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NOTE FROM THE EDITOR

The Center for Documentation of Refugees and Migrants (CDR) is a research organization and the secretariat of “Human Mobility Studies (HMS)”, a series of lectures in the University of Tokyo. Both of these initiatives are sponsored by the Hogakukan Co.Ltd. under a donation initiative. The initiative was started in April 2010 and will continue till March 2015.

The CDR is charged with several tasks relating to the documentation and dissemination of information on forced displacement, and migration issues; these issues are to be considered from a broad range of disciplinary perspectives. Tasks include inviting experts including academic researchers and practitioners, governmental officers, and lawyers to discuss the pressing issues in our field of research. In addition, by the publishing of original research and information and by providing lectures and training sessions for students, the general public, and professionals, CDR is contributing to the building of a more conscious public opinion vis-à-vis having an open or closed society. Moreover, the CDR is developing an online database for knowledge accumulation and dissemination.

The publishing of this journal, the “CDRQ”, is one of these tasks, and the focus of this journal is to record the activities of the CDR. The CDRQ includes records on seminars, workshops and symposia conducted by the CDR and HMS. While some of the articles published here are written by the reporters and panelists of these events, outside contributions are also welcome.

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REMARKS FROM DIRECTOR

It is truly an honour for us to publish an independent quarterly concerning the issues relating to the movement of people. Until now in Japan there have been no journals or magazines focused specifically on the issues of the movement of people, and which utilize a multidisciplinary approach through which to view these issues. Moreover, there have been no journals published in English, on this field in Japan. The CDRQ is the first of its kind in Japan. Although the level of discourse in Japan has developed to a point, the situation and activities in Japan have not been made well known to the rest of the world. The CDRQ will act as a doorway by which to pass through the language barrier and open the discussion in Japan to the rest of the world.

Japanese society is now facing serious decreasing of population and ageing society. While it is recognized that these issues should be tackled from a multidisciplinary perspective, there has been an insufficient platform for networking and discussion until now. Discussion across disciplines and interactive information exchange connecting different fields of professionals is important not only to benefit academia, but also to make research contribute to society. The academic world should be more aware of facilitating engagement to the real world, as long as it tries to handle social issues. In this sense, I hope CDRQ to be one of the attempts to open a new frontier in discourse.

It is challenging to keep a balance between setting up an open platform for discussion and establishing an authoritative academic journal. However, I hope many of us might contribute to advancing the discussion and finding new solutions. Especially I expect those among the younger generations will propose to undertake unconventional styles of research, even though these new approaches may not be immediately complete. I strongly believe that we can improve our approach day by day, as long as we continue to try.

Yasunobu SATO

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ARTICLE

INSIGHTS FROM DIAMOND EXTRACTIVE INDUSTRIES IN SIERRA LEONE COMMUNITY DEVELOPMENT FUND, KIMBERLEY PROCESS AND KIMBERLITE MINING

Kazumi KAWAMOTO*

ABSTRACT

The diamond extractive industry has had great political, economic and social impacts in Sierra Leone. Exploited by the central government, diamonds have never benefited mining communities. This in effect, caused grievances especially among marginalized youth, who became fertile ground for recruitment by rebels. Government officials tacitly engaged in illicit diamond mining and exports by creating "shadow states." Those engagement processes resulted in a war (1991-2002), leading to thousands of deaths, amputees, refugees and internally displaced persons. Hence, the Diamond Area Community Development Fund and the Kimberley Process were established after the war to address its causes. The former aims to alleviate the grievances of the

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mining communities, while the latter is intended to constrain the economy of shadow states.

Kimberlite mining was started in 2004 to facilitate peace building in the country. However, it has raised a new "potential conflict" between the mining company and local communities. At the root of this conflict lies discontent over (1) relocation and resettlement, (2) the forced evacuation during blasting, (3) beneficiation for the community, and (4) participation of the local community. The measures taken by the government - sending a Commission of Inquiry and suspending the mining operation - helped to reconcile both parties, and now a standing village resettlement committee, which consists of all stakeholders, is working to resolve those issues.

I. INTRODUCTION

In Sierra Leone, natural resource management is very important to peace building. One example of this is the role that diamonds played in prolonging the civil war (1991-2002), which resulted in the recruitment of thousands of child soldiers, the deaths of civilians, and produced countless numbers of amputees. Rebels under the title of the Revolutionary United Front (RUF) took profit by looting diamonds; RUF profits is estimated around \$25 million to \$125 million per annum (United Nations Security Council 2000) -. The RUF used the profits to obtain illegal arms from Charles Taylor in Liberia (Ndumbe and Cole 2005). Moreover, government soldiers were also involved in diamond smuggling - so-called 'sobels,' meaning soldiers by day and rebels by night - in some cases through cooperating with the rebels (Keen 2000). Those diamonds became globally known as "conflict diamonds," due to a campaign launched by a coalition of NGOs (Hilson 2008; Le Billon 2006). Conflict diamonds are defined as rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate government (Kimberley Process Certification Scheme: Preamble). Since it was reported that the diamonds were connected to fund raising and money laundering for terrorists - e.g. Hizbullah and al Qaeda (Farah 2001; Global Witness 2003) - the problem attracted more attention.

Given these facts, diamond management was a primary concern for peace building in the country. Thus, the Diamond Area Community Development Fund (DACDF) and the Kimberley Process were inaugurated to address the causes of the civil war. The DACDF aimed at alleviating "grievances," while the Kimberley Process aimed to constrain "shadow states." At the same time, kimberlite mining was started to facilitate post-conflict peace building by boosting economic development. However, this has created new tensions, which in turn brought about a clash between the mining company and the local community on 13 December 2007.

This paper investigates how the DACDF and Kimberley Process have addressed the

causes of the civil war, and explores in detail a new “potential conflict” in kimberlite mining. Section 2 gives a brief description of the civil war and examines why and how the diamonds became “bloody.” This section also introduces important diamond management aspects in peace building process of the country, namely the DACDF, the Kimberley Process, and kimberlite mining. Section 3 assesses the results of the DACDF and Kimberley Process, and describes how and why the new “potential conflict” in kimberlite mining took place. The fifth section elaborates lessons learned from the implementation of the DACDF, the Kimberley Process and kimberlite mining.

II. BACKGROUND

A. An Overview of the Civil War in Sierra Leone (1991-2002)

The civil war in Sierra Leone reportedly caused 50,000-75,000 deaths, half a million refugees, about 2.5 million displaced persons between 1991 and 1999 (Pratt 1999; Smilie et al. 2000), and several thousand amputees and war victims (Fofana 2005). When the Foday Sankoh-led RUF started the civil war with support from Charles Taylor in March 1991, no one could have expected that Sierra Leone would experience such a tragedy. In April 1992, junior officers in the army overthrew the rule of the All People's Congress Party (APC) and sending the then-President, Momoh, into exile, and setting up the National Provisional Ruling Council (NPRC). Later, the NPRC agreed to hand over power to a civilian government. As a result of the election in March 1996, Ahmed Tejan Kabbah became President.

However, a military coup led by Johnny Paul Koroma turned over the Kabbah government in 1997, by establishing the Armed Forces Ruling Council (AFRC). In March 1998, the Nigerian-led forces – the Economic Community of West African States (ECOWAS) Military Observer Group (ECOMOG) – ousted the AFRC junta, and the democratically elected government of President Kabbah returned.

In July 1999, the Lome Peace Agreement was signed between President Kabbah and Sankoh. It gave the status of Vice-President to Sankoh and full amnesty to RUF combatants (Art.V-2 and IX). It also has the most detailed provisions on diamond management compared with the other peace agreements such as the Abidjan and Abuja Agreements. Consequently, Sankoh became the Chairman of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD) (Article V-2). The roles of CMRRD are: (1) licensing; (2) ensuring security; and (3) authorizing transactions (Art.VII-3, 4, 5).

However, the RUF did not respect the agreement, and instead forcibly seized military equipment from peacekeepers. Furthermore, the agreement simply created confusion between the CMRRD's function and that of the Ministry of Mineral Resources (Koroma 2004). In the end, Sankoh and other senior members of the RUF were arrested

and the group was stripped of its positions in the government (US Department of State). The peace process resumed with the Abuja Peace Agreement in May 2001. The end of the civil war was officially declared on January 18, 2002. Peace was realized because of the arrival of 17,000 UN peacekeepers and British troops, as well as the interruption of the diamonds-for-weapons pipeline through Liberia (Gberie 2004).

B. Why and How did Diamonds Become Bloody?

Sierra Leone is rich in various natural resources (bauxite, rutile, iron ore etc.), but only diamonds – and to some extent gold, financed the civil war. Why? First, its high-value and small size means that diamonds are more profitable and easier to smuggle than any other natural resource. Second, the mining locations also facilitated smuggling. Two of the main diamonds fields in the country, Kono and Tongo, are far from the capital, Freetown, and located close to the national border with Guinea and Liberia. The third reason was the high lootability of diamonds in Sierra Leone. In contrast to a capital-intensive ‘kimberlite mining’, where diamonds are extracted from tens or hundreds meters deep in a highly mechanized and concentrated manner, alluvial mining extracts diamonds from the surface of soil. In particular, artisanal (or small-scale) mining are very simple and labor-intensive mining method: digging and sieving river slit. The disused alluvial diamonds are very difficult to control and tax, but instead easily appropriated and transported by unskilled workers (Le Billon 2001; Maconachie 2009). In Sierra Leone, artisanal and small-scale mining is dominant, as it accounts for nearly 90% of the value of diamond exports (Diamond Development Initiative 2008). Alluvial mining is also widely common in other conflict-affected countries, such as Angola and the Democratic Republic of Congo. In short, given all the natural conditions, diamonds in Sierra Leone were “favorable” to rebels (Olsson 2006; Smillie et al. 2000).

Such “opportunities” can be a determining factor of rebellion (Collier et al. 2005). Indeed, Keen (2000) argues that “greed” was a main cause of the civil war, which means that the purpose of the civil war was to achieve economic gains rather than a political agenda (Collier et al. 2003; Berdal and Malone 2000). However, many people reported during fieldwork interviews that the root cause of the civil war was not diamonds. To identify the causes, it is necessary to look at how diamonds became “bloody.”

In the pre-war period, exploited by the central government (both before and after

independence)¹, diamond mining communities were one of the poorest areas in the country. The rural elites – so-called chiefs² – had absolute control over local residents (e.g. access to citizenship and livelihoods), while the people who lacked patronage, especially the young, were left uneducated and unemployed. These people were deemed to face a lifetime's hard labor (Fanthorpe 2001). The “lumpen”, or marginalized youth, became a fertile ground for RUF recruitment during the civil war (Abdullah 1998; Fanthorpe 2001, Richards 1996 and 2005; Richards et al. 2004). In short, ‘local people have never benefited significantly from the diamond resource, nor have they had any significant influence over fundamental management issues related to mining’ (Even-Zohar 2003); such “grievance” was a root cause of the civil war.

Another root cause of the civil war came from elsewhere. Since President Siaka Stevens tacitly encouraged illicit mining and became involved himself in criminal or near criminal activities, legitimate diamond exports dropped from over two million carats in 1970 to 595,000 carats in 1980 and then to only 48,000 in 1988³ (Smillie et al. 2000). Proceeds from illegal mining and trade became a critical resource to sustain the “shadow state” – patron-client system outside of formal state institutions –.

However, the “shadow state” started eroding under the next president Momoh. He could neither afford to provide enough profits for his followers, nor prevent his rivals from taking personal benefit from clandestine economic opportunities (Reno 1997, 2000 and 2003). The collapse of the former patronage system intensified the competition over resources through violence, leading to the civil war in 1991.

-
- 1 The Sierra Leone Selection Trust (SLST), based on the agreement between the government of Sierra Leone and the Consolidated African Selection Trust (CAST), obtained an exclusive license to explore, mine and market diamonds for a period of 99 years from the British authorities. Its mining mounted opposition from local diggers (Even-Zohar 2003). Under Siaka Stevens regime, the government obtained 51% of SLST's share and created National Diamond Mining Company (NDMC) in 1970. Its remaining 49% share was fully nationalized in 1984. As noted later, the national wealth of diamond did not return to the mining communities but to “shadow states.”
 - 2 Sierra Leone is divided into three provinces, each of which consists of several districts. Each district is composed of chiefdoms, which were the basic administrative units during the British protectorate. Each chiefdom is ruled by a paramount chief, with the support of governing council (“tribal authority,” which was renamed the “chiefdom council” after independence) (Fanthorpe 2001, 79).
 - 3 Illicit mining and smuggling had already increased in the 1940s and 50s (Even-Zohar 2003). “By 1956, there were an estimated 75,000 illicit miners in Kono District - the heart of the diamond area – leading to smuggling on a vast scale, and causing a general breakdown of law and order” in the mining areas (Smillie et al. 2000).

