codification of international law. The UNGA, UN member states (individually or jointly), principal UN organs other than the UNGA, specialized UN agencies, and official bodies established by intergovernmental agreement can refer or submit proposals to the ILC.[14] The majority of the ILC's work comes from the proposals it has made to the UNGA, specifically through its 6th committee, which is the primary forum for the consideration of legal questions in the General Assembly.[15]

The ILC can also select topics on its own initiative and has developed a robust procedure for this process. Topics can be proposed by ILC members or by the ILC's Secretariat.[16] This has been the primary source of the Commission's work to date. Topics proposed in the ILC are also sent to States for their feedback before a separate decision is taken deciding if and when to move any new studies forward. Since 1996, the ILC has used three criteria to guide this process, which are that it must be demonstrated that the proposed topic: 1) reflects the needs of states in respect the progressive development of international law and its codification; 2) is sufficiently advanced in terms of state practice to permit progressive development and codification; and 3) is concrete and feasible. In addition, the ILC has agreed not to restrict itself to traditional topics and to consider issues of "pressing concern" to states, such as the environment.

Historically, the Commission typically prepares draft articles, and in some cases, explicitly may indicate that the outcome is intended ultimately for a recommendation to the General Assembly to conclude a treaty in a given area.[17] This was the case in the topic crimes against humanity in 2014. In other cases, the ILC might not indicate its plans in advance, but could at the end of a project make such a recommendation in accordance with the statute of the Commission, guided by the outcome of the work on the topic. When being proposed for use as negotiating basis for a future treaty, draft ILC articles are presented to the UNGA 6th committee, which decides the way forward for the articles.[18] The 6th committee takes decisions "by consensus", which 6th committee members in recent years seem to have interpreted to mean by unanimity. This means that a minority of member states on the committee could block an ILC proposal moving forward. Due to the consensus practice and other reasons, the 6th committee has not taken forward many ILC recommendations to negotiate a convention. Similarly, although it is statutorily allowed to do so, the UNGA has not referred projects for the preparation of articles to the ILC since 1994.

2. The ILC's relationship with civil society

The ILC Statute does not provide for academia or civil society organizations (CSOs) to directly propose topics for progressive development or codification to the Commission. However, this absence does not necessarily mean that this is forbidden, though the topic would then have to be subject to the ILC's independent consideration as to whether to take it forward in its long-term program of work, and thereafter, into its actual program of work.

Even if CSOs cannot formally propose topics to the ILC, the Commission can consult with them (individuals or organizations) in carrying out its work.[19] For example, with regard to the topic of crimes against humanity, a member of the ILC proposed this topic for the ILC to take up on its own initiative in 2014. However, prior to that, a group of international law scholars, convened by the Crimes Against Humanity Initiative at Washington University of St. Louis, had already carried out extensive legal and advocacy work on the need for such a convention, which seemed to have been taken into account by the ILC in deciding to add the topic to its program of work. CSOs can also be influential in clarifying issues once the Commission has taken on a topic and is developing draft articles. For example, Amnesty International and other CSOs produced reports and analyses of the ILC's draft articles for crimes against humanity. These positions were cited by ILC members as the draft articles were considered and may well have informed the positions of some states in their comments in the General Assembly.

3. Key recommendations and insights for the Red Line Initiative

During the panel discussion, and in their personal capacities, experts Jalloh and Radhakrishnan provided important insights and recommendations for the *Red Line Initiative* team to take into account.

First, the experts highlighted the need to understand the length of time that the UN treaty making process can take, including not just the deliberative process of the ILC, but also with respect to the 6th committee. They also raised the inter-related issue of being aware of the other topics within the ILC's program of work and the stage of development at which these topics are. For example, the experts discussed the potential for confusion by states when there are multiple topics addressing similar or overlapping areas of law being put forward at the same time.

Second, the experts recalled that the substance of any international instrument is ultimately up to states. In this respect, they emphasized the importance of being aware of the prevailing political climate and stressed the importance of timing of any potential advocacy campaign to when states' political commitment is most assured. Such climates can impact both the process and substance, taking into account seemingly increasing hesitancy by states to adopt binding multilateral treaties.

Third, they encouraged the *Red Line Initiative* team to be creative in how it considers addressing the enduring problem of CRSV and its use as a method of warfare. They suggested that consideration be given to the possibility of working towards "softer" legal instruments, that may not initially be binding, and to carefully consider whether some of the *Red Line Initiative*'s aims could be accomplished through supporting and influencing other ongoing campaigns or issues that address the same themes. In this regard, it might be noted that the ILC's draft articles on the prevention and punishment of crimes against humanity completed in 2019 are formally under consideration by the General Assembly. The Mukwege Foundation's support for that initiative is one way to build on prior work to address CRSV.

Finally, the view was also expressed that the *Red Line Initiative* should continue to ensure that its campaign is global in nature. In the multilateral context, it might not be viewed favorably if an initiative is perceived as coming primarily from one region of the world. The need for inclusivity and transparency was emphasized as any perceived absence of such could prove to be challenging to the success of any campaign. In this regard, they strongly encouraged the continuation of a collaborative approach with globally representative consultations with other organizations, states, and civil society actors.

B. Overview of the existing treaty frameworks

The second expert panel addressed: 1) the international treaties that are applicable in international humanitarian law (IHL), international human rights law (IHRL), and with respect to the crime of genocide 2) the enforcement mechanisms of these treaties, including their weaknesses and prevalence of use by states; and 3) recommendations for the *Red Line Initiative* team to consider. For the first topic, the experts addressed how these treaties do or do not address CRSV specifically, as well as how CRSV has nonetheless been addressed through different enforcement mechanisms, such as by the expert treaty bodies. The discussion was limited to treaties with global reach and did not focus on regional instruments, with the exception of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which, while a European treaty, is open to global ratification.

1. Existing treaty frameworks and their enforcement mechanisms

a) International Humanitarian Law

The rules governing IHL have been developed by states through the adoption of international treaties and the formation of customary international law, which is where there is widespread, representative state practice that is accepted by states as being required by law.[20] Modern-day IHL first came into being with the adoption of the original Geneva Convention in 1864. According to the International Committee for the Red Cross, since then "[i]t has evolved in stages, to meet the ever-growing need for humanitarian aid arising from advances in weapons technology and changes in the nature of armed conflict."[21] Following the second world war, IHL was further codified in the four Geneva Conventions of 1949[22] and its two Additional Protocols,[23] various conventions and protocols dealing with specific types of weapons used in warfare, and conventions aimed at ensuring respect for certain rights, such as children and cultural property, during armed conflict.[24] With regard to international criminal law, article 8 of the Rome Statute provides that the term 'war crimes', is to be interpreted within the framework of international humanitarian law,[25] though there are differences in wording and content between the Statute's definitions and the obligations set out in the relevant IHL instruments.[26]

With respect to CRSV, the Geneva Conventions identifies "honour" as the relevant protected interest, which one expert referred to as "an archaic formulation", but they do refer specifically to rape and "any form of indecent assault",[27] as well stipulating that "women shall be treated with all regard due to their sex", which includes an obligation to prevent sexual violence.[28] Common article 3 to the Conventions prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment" and "violence to life and person", which also encompasses CRSV. Expert Pillai highlighted that:

> "Despite numerous instances of wartime rape and sexual violence, the Geneva Conventions of 1949 did not include rape as a grave breach explicitly**.** However, in 1992 the ICRC clarified that grave breaches, such as in Article 147 of the Fourth Geneva Convention, relating to "wilfully causing great suffering or serious injury to body or health", torture or inhumane treatment, would encompass rape and any attacks on the dignity of a woman. This is important as grave breaches are obligatory on states to criminalize, upon ratification of the Geneva Conventions."

Additional Protocol I, which applies to international armed conflicts and is a part of customary international law and thus binding on all states, prohibits "outrages upon personal dignity, in

particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault",[29] as well as "rape, forced prostitution and any other form of assault".[30]

Article 4 (2) (e) of Additional Protocol II, which is applicable to non-international armed conflicts (NIACs), improves upon the language of Common article 3 by prohibiting "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault". However, the customary international law status of Additional Protocol II is contested and not all states are parties. In this regard, expert Pillai observed that "this is particularly problematic due to the high number of NIACs and the prevalence of widescale sexual violence in these conflicts."

With respect to IHL enforcement, article 90 of Additional Protocol I establishes the International Humanitarian Fact-Finding Commission (IHFFC). The IHFFC's mandate includes "enquir[ing] into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violations [thereof]". The IHFFC has 15 independent commissioners, who must be of "high moral standing" and impartial, and who serve in their personal capacity. Recourse to the IHFFC is not automatic for state parties to the Protocol. Contracting parties must separately recognize the IHFFC's competence (either comprehensively or on an *ad hoc* basis for specific disputes) and all "concerned parties" must consent for an investigation to take place. Only 22 states have recognized the competence of the IHFFC and the mechanism has only been used once since its creation.[31] While the Geneva Conventions do not provide for a dispute to be referred to the International Court of Justice (ICJ), other multilateral instruments that include provisions related to international humanitarian law have given the ICJ the opportunity to address some of the Conventions' obligations.[32]

In light of the difficulties with respect to the IHFFC, enforcement of IHL has mainly occurred through individual criminal accountability, either domestically or at the international level. While important advances in prosecuting CRSV crimes have taken place, a number of challenges remain in terms of ensuring that CRSV crimes are not considered only as auxiliary to other international crimes, as well as difficulties related to the collection and preservation of evidence, and the protection of witnesses.

b) International Human Rights Law: Expert Treaty Bodies

1. IHRL obligations relevant to CRSV

IHRL is applicable during times of peace and armed conflict. It therefore applies in armed conflict alongside IHL.

While perhaps surprising, there is no explicit provision on sexual and gender-based violence (SGBV), which CRSV is a form of, in the text of most IHRL treaties, including the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW).[33] However, the expert treaty bodies have issued authoritative interpretations on the binding international law in the form of general comments or general recommendations that make it clear that SGBV is prohibited.

For example, CEDAW General Recommendation 19, issued in 1992, recognizes SGBV as a form of discrimination, which is specifically prohibited in the Convention. The prohibition applies to state officials and states can also be responsible for private acts if they fail to act with due diligence to prevent, investigate and punish acts of violence, or to provide compensation.