C. Diamond and Peace Building

To address the connections between diamonds and the causes of the war, two post-war diamond mechanisms were established. As noted before, the first mechanism is the DACDF, which aimed to alleviate grievances in mining communities by returning diamonds' benefit. The DACDF was formally approved by Sierra Leone's Ministry of Mineral Resources in December 2001, as part of a broader reform program on the diamond sector following the end of the civil war (Maconachie 2009). The second mechanism is the Kimberley Process, whose function contributes toward handling "shadow states" by constraining illegal mining and smuggling. In 2000, the UN Security Council banned the sale of rough diamonds from Sierra Leone (Resolution 1306), while in the same year Belgium's Diamond High Council helped the country to implement a diamond exporting certification scheme (Gberie 2004). In 2003, the Kimberley Process Certification Scheme (KPCS)⁴ was put into force, requiring 'its members to enable them to certify shipments of rough diamonds as 'conflict-free'.' (Kimberley Process, Homepage).

Although diamonds fueled the armed conflict, the diamond sector has also played an important role in strengthening peace building. One example is the country's first kimberlite mining, which started its operation in 2004 to boost economic growth (Ministry of Mineral Resources, Overview). However, despite the fact that kimberlite mining has been often described as "less hazardous" than alluvial (particularly artisanal) mining (see the following section; Olsson 2006; Paes 2005; Ross 2004; Snyder and Bhavnani 2005)⁵, the issues of relocation, profit sharing and participation of the local community in the decision-making process are distinctly contested in Sierra Leone. In December 2007, the heightened tension between the company and the local community resulted in a clash.

III. ASSESSING DIAMOND SECTOR CONTRIBUTION TO PEACE BUILDING

Diamonds are a "double-edged sword" (Maconachie 2009). They can be "rebels' best friend" (as described above), while they can also have the potential for peace building by spurring economic growth and reconstruction (Grant 2005). Indeed, diamond exports (\$141 million) accounted for about 57.5% of the total exports in Sierra Leone (\$245 million) in 2007. Moreover, the diamond sector creates the second largest em-

4 In December 2009, it had 49 members, representing 75 countries.

5 Snyder and Bhavnani (2005) contend that the mere existence of alluvial diamonds is not relevant to the probability of civil war. Indeed, they show that the risk of alluvial diamonds is neutralized by other industrialized mining in some countries such as Ghana and Guinea. Nonetheless, it does not contradict the argument that kimberlite – highly industrialized – mining is less prone to armed conflicts.

ployment after agriculture for 120,000 to half a million people (Diamond Development Initiative 2008; Gberie 2005; Ministry of Mineral Resources 2005). Given these risks and potentials of diamonds, diamond management had a high priority in peace building of Sierra Leone.

This section first examines how the DACDF and the KPCS have addressed the causes of the civil war. Second, it investigates how and why a new conflict in kimberlite mining occurred.

A. DIAMOND AREA COMMUNITY DEVELOPMENT FUND (DACDF)

The DACDF allocates one quarter of 3% diamond export tax – that is 0.75% of the total diamond export value – to mining communities on a six-month basis (January-June and July-December). Under this mechanism, from 2001 to 2006, a total of Le 9,946,856,325 – nearly \$3,282,790⁶ – was paid to mining chiefdoms by the government (Ministry of Mineral Resources, Allocation disbursed from Jan 2001- Dec 2006 (Le)). Criteria for the allocation to chiefdom is based on the number of diamond mining licenses issued and the value of diamonds extracted from their territories (Ministry of Mineral Resources 2008a).

The participatory mechanism of the fund supports local actors to exercise their natural resource management responsibilities and decision-making process. 'In addition to providing valuable resources for social and economic development, the fund is supposed to encourage chiefdoms to monitor mining more effectively and eradicate illegal activities, thereby enhancing the KPCS' (Maconachie 2007 and 2009). Thus, the DACDF aimed to address grievances of the mining communities and hinder the illegal mining and trade.

The fund has been used for various projects, but mostly for the rehabilitation or construction of roads, bridges, health centers, schools, prisons, guesthouses and community grain stores (Eisenstein and Temple 2008). Indeed, infrastructure development accounts for 73.68% of the DACDF impact (Network Movement for Justice and Development 2006, 11).

Eisenstein and Temple (2008) contend that there is indeed a remarkable difference in basic grassroots and social development between the DACDF-benefiting chiefdoms compared to non-DACDF ones, and that the socioeconomic impact of the fund did make opportunities for youth. First, the reconstruction of schools has helped to support education for youth and children. Second, guesthouses built by some DACDF have created employment. Third, 'community centers are being used as meeting places especially for the youth who organize social meetings and events. That has also helped them to generate income for themselves and to promote peaceful coexistence' (ibid).

Of course, there are still many uneducated and unemployed, suffering from poverty.

6 At the exchange rate on 22 April 2009, \$1 = Le3030.00.

In effect, nearly 65% of the population is illiterate and GDP per capita ranks 222 out of 229 countries⁷ (CIA, *The World Factbook*). Nonetheless, the positive impact of DACDF on peace building can be understood by the counterfactual: without the DACDF, the mining communities would have more difficulties in rehabilitating infrastructure, and without infrastructure (schools guesthouses and so on) more youth would be left uneducated and unemployed. Thus, without the fund, their grievances would remain unaddressed and some might return to war. People in Kono also indicated that there is some progress compared with the pre-war period (Interview with the Affected Property Owners Association, August 2008).

On the other hand, the fund has not been free from criticisms. For example, it was reported that a number of chiefdoms were not utilizing the fund in a competent manner (Maconachie 2009; Ministry of Mineral Resources, Background paper on the establishment of the Diamond Area Community Development Fund (DACDF), current issues and options). Misappropriation of the fund and lack of accountability were highly problematic. These problems have been raised at the Diamond High Level Steering Committee, which led to the suspension of the fund in 2004. Nevertheless, in late 2006, for the first time, the central government directly distributed to and through district councils DACDF that was earmarked for individual chiefdoms. To effectively administer these funds, the district councils were given the mandate to supervise the chiefdoms in their use of the funds for community projects (Eisenstein and Temple 2008). Eisenstein and Temple (*ibid*) evaluate the value (%) of DACDF transparently utilized for the benefit of the communities. Its shift from 66.6% in 2003 to 90% in 2008 shows that the accountability of the fund use has increasingly improved.

In addition, the Ministry of Mineral Resources and Ministry of Local Government released Diamond Area Community Development Fund (DACDF): Operational Procedures and Guidelines in November 2008. It was to address other problems, such as the absence of project criteria and application guidelines, and underrepresentation of the communities in decision-making (Ministry of Mineral Resources, Returning benefits from diamond mining to the local community: the Diamond Area Community Development Fund (DACDF)). It clarifies project appraisal criteria, and requires standardized forms and reports on project – from proposal, implementation to procurement –. It also encourages the participation of the communities (not only rural elites) by demanding that Chiefdom Project Committees (CPCs) consist of at least 5 residents, annually elected within the chiefdom. CPCs are responsible for completing all the forms and reports above. Thus, the new procedures and guidelines aim to improve the transparency and accountability of the DACDF, but the impact of the reform still remains to be seen.

7 The data on unemployment is unavailable.

B. Kimberley Process

As stated earlier, the Kimberley Process Certification Scheme (KPCS) requires the certification of rough diamonds to constrain illicit diamond trade.

In Sierra Leone, the Government Gold and Diamond Office (GGDO), a department of the National Revenue Authority⁸, is responsible for certifying diamonds. The GGDO places diamonds in a Kimberley Process-approved tamperproof package for export after valuing and imposing 3% tax on them. The value of diamonds is double-checked by an independent external valuator, Diamond Counselor International (Gberie 2004).

Since the certification scheme was put in place, the value of exported diamonds has skyrocketed from \$10 million in 2000 to \$142 million in 2007⁹. Therefore, it has substantially contributed to reducing diamond smuggling and increasing the revenue of the government. Though there are still allegations on rampant smuggling (Gberie 2006), the shift in the number of legally exported diamonds from 48,000 carats in 1988 to 603,000 carats in 2007¹⁰ demonstrates how the theft of national wealth has shrunk. The Kimberley Process has thus contributed to peace building by considerably reducing the space for “shadow states” in the diamond market.

However, in the KPCS, ‘the most glaring deficiency is the lack of a verifiable audit trail from diamond mine to market’ (Gberie 2004). In Sierra Leone, the Ministry of Mineral Resources – Mining Engineers more precisely – supervises Mines Wardens and Mines Monitoring Officers (MMO) (Ministry of Mineral Resources, Current MMR organogram) to prevent illegal mining and smuggling¹¹. The MMR had 84 Mines Wardens in 2006 (Gberie 2006); they are ‘professionals who map out mining areas, issue licenses, regulate mining activities, and make sure that environmental and other regulations are

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- 8 The GGDO was under the supervision of the Ministry of Mineral Resources, but it was absorbed into the National Revenue Authority on 17 September 2003.
 - 9 According to the National Revenue Authority, the total export value was recorded as \$26 million (2001), \$41.7 million (2002), \$76 million (2003), \$126.7 million (2004), \$142 million (2005), and \$125 million (2006). It declined to 99 million (2008) and 80 million (2009)(Ministry of Mineral Resources, Sector Transparency), allegedly due to lower world prices, less local investment, and higher export tax – 15% of the value stones worth more than \$500,000, while a law passed November 2009 raised taxes on diamonds to 6.5% from 5% (Johnson 2010).
 - 10 The figure of 2007 includes both alluvial and kimberlite mining.
 - 11 Furthermore, 2004 Amendment to the Mines Minerals Act states that those who report illicit diamond mining can receive 40% of the value of the diamonds seized by the authority.

followed' (Gberie 2005). On the other hand, 207 MMOs¹² are to complement the Mines Wardens, 'monitoring and evaluating the performance of diggers, dealers and exporters' (ibid), though they do not have the power to arrest unlike the Wardens.

Yet, several problems have been raised on their monitoring mechanism due to limited availability of human, financial and other resources. First, the number of license holders far exceeds that of the Wardens and MMOs – the latter are 84 and 207 respectively, while artisanal mining license holders are approximately 2000 in 2006 (Ministry of Mineral Resources, Government revenue from diamond activity). Second, most of MMOs are not civil servants or professionals. 'Their annual salary is US\$511 or approximately US\$43 per month¹³, and no other benefits. This represents less than US\$2 a day... The low salary and inadequate support, combined with the task of monitoring the flow of millions of dollars worth of diamonds, sets them up as targets, both for bribes and for failure' (Partnership Africa Canada and Global Witness 2004). In addition, poor logistics also undermines their performance; Gberie (2006) reports that there were only eight old motorbikes for 51 MMOs in Kenema and that no mobile phone was provided to them.

From these facts, the government established a Precious Mineral Monitoring Team in September 2004. Including eight police officers and eight MMOs, the team has the power to arrest and make on-the-spot checks all over the country (Gberie 2005).

C. Kimberlite mining and riot on 13 December 2007

Kimberlite mining has been important in peace building, because it can be a driver for post-war economic growth by increasing revenues to the government, attracting foreign investments, and creating employment in the local community. The government of Sierra Leone expects that the kimberlite mining has a potential to produce up to 450,000 carats per year (M'cleod 2008), which is more than the country's total exports of 371,260 carats in 2008. According to an interview in 2005 with then President Kabbah, a primary focus of Sierra Leone is now to attract bigger mining companies, or foreign investment (His interview is published by Gberie 2005). He maintains, 'We have had tremendous success with the Koidu Diamond Holdings...They are easier to monitor, they keep a paper trail, and they are bringing in a lot of revenue in the form of taxes and employment. The alluvial mines are a problem. They always have been, and will probably continue to be' (ibid).

However, kimberlite mining has not been free from "conflicts." It should be noted that the word "conflict" has a broad meaning, encompassing from mere disagreements,

12 In the year of 2006 (Gberie 2006).

13 According to Gberie 2005 and 2006, their salary is \$50/month.

arguments, fights to wars. As written above, the “conflict” of “conflict diamonds” usually means armed conflicts aimed at undermining legitimate government. However, such a definition overlooks other types of conflict, which pose grave destabilizing effects on mining communities; for example, a clash between the Koidu Holdings and the community people on 13th December 2007 resulted in two deaths. As described below, it was not an armed conflict. However, if both parties had been armed, it would have been a large-scale combat with violence making a great number of victims. Therefore, to describe the problems of the kimberlite mining, I use the term “potential conflict,” meaning serious disagreements between stakeholders, which would lead to confrontations with large-scale physical violence. Though a large scale conflict is not likely to occur in the foreseeable future, there is a possibility that potential conflict could destabilize long-term peace in Sierra Leone. Therefore, it is necessary to examine how and why the clash in December 2007 occurred between the company and the local community.

Koidu Holdings was originally created by the joint-venture agreement in September 2003 between Diamond Works, Branch Energy Ltd¹⁴, and Magma Diamond Resource Ltd. Koidu Holdings ‘is now wholly owned by BSGR Diamonds Ltd, which is wholly owned by BSG Resources Ltd¹⁵’ (Koidu Holdings S.A., Company history). The company’s operation is mainly in Kono District under a 25-year mining lease agreement, while in March 2004, it obtained an Exploration License in Tongo diamond field as well (Ministry of Mineral Resources 2008b). With respect to profit sharing, Koidu Holdings ‘has given 20% of its shares free to Sierra Leone, 10% for the government and 10% for Kono District, the area of their operations’ (Gberie 2006)¹⁶.

Before the mining started, positive impacts were introduced as follows: regional development (due to the establishment of the mine), economic opportunities (e.g. employment), greater household cash income, promotion of social welfare, and greater political representation for the community at national level (Digby Wells and CEMMATS

14 Diamond Works, a Toronto Stock Exchange listed company, acquired Branch Energy Ltd and its entire mineral rights in 1996. However, in May 1997, when a coup d’etat took place in Sierra Leone, Branch Energy was forced to halt its activities and invoke force majeure. Over the ensuing 5 years of conflict, the company’s assets at Koidu were completely destroyed and no further work could be undertaken on the exploration properties. Diamond Works revisited the mineral holdings in Sierra Leone after the war in 2002, targeting the Koidu Kimberlite Project and began construction and re-development of facilities damaged during the war (Koidu Holdings S.A. Company history).

15 BSG Resource Ltd is a resource arm of the Beny Steinmetz Group (BSG), a privately owned holding company based in Geneva.

16 This is a citation from an interview with the then Mineral Resources Minister.

2003, 7). On the other hand, it was estimated that large-scale mining of the company would also have negative impacts such as involuntary population movement, an influx of people into the area, disturbed rock strata, degradation of soil resources, reduction of biodiversity, contamination of ground water, air pollution, and noise pollution (ibid). In fact, the operation of the kimberlite mining has produced grievances among the local people. Those grievances finally led to the clash on 13 December 2007. The following description of the event is, if not specified, based on my interview with the Affected Property Owners Association (APOA) in August 2008.

On November 15 of that year, the Affected Property Owners Association (APOA) had submitted a fourteen-point resolution listing their grievances and concerns to a number of parties, including the Ministry of Mineral Resources, the president of Sierra Leone, the vice president, the paramount chief (Tankoro Chiefdom), the Local Unit Commander (Tankoro Chiefdom), and the Chief Executive Officer, Koidu Holdings. One week later, on November 23, 2007, the APOA notified the recipients of the resolution of its intent to stage a peaceful demonstration in 21 days (that is, on December 14) if the government and other parties failed to address the resettlement action plan between the APOA and the company; the APOA further stated that it wished to negotiate with the company as soon as possible (Jenkins-Johnston Commission of Inquiry 2008).

The company not only ignored the requests from the APOA for negotiations, but also announced that it would carry out blasting on December 13. In response, the APOA staged a peaceful demonstration, on that same day, outside the company grounds. Around 14:30, the company sounded a siren, then began blasting at 15:45 before the demonstrators had been evacuated. Agitated by the blasting, the demonstrators began stoning the company premises, and the police reacted with tear gas and rifle bullets, killing two and injuring dozens. The crowd then burned two police posts to the ground (Jenkins-Johnston Commission of Inquiry 2008).

On December 17, representatives from the company and the affected community were invited to attend a meeting of the Jenkins-Johnston Commission of Inquiry, which was held at the statehouse in Freetown. That same day, the government ordered the company to suspend operations. In March 2008, the commission of inquiry released a report with recommendations, most of which the government accepted in a subsequent white paper (Government of Sierra Leone 2008). The Ministry of Mineral Resources set up a committee—consisting of the director of mines division (in the Ministry of Mineral Resources), the paramount chief, and representatives of the APOA and civil society, among others—to focus on the reopening of the mining operation (Ministry of Mineral Resources, Koidu and the community: back on track) and on compensation for those who had been injured and for the families of those who had been killed. On July 31, 2009, ‘a Resettlement Action Plan was signed between the government, Koidu Holdings, CEMMATS¹⁷ and the APOA after crop compensation of over \$700,000 was paid to the

17 CEMMATS is a multidisciplinary engineering and project management firm in Sierra Leone.

affected crop owners. . . . There is now a standing village resettlement committee, which includes all stakeholders, working with CEMMATS to implement the Resettlement Action Plan and to address issues on the ground' (e-mail from Abdul G. Koroma, Judge of the International Court of Justice, 18 August 2009).

1. The Causes of the Riot

The commission of inquiry identified the blasting and poor organization and deployment on the part of the police as the immediate and proximate causes of the riot, but stated that tension between the company and the community was the root cause.

Immediate Causes

According to witness testimony, all staff of the Tankoro police station are under the control of the local unit commander (Jenkins-Johnston Commission of Inquiry 2008). But there is a second police presence in the area: an operational support division (OSD), based in Freetown, whose area of operation includes Tankoro chiefdom. According to the Local Unit Commander of Tankoro Police Station, the OSD is deployed at Koidu Holdings, and is under the operational control of the company rather than that of the local unit commander (Jenkins-Johnston Commission of Inquiry 2008, 17). On the day of the riot, officers from both the Tankoro police and the OSD were on the site. The OSD officers were armed, while Tankoro police were not. Two commanders from each unit were also present, which means that there were two chains of command.

After one of the police commanders (of the Tankoro police) had left to return to his station, the OSD opened fire to "stop" the riot (the word of an OSD officer, *ibid*, 56). The OSD officer, who has operation control at Koidu Holdings (*ibid*, 39) stated that 'there is no difference between shooting to stop and shooting to kill' (*ibid*, 56); the failure of the OSD officers to adhere to their rules of engagement led to the two deaths¹⁸.

Root Causes

With respect to root causes, the commission raised a number of issues, four of which will be examined here:

18 According to the director of the OSD, Sierra Leone police provide security for a number of mining companies, including Koidu Holdings, Sierra Rutile, and Sierra Leone Diamond Company (Jenkins-Johnston Commission of Inquiry 2008) — which means that poor coordination between local police and the OSD could potentially have the same results witnessed at Koidu Holdings. (As of this writing, the ODS is no longer deployed at the Sierra Leone Diamond Company.)

- Relocation and resettlement
- Forced evacuation during blasting
- Lack of community benefits (including profit sharing)
- Lack of community participation¹⁹.

All four issues were addressed by the commission's recommendations, but implementation of the recommendations did not begin until July 2009, when the new resettlement action plan was signed.

Relocation first emerged as a problem as far back as the 1960s (Gberie 2005), when the SLST had undertaken exploration to determine the exact location of the Kono kimberlite pipes. The deposit areas were designated as "safe zones," in which residential dwellings were prohibited. However, by 1995, when Branch Energy was granted a 25-year mining lease, some houses had been built in the safe zones. By 2003, 284 households (about 4,500 people) were living in the mining lease area of Koidu Holdings (Digby Wells and CEMMATS 2003, 10-11). Though these dwellings could have been regarded as illegal (Gberie 2005, 7), Digby Wells and CEMMATS (2003, 13) had concluded that 'all households that own/occupy a household plot, have formal and legal rights to land and assets, and who are affected by mining activities requiring resettlement, will be eligible for full assistance and compensation.'

One reason that the company decided to use vertical, rather than open-pit mining, was to reduce environmental and social impacts (Koidu Holdings S.A. 2006), including

19 The commission of inquiry (2008, 89-99) also (1) criticized the Ministry of Mineral Resources and the Ministry of the Environment for not having known that Koidu Holdings' Engineers did not have a valid blasting certificate or that the company itself does not have a valid environmental impact assessment license, and (2) claimed that the fiscal regime was unsatisfactory, in that it failed to provide an appropriate income for either the government or the communities. Because the relevant exhibits were unavailable for review, the author could not confirm if these statements were justified by the facts.

relocation and resettlement issues²⁰. Nevertheless, residents remained deeply discontented with the relocation arrangements. For example, among the findings of the commission of inquiry (2008, 91-93) were the following:

- Koidu Holdings had failed to relocate and resettle all 284 of the affected households before the blasting started.
- The company should have constructed as many as 360 houses for the resettlement of affected residents but had built only 70 houses—all of which were of substandard quality, and none of which had a kitchen, bathroom, toilet, or running water.
- The resettlement village that the company built had no social amenities such as a market, school, church, or mosque²¹.

The second problem identified by the commission of inquiry, forced evacuation during blasting, was related to the lack of proper resettlement arrangements. Since most of the 284 affected households had not been relocated, they had been evacuated by company security and police before 13 December 2007 — who sometimes had used harsh methods — while blasting was being carried out. This treatment intensified residents' resentment of both the company and the police (Jenkins-Johnston Commission of Inquiry 2008).

The third problem identified by the commission of inquiry was that local residents had seen few benefits from mining. The chief executive officer of Koidu Holdings testified that the company had given 10 percent of its revenues to nearby community and provided employment for six hundred people; had paid an agricultural development fund; had helped provide scholarships so that children could attend school; the company sent two Sierra Leoneans for training as agriculturalists; and had provided clean drinking water (Jenkins-Johnston Commission of Inquiry 2008, 52-54). Nevertheless, as one APOA member said, 'the company does not do enough to the community. . . . we have not seen much development' (Interview with APOA, August 2008). With respect to profit sharing,

20 Vertical mining requires much less land area (in the case of Koidu Town, approximately 4,388 square meters, just over half the size of a soccer field), thus reducing environmental and social impacts. According to Koidu Holdings, "vertical pit mining is a relatively new mining technique." Apart from the environmental and social concerns, the company had two additional reasons for employing this new method: (1) because the pipe was so small, the site would have been uneconomical to mine using open-pit methods; (2) the company did not have enough information about the grade and value of the diamonds to establish an underground mining operation from the outset (Koidu Holdings, Vertical pit development).

21 The commission's findings were confirmed by the author's interviews with representatives of the APOA.

another APOA member noted that the company's operations are 'not transparent. . . . There is too much secrecy in the company. We have no choice but to guess. We need more transparent and accurate information.' There were thus concerns not only about insufficient benefits, but also about lack of transparency regarding profit sharing and expenditures on community benefits.

The fourth problem identified by the commission of inquiry (2008) was that neither the paramount chief nor any resident of the chiefdom had been involved in the negotiation or execution of the agreements with Koidu Holdings²². 'The negotiation with the company was dealt with by the central government without consultation of the local community. The government allocated land to the company without approval of the community' (Interview with a chiefdom resident, August 2008). Before the agreement was signed, the government threatened the community, in order to compel it to accept the mining (Jenkins-Johnston Commission of Inquiry 2008, 28). Another resident stated that he had been arrested for having expressed his refusal to accept the mining in (ibid).

In the end, it was the Ministry of Mineral Resources that approved the transfer of the mining lease from Branch Energy to Koidu Holdings and that signed as a party in the profit-sharing agreement (Jenkins-Johnston Commission of Inquiry 2008, 91). The commission of inquiry found that the government's failure to obtain the legitimate participation of the local community was a major cause of discontent among local residents.

One factor that contributed to tension between the community and the mining company was the lack of explicit legal procedures for relocation. Although the 1994 Mines and Minerals Act allows for relocation, it includes no formal procedures; companies and communities are left on their own to decide how relocation will occur (Mines and Minerals Decree 1994, art.27). Another factor was that after the kimberlite deposit area was first identified, in the 1960s, it was not enclosed by the STSL; as a consequence, the prohibited area had been settled by the time of the 1995 mining agreement with Branch Energy — and more people were in need of relocation than would otherwise have been.