Other treaty bodies, such as the Human Rights Committee and the Committee Against Torture, have also recognized SGBV as a form of torture or cruel, inhuman or degrading treatment.

In addition to clarifying the prohibition on SGBV, these treaty bodies have also issued recommendations and comments on the actions that states must take to meet their treaty obligations. For example, states must carry out a number of actions to prevent SGBV and are obliged to provide remedies to survivors. SGBV must be criminalized in domestic legislation, and states must ensure adequate access to justice and reparations to survivors and affected communities. The CEDAW committee has set out a number of recommendations on how sexual violence should be characterized and defined in criminal law, and what is required to ensure criminal justice processes are gender-sensitive, including access to information and to legal assistance.

With respect to CRSV, expert Aarons highlighted the substantial developments in IHRL CRSV related standards, due in large part to the work of the CEDAW committee. She pointed to CEDAW's General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations,[34] which she summarized as:

> "In terms of prohibition, it includes […] a specific recognition that rape is used as a weapon of war. In terms of prevention, it calls on States to include gender-related indicators in early warning systems to stop conflict, and for States to collect data on SGBV in conflict. In terms of pathways to redress, the [General Recommendation] also sets out a number of recommendations for transitional justice mechanisms to better address gendered violations and abuses, including CRSV. The [General Recommendation] calls for the reparations to be transformative – that is to go beyond merely returning the survivor to the situation they were in before the violation, but to also redress underlying inequalities. The [General Recommendation] includes a whole range of other recommendations, for example clearly setting out women's rights to sexual and reproductive health in conflict contexts, including emergency contraception and safe abortion services."

General Recommendation 30 describes sexual violence as "as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group", which comes from UN Security Council resolution 1820.[35]

2. Overview of the treaty bodies' monitoring mechanisms

In addition to issuing general recommendations and comments, IHRL treaty bodies also carry out other monitoring functions, such as: 1) country reviews; 2) individual complaints; and confidential investigations into grave or systematic violations. As the next section discusses the inter-state dispute mechanisms relevant to IHRL, this is not addressed herein.

Country reviews are periodic public reviews by the relevant committee[36] of reports on implementation of the treaty that are submitted by the state party. While CRSV is often raised by the committees, particularly in longstanding conflicts, expert Aarons noted that, because the reviews are conducted pursuant to a calendar schedule, this procedure is not well suited to respond quickly to incidents of CRSV.

Under the confidential inquiry procedure, a committee can do an in-country visit, meet with national stakeholders and survivors, and prepare detailed findings on key issues of concern that they identify. However, country visits require agreement by the concerned government and the

findings remain confidential for a period of time, unless the state agrees for them to be made public. According to expert Aarons, confidential inquiries have exposed patterns of systematic SGBV and torture, but none, at least those that are public, have addressed CRSV specifically.

Under the individual communications procedure, individuals may raise alleged violations of their rights under the treaty with the committee, if domestic remedies have failed or are unavailable. While this process may take years, recently both the CAT and CEDAW committees have considered CRSV cases from Bosnia[37] and their decision appear to already be having an impact.

In terms of general effectiveness, expert Aarons pointed out that the treaty bodies are chronically underfunded and many IHRL treaties require that member states separately recognize the competence of the committee to carry out the different procedures discussed above. The majority of states have not recognized the competence of the committee for all or some of the procedures or have registered reservations to them. In addition, the implementation of views and recommendations vary greatly between states.

c) Inter-state dispute mechanisms and ICJ referrals for IHRL and the Genocide Convention

Seven of the core IHRL treaties include inter-state dispute resolution procedures, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),[38] CEDAW,[39] and the Convention for the Elimination of all forms of Racial Discrimination (CERD).[40] These procedures are rarely used. The CERD inter-state communications procedure went unused for the first 49 years after the treaty entered into force. However, more recently, in 2018, three complaints were filed under this procedure.[41] Under these procedures, complaints are first attempted to be resolved by the committee with the parties.. However, as with the other procedures discussed above, for the majority of IHRL treaties, states must affirmatively recognize the competence of the treaty body to conduct inter-state complaints. The majority of states have not done so.[42] Regarding access to the ICJ for disputes under the treaties,[43] many states have reservations to the ICJ referral provisions.

The Genocide Convention has different enforcement mechanisms from IHRL treaties, presumably due to when it was drafted. The Genocide Convention sets forth three main obligations on member states: (1) to prevent genocide, (2) to punish genocide when it occurs, and (3) not to commit genocide. The ICJ has held that the obligations of the Genocide Convention are obligations *erga omnes partes*, meaning that each state owes these obligations to all of the other states party to the treaty.[44] CRSV is often a feature of genocides and can be an indicator of genocidal intent. CRSV can fall within articles II (b) (Causing serious bodily or mental harm to members of the group) and II (d) (Imposing measures intended to prevent births within the group) of the Convention. Because acts of CRSV can fall within these enumerated acts in the Convention, if they are committed with genocidal intent, they can constitute acts of genocide.

Unlike the IHRL treaties, the Genocide Convention does not have a treaty body that monitors compliance with the Convention or that regularly interacts with member states. Article IX of the Convention grants jurisdiction to the ICJ with respect to disputes between member states regarding the Convention's interpretation, application, or fulfilment. While considered controversial due to the *erga omnes* status of the Convention's obligations, some states have a reservation to article IX. In this situation, there is no other formal procedure to resolve disputes related to the Convention.