The government's failure to involve the community in decision making about the mine had deep roots in the country's political conflict. In 1995, when the RUF was on the verge of overturning Freetown and the president engaged Executive Outcomes to assist with defense (Ndumbe and Cole 2005), it was Branch Energy that had introduced Executive Outcomes (ibid) to the government. Shortly after the offensive, the government signed a twenty-five-year mining lease agreement with Branch Energy, in return for the help it had received from Executive Outcomes. It means that the government did not have any other options but to accept the mining-lease request of Branch Energy. In addition, this 1995 agreement provides the basic legal framework for Koidu Holdings' operation in the country (NACE 2009). The quasi-imposed agreement makes it unlikely that the

22 The commission (2008) was referring to three agreements: the Koidu Kimberlite Project Mining Lease Agreement (Mining Lease No. ML 6/95), the Transfer of the Mining Lease Agreement (20 October 2003), and the Profit Sharing Agreement (28 August 2006).

negotiation in which the government and the company engaged was fair.

IV. LESSONS LEARNED

There are several lessons learned from the experience of Sierra Leone. The first lesson is the sharing of diamond profits for the benefit of the people in mining communities. In the pre-war period, diamond-mining communities were one of the poorest areas in the country. Marginalized youth in those areas became a fertile ground for the RUF. Returning profits to the communities is an essential base for peace building by alleviating grievances. Such policy was realized by the DACDF.

This lesson will be applicable to other countries and natural resources. So often, conflict occurs from the communities' dissatisfaction and perception that they are being exploited by their government or private companies for natural resources. Oil-producing communities in Nigeria and Sudan are such examples. Appropriate profit sharing and disbursement would mitigate their discontent.

The second lesson is the need to constrain illegal trade of diamonds, which had harbored "shadow states." Statistics show that the certification scheme has dramatically boosted legitimate export of diamonds in Sierra Leone since its inauguration. Without the KPCS, smuggling would continue to be rampant.

The second lesson is applicable to other "lootable" natural resources as well. However, it is to be noted that the quasi-monopoly of De Beers in the world diamond market did contribute to the creation of the KPCS. Since it was almost the only company in the industry and showed a strong interest in eliminating "conflict diamonds," the KP was realized. In other industries (e.g. oil and gold), where no company has such dominance as what De Beers has in the diamond industry, it is doubtful whether a similar certification system itself would be formed.

The third lesson is that, kimberlite mining, which is regarded as easily controlled by the state and positive for peace, can destabilize the local community. Despite the statement of "less hazardous" and high expectations from the government, the riot of December 2007 reveals potential conflicts in the kimberlite mining. However, the problems are not unique to Sierra Leone. For instance, Botswana, which has been often cited as a "successful" model of economic development through kimberlite mining, may also be the case. Indeed, the government allegedly coerced the relocation of San (indigenous minority tribe) by halting the provision of public services for those who refused to relocate (Mokhawa 2005). Therefore, the source of potential conflicts can be found in other settings.

For mitigating the potential conflicts, first, it is required to solve the issue of relocation by providing enough number of houses, whose quality and design are acceptable for the relocated people. Second, the resettled community should also have social amenities (school and hospital etc.) and take a sufficient distance from the mining operation sites to minimize the blasting effects. In addition, transparency is important especially on how

the company's profit is shared and used for the local community. Fourth, it is needed to guarantee consultations with local residents, as well as their participation in planning, implementing and monitoring (Ajei 2008).

These lessons are applicable to other settings and mineral resources extracted in large-scale. Since Sierra Leone is expanding its industrial mining to rutile, bauxite and iron ore, attention is to be paid to how the lesson is applied in those types of mining industries.

V. CONCLUSIONS

Post-war diamond policies in Sierra Leone had to address grievance and “shadow states,” which were the causes of the civil war 1991-2002. First, the DACDF has returned a substantial amount of money from diamonds to artisanal-mining communities and contributed to infrastructure development. Though the old grievances may not be fully alleviated – as shown by the high illiteracy rate and abject poverty –, constructed schools and guesthouses helped to provide education and job opportunities for youth. Second, the KPCS has considerably reduced diamond smuggling from Sierra Leone. Consequently, the government's revenue from diamond export has jumped up, while minimizing the space for “shadow state” in the sector.

On the other hand, being regarded as positive for peace building, kimberlite mining was inaugurated for the first time after the civil war. However, to the contrary, a new “potential conflict” has come out between the company and the community, which became visible by the fracas of December 2007. The root causes of the potential conflict are dissatisfied over relocation, blasting, beneficiation of the community, and lack of participation of the affected community. The riot implies the necessity to look at “conflict diamonds” beyond armed conflicts and wars.

It is still unclear how diamonds in Sierra Leone will serve for peace. All the three aspects which this paper has examined – the DACDF, Kimberley Process and kimberlite mining – still face many criticisms and problems. If the DACDF ends in benefiting a handful of elites' pockets, and if the Kimberley Process overlooks loopholes, diamonds will never realize peace. In addition, there is a risk that the potential conflict in kimberlite mining would become another source of grievances. Hence, we should continue to watch closely how their problems will be addressed.

- * This paper was presented at the 2010 Annual Meeting of the Association of American Geographers (Washington DC, USA). It also draws on earlier studies of diamond mining in Sierra Leone, under the project of “Strengthening Post-Conflict Peacebuilding through Natural Resource Management,” which will be published in 2011 (forthcoming, see http://www.eli.org/Program_Areas/PCNRM/index.cfm)

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 Sierra Leone (usmanboie@yahoo.com)].

ANNEX



Source: United Nations Department for Peacekeeping Operations Cartographic Section. <http://www.un.org/Depts/Cartographic/map/profile/sierrale.pdf> (Accessed at 25 May 2010)

WORKING PAPERS

COLTAN MINING AND THE CONFLICT IN THE EASTERN DEMOCRATIC REPUBLIC OF CONGO (DRC)

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ABSTRACT

This paper sets out to analyse the efficacy of the international response to the link between violence and coltan mining in the eastern Democratic Republic of Congo (DRC). The current responses are largely focusing on breaking the link by boycotting the coltan from the area through due diligence and supply chain management, based on the numerous investigations conducted on coltan mining and trade in the DRC. The paper discusses three key issues on the responses, namely the feasibility of boycotting coltan from rebel-held areas in the eastern DRC; whether boycotting coltan from rebel-held areas in the eastern DRC would break the link between the conflict, and coltan mining and trade; and the possibility of formalising the mining sector in eastern DRC.

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I. INTRODUCTION

The second Congolese war between 1998 and 2003 has cast a spotlight on the supply chain from the coltan mines in the eastern Democratic Republic of Congo (DRC) to high-tech electronic goods such as mobile phones. In the DRC, coltan (columbo-tantalite) is largely mined in the provinces of North Kivu, South Kivu and Maniema in the eastern part of the country (Cuvelier and Raeymaekers 2002a). Tantalum, the mineral extracted from coltan, is resistant to heat and corrosion and has particular ability to store and release electrical energy (Mining Journal 2007). Owing to this ability, about half of the tantalum consumed each year is used in the electronics industry. Tantalum is processed and made into powder or wire to be used in the manufacture of very small capacitors for various devices in telecommunications, data storage, and implantable medical devices. In addition, tantalum is used to manufacture super alloys and jet engines.

Tantalum is usually traded through long-term contracts between buyers and mines rather than in the international metal market; however a spot market exists especially when demand for tantalum is high (*ibid.*). The second Congolese war coincided with the coltan boom in 2000, during which the spot price for tantalum increased ten-fold due to the shortage of tantalum (Cuvelier and Raeymaekers 2002a; Jackson 2003). Although the world's largest tantalum supplier, Talison Minerals of Australia, has been supplying about a third of the tantalum bought (Mineweb 2008), the DRC is believed to have 80% of the world's tantalum reserves (Global Witness 2004).

The exploitation of various natural resources, such as tantalum, in the DRC during the second Congolese war drew attention from the international community and initiated numerous investigations on the link between natural resources and the conflict. Most of the studies support the view that natural resources finance and motivate the conflict (Raeymaekers 2002; Hayes and Burge 2003; Global Witness 2004; Snow and Barouski 2006). This view triggered different actions. These include sanctions by the UN, campaigns against 'blood coltan', such as 'No Blood on My Mobile Phone' by Belgian NGOs, and supply chain management of coltan by the business community.

In spite of the numerous investigations, campaigns, and actions that took place to address the issue of 'blood coltan', the situation remained fundamentally unchanged and the same issue was highlighted again when the fighting intensified in eastern DRC in 2008. Although the price of coltan never recovered to the level of the coltan boom, mining and trading of coltan, as well as cassiterite and wolfram, have been major economic activities in eastern DRC (Garrett and Mitchell 2009). Whilst it is difficult to estimate an accurate figure of coltan exported from the DRC, the world's largest tantalum supplier, Talison Minerals of Australia, suspended its tantalum mines due to the weak demand, partly caused by cheap supply from the DRC (Mineweb 2008).

This paper sets out to analyse the efficacy of the international response to the issue of coltan mining, which largely focuses on boycotting the 'blood coltan' through due diligence, in an effort to break the link between coltan mining and the violence in eastern DRC. The following section provides an overview of the human insecurity situation in eastern DRC, in order to provide the context in which the issue of coltan mining is situ-

ated. The third section examines particular human security impacts of artisanal coltan mining. Then, the fourth section reviews the research conducted on coltan mining and trade to crystallise the prevailing views on the link between coltan mining and trade and conflict. The subsequent section analyses various responses and activities on the issue of coltan mining. The final section discusses the efficacy of the responses to the issue of coltan mining, to conclude this brief paper.

II. HUMAN INSECURITY IN THE DRC

The DRC has gone through two major wars, between 1996 and 1997 and between 1998 and 2003. An estimated 6 million people died since 1998, largely because of lack of access to basic health care, sanitation, adequate nutrition, and infrastructure, especially by being displaced (Caritas Australia 2008). There are about 1.15 million internally displaced persons (IDPs) and 300,000 refugees in neighbouring states, and sexual violence is widespread (UNHCR 2008). The frequent and continuous displacement of the population is termed 'pendulum displacement' by aid workers (IRIN 2007). The country is described as the 'world's worst humanitarian crisis' by UN agencies (International Crisis Group) and ranks 168th out of 177 countries in the 2007/2008 Human Development Index (UNDP 2008).

The ability of the DRC state to provide security, protection of property, basic public services and essential infrastructure is ranked as the world's 6th on a list of 50 failed states (Foreign Policy 2008). Similarly, the World Bank ranks the regulatory environment for business and investment in the DRC as 178th out of 178 states (World Bank 2007).

The current human insecurity situation is not simply a consequence of the two wars nor merely a Congolese problem, as many of the historical events in the DRC and its neighbouring countries since colonial days are inextricably interconnected. However, the focus of this paper is not on the history and international relations of the DRC, so this section will restrict itself to a briefing on the four main armed groups operating in and affecting the human security situation in eastern DRC, and their political agendas.

To start with, the CNDP (National Congress for the Defence of the People) was formed in the area, in order to address three key issues for the Congolese Tutsi population, often called Banyamulenge (Mills 2009). These issues are 'the right of return of dispossessed Congolese Tutsi, the safeguarding of their national identity, and the disarmament of the genocidaires'. Historically, a group of people called Banyamulenge migrated from Rwanda to South Kivu in the 19th century (Takeuchi 2004). There is also another group of people called Banyarwanda in North Kivu, who were immigrants from Rwanda under the Belgians after 1930, and Rwandan refugees during the crisis in Rwanda after 1962. The Banyarwanda had privileged positions and power in eastern DRC during the Mobutu era, however, they were opposed by other Congolese at the end of the Mobutu era. Both groups are often regarded as foreigners, as they speak Kinyarwanda, the language of Rwanda.

In 1994, the Rwandan genocide created a large number of Rwandan Hutu refugees in eastern DRC, and the refugee camps were armed and highly politicised. This has been a security concern for Rwanda and also for the Banyamulenge since they have been attacked by Hutu refugees (*ibid.*). After some of the Banyamulenge launched an armed rebellion in 1996, the Congolese assembly decided to dispossess people with Rwanda origin of their citizenship. Whilst the new constitution guarantees their citizenships, these Kinyarwanda-speaking Congolese people are ethnic minorities and face challenges in the political space.

Secondly, FDLR (Democratic Forces for the Liberation of Rwanda) is an armed group established in 1999, and it consists of the remaining Rwandan refugees and their families, including *genocidaires*, from 1994. FDLR is still determined to return to power in Rwanda, but claims that they demand a political dialogue with the Rwandan government rather than a war (Fessy and Doyle 2009). They identify themselves on their website as a political organisation, and claim their aims are to ‘establish a regime based on universal principles, promote moral values, end wars and establish peace in Rwanda and in the region’ (Chatham House 2009: 6). With an estimated 6,000 to 7,000 fighters and operations in North and South Kivu, the FDLR uses harsh training and ruthless punishment in order to maintain order amongst their members (*ibid.*). Although they use violence when threatened, they act ‘as a state within a state’ generally (*ibid.*: 7).

Thirdly, the Mayi-Mayi coalition of PARECO is considered to be an indigenous resistance force against foreign armed groups, and it particularly resists the Tutsi presence in the DRC (Spittaels and Hilgert 2008). Finally, the Congolese national army, FARDC, is also blamed for plunder, rape, and exploitation of natural resources (Global Witness 2008a).

III. IMPACTS OF COLTAN MINING ON HUMAN SECURITY IN EASTERN DRC

It is necessary to understand the eastern DRC context from the previous section, and the artisanal nature of coltan mining in eastern DRC, in order to appreciate the impacts of coltan mining. Artisanal mining is widespread in developing countries, particularly in Africa (Materials World 2005). It is often an ‘industry of last resort’ when there are no other alternatives to earn income, an illegal or irregular activity which exploits miners, including women and children, and it is hazardous in terms of health and safety (*ibid.*).

In eastern DRC, artisanal coltan mining is conducted in rivers, open cast or underground of old river beds or soft rock deposits (Levin 2008; Garrett 2009). The process includes removing vegetation and the surface, digging out coltan-bearing stones and rocks, crushing the stones and washing them in water in order to remove impurities (Hayes and Burge 2003; Levin 2008). Most mines in the areas are only suitable for artisanal mining because of the soft rock (Garrett 2009; Garrett and Mitchell 2009).

The environmental impact on the area, especially in the Kahuzi-Biega National Park,

where 75% of coltan deposits are located (Levin 2008), is significant (Redmond 2001; Moyroud and Katunga 2002; Garrett 2009). These include forest clearance for mining, making mining camps and tools, and cooking; pollution of streams from washing minerals and tailing; and the change in biodiversity from eating bush meat, illness caused by sewage, and the loss of biodiversity. The unprotected land surface also causes landslides.

There are also considerable socio-economic impacts from coltan mining (Pole Institute 2002). Since many of the local population, including children, have moved to mine, or in some cases been forced to mine, especially during the coltan boom, agricultural production has declined, causing a food crisis. Similarly, school attendance has declined and livelihood has changed. Health and safety issues are the main concern in the mines because of accidents and respiratory illness from the dust. In the mining areas, social problems of drinking, drugs, crime, prostitution, sexual abuse, HIV/Aids and other sexually transmitted diseases have increased.

The engagement of the local population in dangerous artisanal mining itself manifests the human insecurity in eastern DRC, and artisanal mining can be described as an 'industry of last resort' as mentioned earlier. Artisanal mining can provide quick or the only livelihood for the local population in the insecure and unstable environment, and does not require any capital or education (Durban Process 2006).

IV. ANALYSIS OF THE LINK BETWEEN THE CONFLICT, AND COLTAN MINING AND TRADE

Awareness of the link between the exploitation of various natural resources and the conflict in eastern DRC prompted a number of studies. The most influential study has been the reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (UNSC 2001a; UNSC 2001b; UNSC 2002a; UNSC 2002b), commissioned by the UN Security Council in order to examine the exploitation of natural resources in the DRC.

In the first report (UNSC 2001a), the link between the illegal exploitation of natural resources in the DRC and the conflict was identified in terms of financing and sustaining the war efforts of the armed groups. The study was significant in highlighting the role played by private companies in sustaining this vicious cycle of conflict by cooperating to export these resources. The study (UNSC 2001b) also suggested that the exploitation of natural resources has gradually shifted to become a 'primary motive' for invasions by Rwanda and Uganda although they initially invaded the DRC for security reasons. Furthermore, the interim report (UNSC 2002a) stated that trade in conflict resources had been continuing and a system of natural resource exploitation had been established during the war. The view of these studies can be supported by the popular 'resource curse' discourse which links natural resource rent and conflict (Collier and Hoeffler 2005; Lalji 2007).

A study by an NGO (Raeymaekers 2002) also claims that the motivation for the con-

conflict has changed from political to economic, and warring parties are fighting over control of the resources. The plundering of resources is organised by privatised networks of army officers, armed groups, and international companies, in order to enrich themselves and finance the conflict. Within this 'network war', an emerging political economy, the conventional state boundaries and sovereignty or the distinction between legal and illegal economy are not relevant. The report cites the term, 'emerging complexes', rather than 'complex emergencies' to describe the situation in the DRC, referring to Mark Duffield (2001). In these 'emerging complexes', participants have linked the local war economy with global economic networks to obscure the division between governments, armies and individuals.

The view in which natural resource exploitation finances and motivates the armed groups – although there have been some underlying political issues amongst them, including ethnicity, citizenship, and land – has been largely shared by many other studies and reports (Hayes and Burge 2003; Global Witness 2004; Enough 2009). For that reason, the role of private companies in fuelling and sustaining the conflict in eastern DRC has been widely discussed. The business partnership between military and private companies, in which private companies assist in exploiting, transporting and marketing the natural resources from the DRC, is described as 'military commercialism' in some studies (Dietrich 2000; Cuvelier and Raeymaekers 2002a; Raeymaekers 2002; Amnesty International 2003). Within this 'military commercialism', 'the maintenance of insecurity has become a primary source of enrichment' and strategy (Raeymaekers 2002: 9).

Whilst agreeing with the view that natural resources such as coltan motivate and finance the conflict in the DRC, a research using an ethnographic approach (Jackson 2003: 1) argues that coltan mining has become the most important means for local people to survive. The research looked at the price increase and crash of coltan, and has found out that the price crash did not stop the trade in coltan but intensified the control of 'war entrepreneurs'. This is because armed groups 'turned inwards to the territory they control, capitalising – personally as well as collectively – on the rich resources available' when the war arrived at a deadlock.

There have been a few other studies with different views which attempt to embrace the broader DRC context. For example, a recent study (Garrett and Mitchell 2009) views that the mineral resource exploitation in eastern DRC is a symptom of insecurity and governance failure. Rackley (2006) also criticises the simplistic view of blaming mineral resources for driving the conflict in eastern DRC, on the basis that this ignores the governance crisis in the DRC. Without legitimate governance, the forms of predation by the civil and military administration have been so pervasive that they occur 'in many spheres of human exchange, down to the basic subsistence practices of Congolese farmers' (ibid.: 420).

In addition to analysing the link between the conflict and mineral resources in eastern DRC, some studies have been conducted in order to examine the trade chain of mineral resources from eastern DRC. These studies confirm that the mineral trade chain is highly complex, and involves numerous actors (Hayes and Burge 2003; Jackson 2003). Coltan is mined by diggers using artisanal methods, largely in North Kivu, South Kivu

and Maniema, brought to local traders by porters, sold to trading posts in larger cities, sold to international traders, and then exported abroad by transport companies (Cuvelier and Raeymaekers 2002a; Amnesty International 2003; Hayes and Burge 2003; Global Witness 2004). If not directly exported from the trading posts in Goma or Bukavu (province capitals of North Kivu and South Kivu respectively), coltan often crosses the border to Rwanda, from Goma to Gisenyi (the western province of Rwanda) and from Bukavu to Cyangugu (south-western province of Rwanda), is brought to Kigali, the Rwandan capital, and then exported abroad, often through Mombasa or Dar es Salaam (DFID 2007; INICA 2007a; Garrett and Mitchell 2009).

V. RESPONSES TO THE COLTAN MINING ISSUES

Analysis of the link between the conflict, and coltan mining and trade, has significantly influenced responses to the issue. Most action entails boycotting the coltan from particular areas, ranging from the rebel-held areas in eastern DRC to central Africa, in order to cut off the financial resources of armed groups. This is because the prevailing view considers coltan the key driver of the conflict, and it is the most appealing method for public relations (Hayes and Burge 2003).

Responding to pressure, many mobile phone companies, as the end users of tantalum, published statements regarding their coltan supply chain management on their websites¹. The telecommunications industry has collectively created a Supply Chain Working Group². Moreover, two of the world's largest tantalum processing companies³ have published statements on their websites concerning their tantalum sources. Cabot Corporation (2008) affirms that its tantalum is sourced from its own mine, and H.C.Starck

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- 1 For example, Nokia mentions their awareness of the issue of Congolese coltan, and explains that the company has asked its suppliers to avoid purchasing tantalum from the DRC, on its website: www.nokia.com/A4230065, as of 5/11/2007. Similarly, Vodafone states that they do not produce mobile phones, and hence, they have a limited influence over the tantalum supply chain of tantalum (www.vodafone.com/start/responsibility/supply_chain/sector_partnership/coltan.html). They clarify that their supply chain management strategy is to engage directly with their first-tier suppliers, who will also do the same, on their website: www.vodafone.com/start/responsibility/supply_chain.html, as of 5/3/2008.
 - 2 The Global e-Sustainability Initiative (GeSI).
 - 3 U.S.-based Cabot Corporation, Germany's HC Starck and China's Ningxia were predicted to use 70% of the tantalum consumption consumed in 2008, which was estimated to be 5.82,630 million pounds tonnes (Mineweb 2008).

(2008) confirms that it does not ‘knowingly’ source any tantalum originating from the DRC. These efforts revolving around supply chain management appear to be part of the public relations strategies of the companies since supply chain management by end-user companies usually means that they are responsible for their first-tier supplier and their suppliers will be responsible for their first-tier suppliers (Vodafone 2008b).

There is also pressure for companies to implement due diligence when trading in tantalum. NGOs such as Global Witness (Global Witness 2008b) call for due diligence by companies and Enough Project (2009) demands transparency of the supply chain; governments are also trying to develop measures for due diligence. One example is the Congo Conflict Mineral Act of 2009 (Open Congress 2009), by the US government. The act is intended to create due diligence guidance for mineral-using companies on the basis of the planned investigation, and obligates mineral-using companies to reveal from which mine their minerals are sourced. The act also proposes improving the livelihood and situation of the mining communities.

The UN has been trying to break the link between coltan and the conflict through sanctions and an arms embargo, and also named in its report (UNSC 2002b) 85 companies that are considered to be in breach of the OECD Guidelines for Multinational Enterprises⁴. This has been followed up by some NGOs, and cases of a UK-based mineral trading company, Afrimex (Global Witness 2007), and a British air cargo company, DAS Air (RAID 2008), both saw complaints to the National Contact Point in the UK, under the Specific Instance Procedure of the OECD Guidelines. Whilst these efforts by the NGOs have achieved the rulings to support the allegations, the OECD Guidelines do not have any enforcement mechanisms.

There have been some efforts to establish certification schemes for coltan in order to support efforts for supply chain management and due diligence. The German government is financing a pilot initiative to create a mineral fingerprint for coltan by collecting and analysing data from coltan mined in various locations so that the source of tantalum can be identified (Reuters Africa 2008). The Congolese government plans to use this data in order to develop a certification process for coltan (ibid.), similar to the Kimberley

4 The OECD Guidelines for Multinational Enterprises are voluntary principles and standards for business activities with regard to human rights, disclosure and combatting bribery. See www.oecd.org/daf/investment/guidelines.

Process Certification Scheme⁵. The government hopes to increase revenues from coltan and control the areas by controlling the coltan mining and trade through licences, centralised control, and certification (*ibid.*).

Lastly, some studies recommend formalising or regulating mining and trade. Regulation of the sector is encouraged by studies that acknowledge the difficulty of boycotting Congolese coltan, owing to the complex supply chain and the prevalence of coltan smuggling (Hayes and Burge 2003; Jackson 2003). A recent study (Garrett and Mitchell 2009), which recognises governance failure and insecurity in eastern DRC, does not see the boycott of coltan from the DRC as a viable option. This is not only because it is difficult to implement any control mechanisms for the supply chain, but also that issues of governance and security have to be addressed in coordination with the issue of coltan mining and trade. The study suggests that it is essential to coordinate measures in three areas, namely engaging with and formalising the coltan trade, security sector reform, and reforming and strengthening Congolese state institutions.

VI. DISCUSSION

There are three key questions to discuss on the responses and activity regarding the issue of coltan from eastern DRC, founded on the studies conducted on the link between the conflict and the mining and trade of coltan, reviewed in the previous section. Firstly, is it technically feasible to boycott the coltan from rebel-held areas in eastern DRC? The complex nature of the coltan supply chain has been identified as a difficulty in implementing any supply chain management or due diligence measures (Hayes and Burge 2003; Jackson 2003). However, the fundamental problem for these measures to boycott coltan from rebel-held areas is the degree of the informal economy in the region as illustrated below.