2. *Key recommendations and insights for the Red Line Initiative*

During the panel discussion, the experts provided important insights and recommendations.

First, regarding why states rarely engage with the inter-state dispute resolutions mechanisms in IHL or IHRL, expert Pillai noted that the lack of use of the IHFFC was due to a lack of political will and particular sensitivity felt by some states around potentially legitimizing a conflict or armed actors in NIAC situations. Expert Suleman observed that states view these mechanisms as only one tool in their toolkits to address situations of concern. He explained that states consider a variety of factors in terms of how they can influence another state, including the options of sanctions and diplomatic engagement, and many consider the legally-oriented mechanisms to not be particularly effective.

Expert Aarons advised that the *Red Line Initiative* should approach the issue of how best to strengthen response and prevention in addressing CRSV by conducting a risk-benefit analysis. In this respect, she noted that, while IHRL sets out comprehensive and holistic state obligations, these are often to be found in the treaty bodies' general comments and recommendations and many states are unaware of them. Thus, there could be a benefit in extracting this strong case law from its various sources and consolidating it in one higher profile instrument, such as a convention. A risk to this approach, however, would be that this could lead to states undermining the binding nature of the treaty bodies' work. Another potential risk, similar to that expressed in the first panel, relates to the current political climate and the concern that states may backslide on the high standards established by the treaty bodies.

Expert Aarons pointed to the Istanbul Convention as an example of this concern, noting that states' efforts to lower already existing standards almost led to a number of CSOs withdrawing support from the campaign. Ultimately, however, the standards were retained. It is strongly recommended for the *Red Line Initiative* team to further engage with expert Aarons and others to understand how campaigners were able to successfully mitigate this risk and prevent the substance of the convention's provisions from being watered down.

The experts highlighted the systemic weaknesses inherent in international processes. Given the need to ensure state consent and the frequency of non-recognition and reservations being used for enforcement provisions, they advised that equal attention should be paid to domestic implementation and enforcement. Similarly, expert Pillai encouraged the *Red Line Initiative* to continue to engage with other UN bodies, such as the UN Security Council, the Secretary-General's Special Representative on CRSV, and the Special Procedures. These entities all have important initiatives underway relevant to preventing and responding to CRSV, including its use as a method of warfare. Finally, expert Pillai pointed out that, particularly for IHL, other actors such as the ICRC play an important role in ensuring that states fully respect their obligations under the Geneva Conventions.

C. Lessons learned from other treaty making campaign experiences

During the final session, panellists discussed their treaty making experiences with The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997 (Landmines Ban Treaty) and the current draft Crimes Against Humanity convention (Draft CAH Convention).

1. Background

The impetus for the Draft CAH Convention was the ICJ's judgment in the *Bosnia v. Serbia* case. Legal scholars noted that, despite numerous crimes against humanity being committed during the conflict, state responsibility could only be established in relation to the crime of genocide. This led a group of scholars to take up the cause of completing the international system establishing state and individual criminal responsibility for international crimes. State and individual criminal responsibility for war crimes is set out in the Geneva Conventions and its Additional Protocols and genocide is regulated by the Genocide Convention. Crimes against humanity are the only category of international crimes for which neither state responsibility nor individual criminal responsibility is codified in an international instrument. This campaign was thus born out of identifying a clear gap in the international legal framework.

According to expert Sadat, who chairs and directs the Crimes Against Humanity Initiative that created and launched the Draft CAH Convention campaign, they commissioned legal analyses and solicited analyses from identified experts, which were then discussed in a series of conferences and consultations that included a global representation of stakeholders from civil society and academia to government officials. The campaign also prepared a draft convention, which was also subject to broad consultations. Consultations were organized regionally in order to ensure global participation and key documents were translated into all 6 working languages of the UN, as well as German and Portuguese. The campaign engaged states beginning with those who are states parties to the ICC, as well as some non-States parties, given that its definitions for crimes against humanity were the basis for the Draft CAH Convention. However, However, there was some tension during the period emanating from the contentious relationship between some African states and the ICC, as well as concerns expressed by some states that the Draft Convention might impact the ICC's ratifications efforts if states felt that they could choose between the two. These complications required the Crimes Against Humanity Initiative to work closely with ICC stakeholders to ensure that the two were not considered to be in competition, but were complementary and working towards the same overall goal.

During one of the conferences held in Washington, DC, one of the attendees, Prof. Sean Murphy, became a strong supporter of the Convention. Following his election to the ILC, he successfully championed adding the topic to the ILC's plan of work. The campaign then engaged with the ILC as it took over the task of preparing draft articles on crimes against humanity. In 2019, the ILC submitted the draft articles (on second reading) to the 6th committee. However, due to the committee's consensus approach, the Draft CAH Convention has to date not been moved forward to the UNGA or to treaty negotiations, although Austria has agreed to host a Diplomatic Conference.