As a result of the crash in the price of coltan, and pressure from the international community to boycott Congolese coltan, a number of multinationals have decided to stop their operations in the Kivus (Cuvelier and Raeymaekers 2002b). This had a significant impact, in which traditional trading posts have been marginalised and a small group of business people with close relations with the Rwandan government have replaced the traditional trading posts (*ibid.*). Despite the withdrawal of these multinationals from the

5 The Kimberley Process Certification Scheme (KPCS) aims to cease production and trade in diamonds from conflict zones so that the diamond trade does not finance violence and conflict. KPCS is a joint initiative of governments, industry and civil society launched in 2003, and its members comprise approximately 99.8% of the global production of rough diamonds. With Under this scheme, international shipments of rough diamonds must have a Kimberley Process certificate to certify that they are not from conflict areas. See www.kimberleyprocess.com/.

Kivus, coltan from eastern DRC has been widely supplied to the international market. In 2008, aforementioned Talison Minerals (previously Sons of Gwalia) in Australia suspended tantalum mining operations, based on the weak demand owing to the financial crisis and cheap supply from the DRC (Mineweb 2008).

A study by Department for International Development (2007) estimates that more than half of exports from the DRC are not officially recorded, owing to under-declared exports for tax evasion, and the lack of capacity and weak governance within state institutions. The degree of informal operation within the mining and trade sector encourages illegal operation since legal operation is more difficult to carry out (*ibid.*). This corresponds to the Doing Business ranking by the World Bank (World Bank 2007), mentioned in the second section. In addition, widespread corruption or predation by the civil and military administration in virtually all areas of activity (Rackley 2006) does not allow any measures to control coltan from eastern DRC, particularly when there are buyers who do not consider their reputational risks, including mafia networks (Raeymaekers 2002).

As a result of the overwhelming informal economy existing in the DRC, it is not only infeasible to implement a boycott of coltan from eastern DRC, but, if implemented, the trade would continue in a more opaque manner and/or in different locations (Pole Institute 2002).

Secondly, it has to be considered seriously whether boycotting coltan from rebel-held areas in eastern DRC would break the link between the conflict, and coltan mining and trade, as many studies and reports advocate. This approach is based on eliminating the financial resources of the armed groups, but can be challenged by considering two facts. To begin with, there are complex long-term political issues underlying the conflict in the region as some studies recognised (Moyroud and Katunga 2002; Jackson 2003; Putzel et al 2008; Spittaels and Hilgert 2008). The governor of North Kivu clearly disagrees with the view that various armed groups are simply fighting over mineral resources, and explains the current situation as an accumulation of the very poor management of the DRC over several decades (IRIN 2004).

The political agendas of the rebel groups, FDLR and CNDP, remain largely unresolved although the CNDP has been transformed to a political party and their soldiers have recently been integrated into the Congolese national army. Whilst disarming, demobilising and repatriating the FDLR has often been advocated in order to solve the security issues in the eastern DRC, this would not be successful without diplomatic exercises, namely continuous efforts to open up political space within Rwanda through dialogue (Chatham House 2009). In addition, many FDLR members have been living in the DRC for more than a decade and have assimilated into the community (*ibid.*), and therefore, it is not realistic simply to expect them to repatriate.

The political agenda of the CNDP also has to be considered genuinely as it is doubtful whether they can participate in and contest political debates in the DRC as an ethnic minority group (Takeuchi 2004). Considering the increasing migration from Rwanda to eastern DRC where the land issue has already been creating tensions (ICG 2009), and military support from Rwanda to the CNDP (UNSC 2008), it is crucial to promote diplomatic efforts with Rwanda. The necessary process of disarmament, demobilisation and

reintegration (DDR) and security sector reform (SSR) will not succeed without the cooperation of Rwanda, and donors' unconditional aid for Rwanda should be questioned (McGreal 2008).

A subsequent factor concerns the financial resources of the rebel groups. A recent UN research (UNSC 2008) has revealed that the armed groups, such as CNDP and FDLR, have well-established networks outside the DRC. With regard to financial resources, FDLR, as well as the Congolese army, control a large portion of the trade in coltan, gold, wolfram and cassiterite, and some of their commodities are exported through formally licensed trading posts in Goma and Bukavu. CNDP gains from controlling some of the mines, taxes from border customs posts, land, cattle, and external financing. The study has also found some evidence to show support from the Rwandan government to CNDP. Whilst the revenues from mineral resources are a crucial income for the rebel groups, they can also finance themselves from external and diversified financial sources, and boycotting minerals from the area is not likely to have a decisive impact in breaking the link between the conflict and minerals.

Moreover, contrary to the good intentions of the boycotting of coltan from the area, boycotting would likely impact negatively on the human security situation in the local community. Some studies suggest that coltan mining and trade is one of the very limited livelihoods available for the local population to survive and the boycott would harm the local community that has already been suffering a great human insecurity (Pole Institute 2002; Jackson 2003; Johnson and Tegera 2005; Garrett and Mitchell 2009). In fact, more than one million people are considered to be dependent on artisanal mining in the Kivu since most other industries have been destroyed by the long-term insecurity in the area (Garrett and Mitchell 2009). In addition, there is concern amongst local traders that the proposed mineral fingerprint system for coltan would kill off the industry since the system would increase the price of coltan and reduce the competitiveness of Congolese coltan (Reuters 2009).

The critical issue is that coltan mining and trade has not been benefiting the local population, except the traders who have access to the international market and international buyers (Pole Institute 2002; Johnson and Tegera 2005; Garrett and Mitchell 2009). Whilst coltan mining is not identical to the brutal 'blood diamond' situation, the revenues from coltan have not been fairly distributed and artisanal miners face harsh and dangerous working conditions (Garrett and Mitchell 2009). It is, therefore, not a problem of illegality of the mining and trade but the absence of human rights and socio-economic benefit to the local population (Johnson and Tegera 2005). The weakness of the 'conflict driven by minerals' view is that it misjudges the complexity of war economies, and neglects the fact that the systems of mineral exploitation, created during the war, persists beyond any peace processes (Garrett and Mitchell 2009). For the above reasons, it is not effective to boycott the coltan from this area, but necessary to reorganise (Pole Institute 2002; Johnson and Tegera 2005) and/or formalise the sector (Garrett and Mitchell 2009).

Given the above recommendation, a third question will be the feasibility of formalising the mining sector in eastern DRC. According to the current Mining Code in the DRC, which was enforced in 2002, all deposits of mineral resources belong to the DRC state

(INICA 2007b). Artisanal miners are supposed to apply for one-year artisanal mining rights and mine within artisanal mining zones, specified by the authority; however, they need to pass a written exam, receive training and follow various obligations, including restoration of the land (ibid.).

The Mining Code has been criticised for encouraging fraud, because of the unrealistic conditions for artisanal mining rights, when an increasing population has been relying on artisanal mining for their livelihood due to the displacement, loss of livelihood and infrastructure from the conflict (ibid.). Consequently, the specified timetable for application of the Mining Code has not been kept (Johnson and Tegera 2005).

It is probably not difficult to amend the Mining Code to address the above problem and formalise the mining sector. However, considering the existing cross-border trade networks (MacGaffey 1991; Putzel et al. 2008), efforts to formalise the sector have to be coordinated regionally, probably using a regional initiative such as the International Conference on the Great Lakes Region.⁶ Nonetheless, the challenge is to reorganise the sector in order to enhance social accountability of the mining and trade of coltan (Pole Institute 2002) to achieve sustainable peace and development, since some of the trading posts are already officially licensed and conducting legal trade at present (DFID 2007; Garrett and Mitchell 2009). As some studies point out, the system of coltan exploitation has been unchanged, unaffected by the peace processes, because of the same actors or networks since the conflict (Garrett and Mitchell 2009). In order to reorganise the sector, strengthened governance, particularly the judicial system, and diplomatic efforts to negotiate with neighbouring countries will be crucial.

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VOICE OF GAZA'S PEOPLE UNDER BLOCKADE, SANCTIONS AND MILITARY INVASION

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I. GAZA STRIP

The Gaza Strip is a small, 360 km² area (6–10 km wide and 40 km long) overlooking the Mediterranean Sea. Some 1.5 million people live in this tiny land, on a corridor between two continents. The population is mostly Muslim, but thousands of Christians live there, too. Approximately 70 per cent of Gaza residents are Palestinian refugees who are registered with UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East). They fled from their land when the state of Israel was established in 1948. More than half of the refugees have been living in the refugee camps, the most densely populated area in the world. The right of return for Palestinian refugees was recognized in UN General Assembly Resolution 194, passed in December 1948, but it has never been achieved during the past six decades.

The Gaza Strip has been occupied by Israel since the 1967 War. The Oslo Peace Accord of 1993 legitimized the autonomy of the Palestine Authority within the Gaza Strip. Although the Israeli army and settlers withdrew from Gaza in 2005, Israel still controls land and air borders. Therefore, the Israeli occupation of the Gaza Strip by continues.

II. SITUATION IN LATE 2008

In 2006, the Islamic party, Hamas won the Palestine National Authority elections. Since then, the state of Israel and the international community have imposed severe economic sanctions. Under this deadlock, even humanitarian assistance could not reach the Gazan people, and they have suffered from a shortage of basic human necessities such as water, fuel, electricity, construction materials etc. The United Nations has reported that the humanitarian situation in 2008 is the worst in 40 years. Moreover, a UNOCHA officer has described the situation as a 'violation against human dignity'.

In this critical situation, the Israelis carried out a military attack on the Gaza Strip on

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the 27th of December 2008. Although the Gazan people were afraid that this kind of attack was coming, they did not expect it on that day. For example, on that day, at the Child's Nutrition Center, which the Japan International Volunteer Center (JVC) is supporting, mothers were feeding therapeutic food to their children who were suffering from malnutrition. 'The bombs exploded all of a sudden, and the mothers screamed and ran back home with babies in their hands,' reported the representative of the Child's Nutrition Center. In the schools, when the attack started, students were on their way home after finishing their mid-term examinations. The facilities of the security police office targeted by the Israeli army were close to the schools, and some children were caught in the air raid. Mothers at home panicked when their children did not arrive. The air strike started by destroying the Gazan peoples' daily life.

III. Disproportionate assault that should be condemned

On the 17th and 18th of January, both Israel and Hamas unilaterally declared cease-fires without any agreement; the attacks left 1300 dead and 5400 injured, including many women and children in the Gaza Strip. The declarations did not completely stop hostilities, and the situation continued to be unstable.

Israel argued that these attacks are a retaliation for Hamas's rocket attacks. Indeed, rocket attacks should be condemned. However, the gap between Israel's mass air strike, utilizing the world's most powerful military hardware, and Palestine's homemade bombs, is too large to compare in terms of level and scale of violence. Amnesty International reported that Israel's attack violated international humanitarian law. Such an attack should certainly be condemned.

IV. Humanitarian aid or human rights

The Gazan people are eager to live with dignity as human beings, with the human rights of freedom and self-determination, and not only rely on basic human necessities from donor agencies. The occupation has resulted in 'de-development' in the Gaza Strip. Humanitarian assistance can solve neither the core issue nor the conflict itself. Political resolution is needed, and the international community must actively intervene in this issue. The most vulnerable and impoverished are the victims. We think that we should continue to join with the Gazan people in demanding peace in this region.

JVC carries out emergency humanitarian aid such as medical assistance for the Gazan people under attack. We have been sincerely offering 'emergency' aid since 2002 although the term 'emergency' is ironic in this context. The limitations imposed on our work present us with a dilemma. We work as a humanitarian aid agency, but we are aware that the people want human rights more than basic humanitarian aid. Of course, water, food and medical care are most needed for the lives of survivors. However, in

order for us to implement this assistance, the blockade of Gaza must be lifted. Without early recovery and the reconstruction of destroyed homes, neighborhoods will not be possible.

*** This paper was written right after the seminar held at 10 July 2009.
Opinions expressed here is based on the background at the time.**

REPORT ON THE HUMAN RIGHTS SITUATION IN THE WEST BANK INCLUDING EAST JERUSALEM

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I. ABSTRACT

The aim of this paper is to explain the human rights situation in the West Bank including East Jerusalem, where various human rights violations such as settlements, demolition of houses, the wall and checkpoints have occurred on a daily basis. It analyzes this situation from a legal perspective, in particular international human rights law and humanitarian law.

I. BACKGROUND

The State of Israel has occupied the West Bank and the Gaza Strip since 1967.¹ The State of Israel and the Palestine Liberation Organization (PLO) agreed to the Declaration of Principles on Interim Self-Government Arrangements in 1993 and the transfer of limited power from the State of Israel to the PLO started in the Gaza Strip and Jericho Area in 1994.² As part of this peace process, Palestinian autonomous areas have expanded based on the following agreement³ in 1995 and consequently, the West Bank has been divided into three areas, called Areas A, B, and C.