The Landmines Ban Treaty was conceived by 6 non-governmental organizations (NGOs) whose original goal was to ban the production, sale, and use of landmines. The International Campaign to Ban Landmines (ICBL) began by focusing on the devastating humanitarian, health and infrastructure problems caused by landmines, with an important report regarding the situation in Cambodia serving as a basis for the initial call for a ban and one of their first advocacy tools. Initially, the campaign was not focused on creating a new treaty as a way of addressing the gap relative to prohibiting the use of antipersonnel landmines in international laws and arms control processes. However, when the Campaign realized how slow and cumbersome the Conference on Disarmament process was, as well as the likelihood that this avenue would not result in the full ban sought, the campaign evolved into a treaty campaign. The Landmines campaign was organized into subcommittees with each developing advocacy

campaigning strategies centered around specific topics, such as legal, media, humanitarian issues, and survivors. One unusual aspect of the Landmines Ban treaty is its humanitarian assistance provisions, which require states to assist in demining activities, provide humanitarian aid, including support to landmine survivors, and technical capacity support to mine-affected countries. This aspect was important to galvanizing global support.

The Landmines Ban campaign worked in parallel with states and also encouraged governments to unilaterally adopt a landmines ban, which several states did. In terms of influencing states, the issue of landmines was structured with western states being the primary producers and exporters, where states from the global south were the primary victims of these weapons and had to manage the devastating health and environmental consequences caused by landmines. According to expert Sirkin, the campaign also developed a strategy of "shaming the exporters", which included organizing events with people from mine-affected communities. The goal was to make it politically painful for western states to not support the ban.

The campaign was championed by states from different parts of the world and, especially middle-sized nations, and at the campaign's conclusion, the number of NGOs associated with the campaign had grown from the original group of 6 to 1,500. The Landmines Ban treaty which today has 164 states parties was negotiated and concluded fully outside the UN system, led by Canada which hosted a treaty conference in Ottawa in 1997 in a period of only 2 years, with the campaign itself having been launched a mere 5 years earlier.

2. Key recommendations and insights for the Red Line Initiative

During the discussion, experts Sadat and Sirkin provided a number of important recommendations based on the lessons that they have learned during their respective treaty making experiences, namely:

- Galvanize as a broad a constituency as possible
- Ensure that all campaigners (staff and supporters) receive clear messaging and understand the key legal and policy arguments
- External messaging should focus on highlighting the gap being addressed and the need (humanitarian, human rights, environmental, infrastructure, etc.) to address the gap
- Messaging to states should seek to convince them that support for the campaign is in their long-term interest
- Nurture government champions and be willing to share and cede the spotlight to them strategically as the campaign develops
- Ensure that members of the campaign are recognized experts on all substantive aspects of the proposed instrument ("Become so expert that you have to be in the room")
- Look beyond the provisions of older treaties and focus on addressing CRSV holistically, meaning not only state responsibility to protect, not commit and punish, but also humanitarian aid and reparations
- Develop specific messaging around preventing provisions from being watered down by states
- Think about beginning at the regional level before going global (ex. The Convention on Enforced Disappearances began as a regional treaty)
- Constantly re-strategize based on political realities
- Ensure that the *Red Line Initiative* is viewed as complementary to other efforts going on and attempt to coordinate efforts so that each supports the other

Finally, with regard to the current treaty making climate writ large, the experts acknowledged that the current environment is difficult. Some of this difficulty stems from a longer-term

pullback of support for the development of international law than existed in the 1990s. More recently, the COVID pandemic and Russia's war on Ukraine mean that states will have a number of urgent competing priorities. These challenges, however, can be overcome by developing a careful and strategic advocacy strategy for the *Red Line Initiative* campaign.

CONCLUDING REMARKS

Over the course of the two day conference, the experts shared their knowledge and expertise on a range of topics. From their interventions, the Mukwege Foundation has been able to deepen its own substantive knowledge regarding the UN treaty making process, particularly with regard to the role of the International Law Commission, and the current international legal frameworks that regulate state obligations with respect to CRSV. In addition, important insights and recommendations were shared by all of the experts, in particular the experiences and lessons learned from the International Campaign to Ban Landmines and the Draft CAH Convention campaign. The Mukwege Foundation is confident that all of these important aspects shared by the experts throughout the conference will serve as important building blocks for the successful strategic and conceptual development of the Mukwege's Foundation *Red Line Initiative*.

EXPERT PANELLIST BIOS

Panel 1: The role and mandate of the International Law Commission in the United Nations system

Dr. Charles Jalloh

Dr. Charles C. Jalloh is a Professor of Criminal and International Law at Florida International University (FIU), founding editor of the *African Journal of Legal Studies* and the *African Journal of International Criminal Justice.* He has twice been elected by the UN General Assembly as a member of the International Law Commission (ILC), where he has held leadership positions as Chair of the Drafting Committee (70th session) and General Rapporteur (71st session) as well as lectured in the ILC's International Law Seminar. He has also successfully proposed the addition of two topics to the ILC's long-term program of work in 2018 and in 2021.

A prolific scholar, Professor Jalloh has published widely in international law including 13 (co)authored and (co)edited books and over 70 articles, book chapters and essays in top peer-reviewed and other scholarly journals and academic presses such as Cambridge and Oxford Presses. He has received peer awards for his scholarly contributions, for example, the FIU Senate Faculty Award for Excellence in Research, the FIU Real Triumphs Faculty Research Award, and the Fulbright Distinguished Chair in Public International Law at Lund University, Sweden.