The State of Israel has annexed East Jerusalem as a part of the Jerusalem municipality

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1 See, e.g., S/RES/242 (1967), S/RES/259 (1968), A/RES/2628 (XXV)(1970),

2 This transfer has started as an implementation of the Agreement on the Gaza Strip and Jericho Area (4 May 1994).

3 The Interim Agreement on the West Bank and the Gaza Strip (28 September 1995)

and declared this 'unified' Jerusalem as the capital of the State of Israel.⁴ Through negotiations in the peace process, East Jerusalem has been separated from the rest of the West Bank and regarded as one of the issues covered by permanent status negotiations.⁵

In Area A, comprising most Palestinian cities, powers regarding civil affairs and internal security and public order⁶ have been transferred from the State of Israel to the Palestinian Authority (PA). In Area B, consisting Palestinian rural communities, only civil authority has been transferred to the PA; the State of Israel and the PA have shared security authority. In Area C, which accounts for approximately 61 per cent of the West Bank, the State of Israel still retains all powers. More than 400 Palestinian communities excluding East Jerusalem are located at least partially inside Area C.⁷

4 This annexation has not been recognized internationally. The Security Council has adopted resolutions which condemn this annexation. See, e.g. S/RES/252 (1968) and also S/RES/478 (1980), which "censures in the strongest terms the enactment by Israel of the "basic law" on Jerusalem and the refusal to comply with relevant Security Council resolutions". The "Basic Law" (5 August 1980) declares Jerusalem, complete and united, as the capital of the State of Israel. The International Court of Justice also views the annexation of East Jerusalem is illegal. See, International Court of Justice, Legal consequences of the construction of a wall in the Occupied Palestinian Territories, Advisory Opinion, 9 July 2004, paras 75 and 122.

5 See, the Declaration of Principles on Interim Self-Government Arrangements, Article V, and the Interim Agreement on the West Bank and the Gaza Strip, Article XXXI.

6 The PA police force has been established and deployed in Area A, based on the Interim Agreement on the West Bank and the Gaza Strip (28 September 1995), while the State of Israel continues to retain the responsibility for external security and overall security of the State of Israel. The PA has no power regarding military force and only the State of Israel has such power. See, The Interim Agreement on the West Bank and the Gaza Strip (28 September 1995), Chapter 2, Redeployment and Security Arrangements.

7 See, United Nations Office for the Coordination of Humanitarian Affairs, "Lack of Permit" Demolitions and Resultant Displacement in Area C, May 2008.

II. THE APPLICABILITY OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW IN THE OCCUPIED PALESTINIAN TERRITORY

The International Court of Justice (ICJ), which is the principal judicial organ of the United Nations, and United Nations resolutions, including the Security Council⁸ and General Assembly⁹, have asserted that the Fourth Geneva Convention¹⁰ applies in all of the Occupied Palestinian Territory (OPT). In particular, the ICJ averred that '[the Fourth Geneva] Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel' in its advisory opinion on the wall in 2004.¹¹

While the State of Israel is a state party to six international human rights treaties¹², treaty bodies such as ICCPR, ICESCR, CRC, CAT, and CERD committees also affirmed the applicability of those treaties in the OPT.¹³ For example, the ICCPR committee reiterates 'the provisions of the Covenant apply to the benefit of the population of the Occupied

8 The Security Council has constantly adopted resolutions which affirm applicability of the Fourth Geneva Convention in the OPT. See e.g. S/RES/446 (1979), S/RES/465 (1980), S/RES/471 (1980), S/RES/605 (1987), S/RES/904 (1994), S/RES/1544 (2004).

9 See, e.g. A/RES/3092 (XXVIII)(A+B)(1973), A/RES/3525(XXX)(A-D)(1975), A/RES/31/106 (A-D)(1976), A/RES/32/91 (A-C)(1977), A/RES/33/113 (A-C)(1978), A/RES/34/90 (A-C)(1979), A/RES/35/122 (A-F)(1980), A/RES/36/226(A+B)(1981).

10 Convention (IV) relative relates to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

11 Ibid., paras. 90–101.

12 Israel is a State party of to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

13 See, e.g., CAT/C/ISR/CO/4, paras 10–12, CRC/C/15/Add.195, para. 2., CERD/C/ISR/CO/13, para. 13..

Territories¹⁴ and the ICESCR committee urges the State of Israel to 'implement without delay its obligations under the Covenant and to desist from decisions and measures resulting in violations of the economic, social and cultural rights of the population living in the occupied territories.'¹⁵

The 2004 Advisory Opinion of the ICJ also concluded that several international human rights including the ICCPR, the ICESCR and the CRC are applied in the OPT.¹⁶ The General Assembly adopted a resolution¹⁷ by an overwhelming majority, which demands that the State of Israel comply with its legal obligation under the Advisory Opinion. However, the State of Israel has taken few measures to follow those obligations.¹⁸

III. HUMAN RIGHTS VIOLATIONS IN THE OCCUPIED PALESTINIAN TERRITORY

A. Settlements

The State of Israel has been building settlements in the OPT since 1967 and those settlements have been expanding. The population of the settlements has risen by 63 per cent since 1993.¹⁹ At the end of 2008, there were 121 settlements in the West Bank and 12 settlements in East Jerusalem where approximately 485,000 and 195,000 settlers live respectively.²⁰ All settlements are located in Area C, approximately 61 per cent of the

14 See, CCPR/CO/78/ISR, para. 11.

15 See, E/C.12/1/Add.69, para. 15.

16 International Court of Justice, Legal consequences of the construction of a wall in the Occupied Palestinian Territories, Advisory Opinion, 9 July 2004, paras. 102–121.

17 See, A/RES/E-10/15 (2004).

18 United Nations Office for the Coordination of Humanitarian Affairs, Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion, 9 July 2007.

19 See, A/HRC/7/17.

20 United Nations Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access Update, May 2009, p.13.

West Bank, or in East Jerusalem, 35 per cent of which is allocated to Israeli settlers, compared to 13 per cent to Palestinians.²¹

Settlement activity in the OPT constitutes a violation of international humanitarian law, especially the Fourth Geneva Convention. Article 49 (6) of the Fourth Geneva Convention specifies 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.'²² Settlement activity in the OPT corresponds to 'transfer' under the Fourth Geneva Convention and is therefore illegal. The Advisory Opinion of the ICJ supports this view.²³ The Security Council also adopted resolutions²⁴ which share this view. The CERD Committee asserted that settlement in the OPT is not only illegal but also 'an obstacle to the enjoyment of human rights by the whole population.'²⁵

B. The Demolition of Houses

Since 1967, Israeli authorities have demolished Palestinian-owned structures on the following grounds: lack of permits, military necessity, and punishment in the OPT.²⁶ After the Oslo Accords, most of these demolitions have occurred in Area C and East Jerusalem due to lack of permits; the Israeli authorities retain powers over building and planning. Area C, and East Jerusalem has been unilaterally annexed by the State of Israel.²⁷ The

21 United Nations Office for the Coordination of Humanitarian Affairs, *The Planning Crisis in East Jerusalem: Understanding the Phenomenon of "Illegal" Construction*, April 2009, p.8.

22 Full text available from: <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>

23 International Court of Justice, *Legal consequences of the construction of a wall in the Occupied Palestinian Territories*, Advisory Opinion, 9 July 2004, paras. 120–121.

24 See, e.g., S/RES/446 (1979), S/RES/452 (1979)

25 CERD/C/ISR/CO/13, para. 14.

26 A/HRC/7/17, paras. 41–42, and United Nations Office for the Coordination of Humanitarian Affairs, *"Lack of Permit" Demolitions and Resultant Displacement in Area C*, May 2008.

27 A/63/518, paras. 38–45.

1966 Jordanian Law²⁸ is still in force in the West Bank, thus Palestinians need to apply for permits to build any structures.

In Area C, it is the Israeli Civil Administration (ICA) which issues these permits. The process of application is time-consuming and expensive, and less than 6 per cent of the applications submitted in Area C between January 2000 and September 2007 were approved. As a consequence, thousands of Palestinians are compelled to build houses without a permit to meet increases in family size. During the same period, over 1,600 Palestinian structures were demolished. Moreover, more than 3000 houses, including ten communities in which demolition orders have been issued for most of the houses, are at risk of demolition without prior warning.²⁹ As of June 2009, at least 221 Palestinian-owned structures including 91 residential ones have been demolished and more than 513 people have lost their homes in the West Bank.³⁰ These people not only lose their properties but may also have to pay a fine or suffer imprisonment.

In East Jerusalem, Palestinians have to live in only approximately 13 per cent of allocated areas in East Jerusalem, compared to 35 per cent for Israeli settlers. The Israeli authorities have failed to provide Palestinians with sufficient housing and thus the Palestinian area has been filled with residential buildings. At least 28 per cent of Palestinian residential buildings have been built without appropriate permits in East Jerusalem, which means that over 6000 people might lose their homes due to demolition by the Israeli authority. Between 2000 and 2008, over 670 Palestinian structures have been demolished on similar grounds.³¹

These demolitions amount to violation of Article 53 of the Fourth Geneva Convention which prohibits '[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations... except where such destruction is rendered absolutely necessary by military operations.'³² The 2004 Advisory

28 The Law of Cities, Villages and Buildings no.79 of 1966. This Law requires a permit for almost all constructions.

29 United Nations Office for the Coordination of Humanitarian Affairs, "Lack of Permit" Demolitions and Resultant Displacement in Area C, May 2008.

30 United Nations Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access Update, June 2009, p.5.

31 United Nations Office for the Coordination of Humanitarian Affairs, The Planning Crisis in East Jerusalem: Understanding the Phenomenon of "Illegal" Construction, April 2009, p. 2-4.

32 Full text available from: <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>

Opinion of the ICJ averred that the demolition of Palestinian structures for the construction of the wall violates Article 53 of the Fourth Geneva Convention and military necessity or national security cannot justify these demolitions.³³ The Committee of CERD was concerned about 'the disproportionate targeting of Palestinians in house demolitions and call[ed] for a halt to the demolition of Arab properties'.³⁴ The General Assembly also adopted several resolutions³⁵, gravely concerned about demolition of Arab houses as a violation of the Fourth Geneva Convention, as did the Security Council³⁶.

C. The Wall and Checkpoints

The State of Israel decided in June 2002 to construct a wall for security purposes to protect its citizens from Palestinian suicide bombers.³⁷ The total length of the wall is planned to be 723 kilometers and 57 per cent of the wall has been completed. Another 10 per cent of it is under construction and 31.5 per cent is planned. In April 2006 the Israeli government approved the current route, approximately 86 per cent of which runs inside the West Bank including East Jerusalem rather than along the 1949 Armistice line – the so-called Green Line – in order to annex most of the Israeli settlements with approximately 80 per cent of settlers. When completed, approximately 12 per cent of the West Bank including East Jerusalem will be separated from the rest of the West Bank.³⁸

There are 42 communities located between the wall and the Green Line and closed by military order. Residents of those communities, approximately 60,000 Palestinians, are required to obtain permits to get through gates in the wall on a daily basis since most Palestinian social facilities including workplaces, schools, hospitals, etc are located in

33 International Court of Justice, Legal consequences of the construction of a wall in the Occupied Palestinian Territories, Advisory Opinion, 9 July 2004, paras. 132, 135 and 137. As the title says, this Advisory Opinion deals with only issues related to the construction of a wall.

34 CERD/C/ISR/CO/13, para. 35.

35 See, e.g. A/RES/2851 (XXVI)(1971), A/RES/3240 (XXIX)(1974), A/RES/32/91 (A-C)(1977), and A/RES/36/147 (A-G)(1981).

36 S/RES/1544 (2004)

37 A/63/518 (2008), para. 21

38 A/HRC/12/37, para 71.

the east side of the wall. However, the gates are not always open and none of the communities have 24-hour access to hospitals in the east side. Over 100 people in the area have no permit to leave the area.³⁹

According to the OCHA report,⁴⁰ since October 2003, Palestinians who live on the east side of the wall have been required to obtain permits to visit the west side. It has been difficult to obtain these permits. For instance, approximately 60 per cent of Palestinian farmers residing on the east side of the wall who own land on the west side have no such permits, thus no access to their land. Gates in the wall shut irregularly and even permit-holders' access is not guaranteed.