Called to the Bar in Ontario, Canada in 2004, Dr. Jalloh has practiced law at both the domestic and international levels. He has also advised governments on issues of international law and has twice appeared as counsel representing the African Union Commission before the International Criminal Court. He has served on many independent expert groups, including most recently on the Independent Expert Panel for the Legal Definition of Ecocide and as member and as Chair of the Panel of Experts on the Election of the ICC Prosecutor established by the ICC Assembly of States Parties in 2019-2020.

His education includes a B.A. from the University of Guelph and JD and B.C.L. degrees from McGill University, Canada, a Master's in International Human Rights Law, with distinction, from Oxford University and a Ph.D. in International Law from the University of Amsterdam.

Akila Radhakrishnan

Akila Radhakrishnan is the President of the Global Justice Center (GJC), where she leads its work to achieve gender equality and human rights. In her time at GJC, Akila has led the development of groundbreaking legal work on both abortion access in conflict and the role that gender plays in genocide.

Akila is a globally-recognized voice on issues of reproductive rights, gender-based violence, and justice and accountability. Her unique expertise as a feminist international lawyer is sought by policymakers, academics, media, and grassroots actors around the world. She has briefed the United Nations Security Council and the United Kingdom and European Parliaments, and regularly advises governments and multilateral institutions on issues of gender equality and human rights. Akila's expert analysis can also be seen across popular media, including in The New York Times, The Washington Post, BBC, The Atlantic, Foreign Policy, CNN, and more.

Prior to the Global Justice Center, she worked at the International Criminal Tribunal for the Former Yugoslavia, DPK Consulting, and Drinker, Biddle & Reath, LLP. Akila received her J.D. with a concentration in international law from the University of California, Hastings and holds a B.A. in Political Science and Art History from the University of California, Davis. She is a term member of the Council on Foreign Relations, serves on the Board of Directors of Reprieve US, is a member of the Oxford Group of Practitioners on Fact-Finding and Accountability, and an expert on the International Bar Association Human Rights Law Committee.

Panel 2: Overview of the existing treaty frameworks and their enforcement mechanisms

Christen Broecker (moderator)

Christen Broecker is Deputy Director of the Jacob Blaustein Institute for the Advancement of Human Rights (JBI), based in New York.

JBI focuses on strengthening the effectiveness of United Nations human rights and genocide prevention mechanisms, particularly the human rights treaty bodies and special procedures, through research and advocacy. Broecker's publications include *The United Nations High Commissioner for Human Rights: Conscience for the World* (editor, with Felice Gaer), and "The Outcome of the General Assembly's Treaty Body Strengthening Process," (with Michael O'Flaherty).

Dr. Priya Pillai

Dr. Pillai is an international lawyer, with two decades of expertise in the areas of international justice, international human rights, transitional justice, peace and conflict, and humanitarian issues.

Priya has worked in national and international institutions, including at the United Nations International Criminal Tribunal for the Former Yugoslavia (ICTY) relating to trials in the aftermath of the conflict in the Balkans, and on various humanitarian issues globally while at the International Federation of Red Cross and Red Crescent Societies (IFRC) headquarters in Geneva. She has been involved in different aspects of peace and transitional justice initiatives, in South and South-East Asia. She is a contributing editor at the international law blog *Opinio Juris*, and is on the editorial board of the Indian Society of International Law Yearbook of International Humanitarian and Refugee Law. She currently heads the Asia Justice Coalition secretariat, which is focused on justice and accountability in Asia.

Dr. Pillai holds a PhD in international law from the Graduate Institute, Geneva, an LL.M from New York University School of law as a Global Public Service Scholar, and obtained her first law degree from the National Law School of India University, Bangalore.

Lauren Aarons

Lauren Aarons is Head of the Gender Team at the International Secretariat of Amnesty International. She has previously held a number of other roles within the organization, including as a Legal Adviser, and as a Researcher/Adviser on Gender. In these roles, she has documented and/or provided legal analysis addressing conflict related sexual violence in numerous country contexts, including Nigeria, Iraq, Syria, Ukraine, Ethiopia and Afghanistan. Lauren has also worked with the Office of the High Commissioner for Human Rights Syria and Palestine, and the International Rescue Committee in Pakistan.

Lauren holds a bachelor's degree in Archaeology and Anthropology from Cambridge University, an MPhil in International Development from Oxford University, a Graduate Diploma in Law from London College of Law, and an LLM from Columbia Law School.

Lauren can be found on social media at @LaurenAarons1

Arsalan Suleman

Arsalan Suleman is Counsel in Foley Hoag's International Litigation and Arbitration practice in Washington, DC. His practice focuses on representing sovereign States in international disputes, including before the International Court of Justice, the International Tribunal for the Law of the Sea, UN treaty bodies, and U.S. courts.

From 2015-2017, Arsalan served as the Acting U.S. Special Envoy to the Organization of Islamic Cooperation (OIC) at the U.S. Department of State. He also served as Counselor for Multilateral Affairs in the Bureau of Democracy, Human Rights, and Labor from 2011-2015, and as the Deputy Envoy to the OIC from 2010-2015.

Arsalan is also the board chair of America Indivisible, a non-partisan, non-profit coalition effort to address bigotry against members of Muslim communities and those who appear to be Muslim from Black, Arab, Sikh, and South Asian American communities. He is an Advisory Board member of Georgetown University's Institute for the Study of Diplomacy. Arsalan is a graduate of Harvard Law School (J.D. '07), Trinity College Dublin (M.Phil '04), and Georgetown University (B.S.F.S. '03). He clerked for the late Judge Miriam Goldman Cedarbaum (SDNY).

Panel 3: Lessons learned from recent and ongoing campaigns to establish new international treaties

Dr. Matthew Preston (moderator)

Dr Matthew Preston has been a Research Analyst in the Multilateral Research Group at the FCO since 2003. In this role, he has provided research, analysis and policy advice on a wide range of global themes and international organisations, particularly the UN. This has ranged from the UN Security Council and the General Assembly to various parts of the wider the UN system, and has covered issues such as peacekeeping, mediation, human rights, war crimes, sanctions, North-South politics, and beyond. He has also negotiated for the UK at eight sessions of the UN General Assembly, and a similar number of sessions or more of the Human Rights Council and its predecessor the Commission on Human Rights. Before joining the FCO, he gained his doctorate and subsequently lectured in International Politics at Oxford University.

Prof. Leila Sadat

The James Carr Professor of International Criminal Law and longtime Director of the Whitney R. Harris World Law Institute at Washington University School of Law, Leila Sadat serves as Special Adviser on Crimes Against Humanity to the International Court Prosecutor (2012-present) and formerly served as a member of the US Commission on International Religious Freedom (2001-2003). She spent Fall 2021 as a Senior Research Scholar at Yale Law School. Sadat is one of the world's foremost authorities in the fields of public international law, international criminal law, human rights, and foreign affairs, and has published more than 160 books and articles in leading journals, academic presses, and media outlets throughout the world. She was the first woman selected to hold the Alexis de Tocqueville Distinguished Fulbright Chair in Paris, France (2011) and received an Honorary Doctorate from Northwestern University as well as the Arthur Holly Compton Faculty Achievement Award from Washington University in 2017. Sadat directs the Crimes Against Humanity Initiative, a ground-breaking project launched in 2008 to write the world's first global treaty on crimes against humanity. Sadat is the President of the International Law Association (American Branch), a Counsellor of the American Society of International Law, and a member of the American Law Institute and the US Council on Foreign Relations.

Susannah Sirkin

Susannah Sirkin is the former director of policy and a senior advisor at Physicians for Human Rights (PHR), where she worked from 1987 to 2022, helping to launch the organization and lead its many investigations and advocacy initiatives spanning almost four decades. In her most recent capacity, she oversaw PHR's policy engagement, including with the United Nations, domestic and international justice systems, and human rights coalitions.

Her work at PHR over the years included overseeing the documentation of genocide and systematic rape in Darfur, Sudan; coordinating exhumations of mass graves in the former Yugoslavia and Rwanda for the International Criminal Tribunals; and documentation of the use of chemical weapons against Iraqi Kurds in the 1980s. Sirkin played a lead role in PHR's extensive documentation of attacks on health care facilities and personnel in conflict zones, including Syria and Yemen. She initiated PHR's program to train doctors, lawyers, law enforcement officers, and judges to respond to sexual violence in conflict zones, initially working in the Democratic Republic of the Congo, Iraq, and Kenya. Sirkin has authored and edited numerous reports and articles on the medical consequences of human rights violations, physical evidence of human rights abuses, and physician complicity in violations.

Today, Ms. Sirkin serves as a member of the Steering Committee for the Safeguarding Health in Conflict Coalition. She represented PHR from 1992 to 2001 as a member of the Coordination Committee of the International Campaign to Ban Landmines, the co-recipient of the 1997 Nobel Prize for Peace. From 2017 to 2019, Sirkin was a non-resident Senior Fellow at the Carr Center for Human Rights at Harvard's Kennedy School of Government and is a recipient of Tufts University's Jean Meyer Global Citizenship Award.

Sirkin holds a BA in Modern European studies from Mount Holyoke College and an MEd from Boston University.

ENDNOTES

[1] 9 December 1948 (entered into force 12 January 1951), 78 UNTS 277
[2] UN General Assembly, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, *available at*: https://www.refworld.org/docid/3ae6b3930.html.
[3] Resolution 174(II), *Establishment of an International Law Commission*, A/RES/174(II) (21 November 1947), *available at*: undocs.org/en/A/RES/174(II).
[4] The ILC was originally comprised of 15 members. Three times, namely in 1956, 1961, and 1981, the UNGA expanded the ILC's membership size, settling in 1981 on the current number of 34 members. The ILC was founded just before decolonization, which was reflected in its original membership composition. As the decolonization process took place, the UNGA responded to the need to ensure appropriate representation by expanding the Commission.
[5] ILC Statute, art. 3.
[6] ILC Statute, art. 2.
[7] ILC Statute, art. 8. As explored by the experts, there are no formal gender considerations applicable to the ILC member nomination and election process, which has resulted in a significant gender disparity in its composition. Only 10 women have been elected to the ILC in its entire history, in comparison to 238 men. For the ILC's current term (2023-2027), there are 5 women out of the 34 members.
[8] It should be highlighted that, as explained by expert Jalloh, the ILC is tasked not with merely engaging with the progressive development and codification of international law, but also to *promote* them.
[9] ILC Statute, art. 1.
[10] *See e.g.* ILC Statute, arts. 16-23.
[11] ILC Statute, art. 15. It is noted that article 15 states that these definitions are "for convenience" without further explaining the meaning of that status.
[12] In 1996, the ILC recommended that the formal distinction between progressive development and codification of international law could be eliminated in any future review of its Statute. While the UNGA took note of this recommendation, it has not acted upon it and the ILC Statute has not been reopened for amendments since 1981.
[13] *See* for a list of the ILC's draft article, including those that resulted in a multilateral instrument, International Law Commission, "Texts, Instruments, and Final Reports", *available at:* https://legal.un.org/ilc/texts/texts.shtml.
[14] ILC Statute, arts. 16-17.
[15] *See* https://www.un.org/en/ga/sixth/.
[16] ILC Statute, art. 14. The UN Secretary-General provides staff and facilities to the Commission. The Codification Division of the Office of Legal Affairs of the United Nations provides the Secretariat for the Commission. *See* https://legal.un.org/ilc/secretariat.shtml.
[17] The ILC has also produced other types of outcomes such as draft principles, conclusions, guidelines, model rules, etc.
[18] ILC Statute, art. 23.
[19] ILC Statute, art. 26. For example, with regard to the topic of the protection of the atmosphere, the ILC repeatedly consulted with atmospheric scientists.
[20] *See* https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law. In 2005, the ICRC launched the Customary International Law Database, containing the rules of CIL and practices underlying the identified rules. *See* https://ihl-databases.icrc.org/customary-ihl/eng/docindex/home.
[21] ICRC, "What treaties make up international humanitarian law?", 7 August 2017 (ICRC 2017 Article), *available at*: https://blogs.icrc.org/ilot/2017/08/07/treaties-make-international-humanitarian-law/.
[22] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31 (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at SeaAug. 12, 1949, 75 U.N.T.S. 85 (Geneva Convention II); Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75

U.N.T.S. 135 (Geneva Convention III); Geneva Convention Relative to the Protection of Civilian Persons in Times of War, Aug. 12, 1949, 75 U.N.T.S. 287 (Geneva Convention IV).
[23] Protocol Additions to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict, June 8, 1977, 1125 U.N.T.S. 3 (Additional Protocol I); Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609 (Additional Protocol II).
[24] ICRC 2017 Article.
[25] ICC Elements of Crimes, Article 8, Introduction; Rome Statute, art. 8 (2), providing that "war crimes" means "grave breaches of the Geneva Conventions of 1949" (para. (a)) and, in the case of armed conflict not of an international character, "serious violations of article 3 common to the four Geneva Convention" (para. (c)), as well as "other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law" (paras (b) and (e)). The Appeals Chamber has clarified that the reference to "the established framework of international law" means international humanitarian law specifically. *See The Prosecutor v. Bosco Ntaganda,* Judgment on the appeal of Mr Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9", 15 June 2017, ICC-01/04-02/06-1962, para. 53.
[26] *See* Legal Factsheet, ICRC, "War crimes under the Rome Statute of the International Criminal Court and their source in international humanitarian law", 31 October 2012, *available at*: https://www.icrc.org/en/document/war-crimes-under-rome-statute-international-criminal-court-and-their-source-international.
[27] Geneva Convention IV, art. 27 (2).
[28] Geneva Convention III, art. 14 (2).
[29] Article 75 (2) (b).
[30] Article 76 (1).
[31] As explained by expert Pillai, this occurred in 2019 and at the behest of the Organization for Security and Co-operation in Europe (OSCE) in relation to the death of a paramedic who was a part of its monitoring mission in Ukraine. OSCE was able to initiate the investigation because it was deemed to be a "concerned party" to the conflict. The mandate of the investigation was not to establish criminal responsibility or accountability for the incident.
[32] *See* for example Judgment, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, 9 February 2022;
[33] UNGA, United Nations, Treaty Series, vol. 1249, p. 13, 18 December 1979 (entered into force on 3 September 1981).
[34] 1 November 2013, CEDAW/C/GC/30, *available at*: https://www.refworld.org/docid/5268d2064.html.
[35] S/RES/1820, 19 June 2008.
[36] These are treaty bodies, except for the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), which is a new treaty body in the UN system. *See* https://www.ohchr.org/en/treaty-bodies/spt.
[37] Committee Against Torture, Decision adopted by the Committee under article 22 of the Convention, concerning Communication No. 854/2017, C/67/D/854/2017, 22 August 2019; CEDAW, Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No.116/2017; C/76/D/116/2017, 26 August 2020.
[38] Art. 29.
[39] Art. 21.
[40] 4 January 1969, 660 U.N.T.S. 195, arts. 11-13.
[41] *See* United Nations, Office of the High Commissioner for Human Rights, "Committee on the Elimination of Racial Discrimination concludes its ninety-eighth session", 10 May 2019, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24601&LangID=E.
[42] The exception is the CERD, which has an automatic opt-in.
[43] *See* CEDAW, art. 30; CAT, art. 29; CERD, art. 22.
[44] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures,* Order of 23 January 2020, para 41.