In addition to the wall, since 1993, Israel has constructed checkpoints, and required West Bank Palestinians to obtain permits to get through these checkpoints.⁴¹ As of June 2009, there are 613 obstacles in total within the West Bank which impede movement of Palestinians inside the West Bank and access to East Jerusalem; 68 of these obstacles are permanently staffed. In particular, 30 permanently-staffed checkpoints are deep inside the West Bank, which obstruct movement from one Palestinian community to another. The other obstacles include unstaffed roadblocks, earth mounds, earth walls, road barriers, road gates, trenches, and 23 'partially staffed checkpoints'.⁴² Therefore communities in the West Bank are compelled to be fragmented.

As a consequence of multi-layered systems including the wall, checkpoints, and the permit system enforced in the West Bank, the freedom of movement of Palestinians within the West Bank has been severely restricted. This regulation amounts to a violation of the right to freedom of movement under Article 12 of the ICCPR which stipulates in Paragraph 1: '[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.' and in Paragraph 2: '[e]veryone shall be free to leave any country, including his own.'⁴³ Moreover, the system constitutes violations of various human rights under the ICESCR such as the

39 A/HRC/7/17, paras. 36–40.

40 United Nations Office for the Coordination of Humanitarian Affairs, *Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion*, 9 July 2007.

41 A/63/518 (2008), para. 29.

42 United Nations Office for the Coordination of Humanitarian Affairs, *West Bank Movement and Access Update*, June 2009.

43 Full text available from: <http://www2.ohchr.org/english/law/ccpr.htm>

right to work⁴⁴, the right to health⁴⁵, the right to education⁴⁶ and the right to an adequate standard of living⁴⁷.

The 2004 Advisory Opinion of the ICJ affirmed that the construction of the wall and the enforcement of its associated régime in closed areas between the wall and the Green Line violates the freedom of movement under Article 12 of the ICCPR⁴⁸ as well as the right to work, health, education and an adequate standard of living under the ICESCR.⁴⁹ The ICJ recognized the legal obligations of Israel to freeze the construction of the wall, to dismantle it and to make reparation for the construction.⁵⁰

The CERD Committee expressed deep concern regarding the severe restrictions on freedom of movement, targeting particular national or ethnic groups, which have a negative impact on the enjoyment of the rights of family life, work, education and health.⁵¹

IV. CONCLUSION

It is evident that the State of Israel has been violating various international humanitarian and human rights laws. As argued above, specific measures taken by the State of Israel to construct the wall, install numerous obstacles, establish and expand settlements, and demolish Palestinian-owned structures have infringed the human rights of Palestinians in the West Bank including East Jerusalem. Therefore it is essential for civil society as well as the international community to be aware of those violations occurring in the West Bank and furthermore pursue accountability for those violations.

44 Article 6 of the ICESCR.

45 Article 12 of the ICESCR.

46 Article 13 of the ICESCR.

47 Article 11 of the ICESCR.

48 International Court of Justice, Legal consequences of the construction of a wall in the Occupied Palestinian Territories, Advisory Opinion, 9 July 2004, paras. 133, 134 and 136.

49 Ibid., paras.134, 136 and 137.

50 Ibid., 163.

51 CERD/C/ISR/CO/13, para.34.

*** This paper was written right after the seminar held at 10 July 2009.
Opinions expressed here is based on the background at the time.**

OBSTACLES AND PROSPECTS FOR PEACE IN THE MIDDLE EAST

Tsutomu ISHIAI*

Applying international law such as the Geneva Conventions is the most powerful tool to improve the humanitarian situation in Palestine, stressed Tsutomu Ishiai, former Middle East correspondent and deputy-editor of the Asahi Shimbun Globe at a conference on Human Security held at the University of Tokyo in July.

After the operation in Gaza, the Israeli government instructed its military leadership not to disclose to the media the names of the commanders who were responsible for the operation. They took this measure, it is believed, in order to prevent any possible war crimes charges against them. Those commanders face that risk, especially when they travel abroad.

Mr. Ishiai said that this means that they take international law seriously. He believes that this is a good sign and a good step.

Mr. Ishiai, who has covered Palestine since the late 90s, also pointed out that the presence of the media had been quite an effective deterrent against atrocities in this 60-year long conflict. In a three-week Israeli military offensive last winter in Gaza, which according to Palestinian officials killed more than 1,500 Palestinians, Israeli Defense Forces (IDF) did not allow any foreign journalists to accompany the Israeli troops. 'Media coverage itself is the strongest weapon to prevent violence against the civilian population,' he said. It can also prevent violence by Hamas against Fatah supporters.

In the Q and A session, there was a debate whether an international boycott of Israeli products would be effective in changing the military policies of the state of Israel. Mr. Ishiai hinted it would not. Based on his experience in other conflicts such as those in Iraq and the Balkans, he indicated that the more international sanctions are applied, the more the political leaders gain political support from their own people. This was the case with Saddam Hussein, and also with Milosevic in Serbia, he said.

Mr. Ishiai pointed out that when we discuss the issue of the Middle East, NGOs and even the media tend to support Palestine and often accuse Israel. He said that it might be easy to be pro-Palestinian and anti-Israel, but that he thought the most important thing for us is to be pro-peace and to promote and encourage pro-peace movements inside Israel. At the same time, he said, the foreign media – including the Japanese media – should not neglect the fact that the Palestinian Authority and Hamas government were also guilty of misconduct and corruption.

He was asked why the IDF sometimes used excessive force against Palestinians. He explained that we should take into account the historical background of the Jewish peo-

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ple after the Holocaust. This made them continue to fear that any small mistakes in security policy might cause the end of the existence of a Jewish State where they could enjoy being a majority of the population. Mr. Ishiai said this kind of special security mentality among Israelis did not, of course, justify what they had done in Gaza and what was happening in the West Bank but it might be helpful for us to have a better and deeper understanding of the situation in order to think about a long-term solution for peace in the region.

In terms of the future prospects of the Peace Process, Mr. Ishiai acknowledged, as many experts suggested, that he did not believe any miracles would occur under Obama's first term even if Mr. Obama tackled this issue seriously. There are three main reasons for this. The first is the Netanyahu administration's unwillingness to sue for peace. The second is the division of Palestinian power between Fatah and Hamas, and the last is the Iranian nuclear issue, which may have a higher priority for the US administration.

Mr. Ishiai also argued that it might be high time for us to reconsider whether the two-state solution was the only sustainable long-term solution. If the state of Israel maintains its Zionist character, it will never coexist with extreme groups in Palestine like Hamas. UK-based Palestinian professor Azzam Tamimi, who has been an advocate and advisor for the political factions of Hamas, told Mr. Ishiai when he visited Japan last year, 'If the State of Israel admits the existence of Hamas in the last phase of the negotiations, Hamas could do the same. The negotiation has to be reciprocal.' It is true that the Israeli government always demands that Hamas admit the existence of the Jewish state; at the same time they never admit the existence of Hamas and continue military operations to terminate the Hamas leadership. So far, the Obama administration has taken a similar position to the Bush administration in terms of dealing with Hamas as a terrorist organization.

Mr. Ishiai briefly introduced the argument by Prof. Yakov Rabkin, a Russian Jewish scholar at the University of Montreal, that there was strong opposition by religious Jews towards the current Zionist character of the state of Israel. Prof. Rabkin, who recently visited Japan, believes that by denying the Zionist character, Palestinians and Israelis could live peacefully together in a single state as they did under the Ottoman Empire.

At the same time Mr. Ishiai cast doubt on the ongoing assistance to Palestinians by the Japanese government – the so-called Corridor for Peace in the West Bank – which was initiated by the Koizumi administration in order to give Palestinians more jobs and money. He said that the main idea of this project was that the richer Palestinians became, the more pro-peace they would be. He believes this is not true, and that rather than being rich or not, the issue here is being just or not.

*** This paper was written right after the seminar held at 10 July 2009.
Opinions expressed here is based on the background at the time.**

REPATRIATION ASSISTANCE FOR REFUGEES AND IDPS AS UN PKO MANDATE: JAPAN'S ROLE IN HUMANITARIAN ASSISTANCE AND THE CHALLENGE OF PEACE-BUILDING

Yukari ANDO *

ABSTRACT

Current UN PKOs have a tendency to extend mandates based on Security Council Resolutions. One of the significant factors in effecting the change is assistance for refugees and IDPs; in particular, repatriation assistance. This paper examines from the perspectives of protection of civilians, in particular, refugees and IDPs, how UN PKO mandates have been changed. As a case study, the ongoing United Nations Mission in Sudan (UNMIS) is examined with special reference to the voluntary and sustainable return of refugees and IDPs. The situations of refugees and IDPs are not unrelated to the security situations in the Sudan. The paper, therefore, discusses the arrest warrant toward acting President Bashir by the ICC under Chapter VII of the UN

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- * Programme Adviser, Secretariat of the International Peace Cooperation Headquarters Cabinet Office, Government of Japan; This paper reflects my personal views. It does not represent the view of the organisation to which I belong. I would like to express my appreciation of the University of Tokyo, Human Security Programme, Documentation Centre on Refugees, which made possible my participation in the 'Protecting People in Conflict and Crisis: Responding to the Challenges of a Changing World' conference held in September, 2009 in Oxford, UK. This paper was revised in the light of other sessions at the conference. Being the only Japanese participant at the conference, I chose to focus on the activities of Japan in the Sudan. I therefore do not go into depth on general issues of the United Nations Mission in the Sudan (UNMIS) in order to concentrate on Japan's efforts to assist refugees and internally displaced persons (IDPs).

Charter, and the activities of Japan in Sudan in regards to Japan's efforts to assist refugees and IDPs.

I. INTRODUCTION

Current United Nations Peace Keeping Operations (UN PKOs) have a tendency to extend mandates based on Security Council Resolutions. This is called robust, multifunctional or multidimensional activity in comparison to traditional UN PKOs.

One of the significant factors affecting the change is assistance for refugees and IDPs; in particular, repatriation assistance. This paper examines how UN PKO mandates have been changed from the perspectives of protection of civilians, in particular, refugees and IDPs. As a case study, the ongoing UN PKO the United Nations Mission in Sudan (UN-MIS) is examined with special reference to the voluntary and sustainable return of refugees and IDPs under Security Council Resolution 1590. The definitions of 'refugee' and 'IDP' apparently differ in international law. Included in the definition of a refugee in the Refugee Convention is the stipulation that a refugee is a person who, "...is outside the country of his nationality...." For IDPs the stipulation is that one has not crossed an international border.

For IDPs, this paper focuses on the situation in the Sudan. I therefore, refer to the National Policy on IDPs, the Republic of Sudan, Ministry of Humanitarian Affairs (d):

Persons or group of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular, as a result of, or in order to avoid, the effects of armed conflict, situations of generalized violence, violation of human rights or natural or human-made disaster and have not crossed an international border.

This IDP definition is similar to paragraph 2 of the Guiding Principle on Internal Displacement of 11th February 1998.¹ On the other hand, article 1 of the Declaration by the Committee of Internally Displaced Persons focuses on different elements. For instance, the latter includes large-scale development projects, which cover a wider range of persons. The Declaration clearly specifies the responsible party which is obliged to act as the responsible State or in case of no State, de facto authority. In addition, the African Union Convention for the Protection and Assistance of IDPs was adopted by the Special

1 Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement 11 February 1998(E/CN.4/1998/53/Add.2).

Summit of the Union held in Kampala on the 22nd October 2009.² By the 26th October 2009 it had been signed by 17 States. This convention is a significant step in dealing with current problems in Africa. The definition of IDP in the African Union Convention is almost the same as the Guiding Principle of 1998.

As described above, two obvious differences can be pointed out. While persecution is one of the main elements of the definition of 'refugee', the definition of 'IDP' does not refer to persecution. Instead of persecution, however, possible causes are enumerated for IDP. Furthermore an international frontier is another key element that should be noted. Under the scheme of sovereignty, the state of being 'within' or 'without' the territory of the State is a crucial element in distinguishing one from another.

This paper, however, focuses on the protection of both refugees and IDPs under UN PKO mandate. It is interesting that the mandate does not necessarily distinguish between protection of refugees and IDPs. As I explain in the following section, they are described in a parallel manner or interchangeable.

II. TURNING POINT OF THE UN PKO MANDATE

The mandate of UNMIS was established by Security Council Resolution 1590 on 24th March 2005. This resolution is notable in that the UN PKO mandate has since been extended. Before examining the mandate itself, two characteristics of UNMIS should be raised. Firstly, the mandate was almost entirely based on the Comprehensive Peace Agreement (CPA) of 9th January 2005. Paragraph 15.1 states that the parties agree to a UN Peace Support Mission to monitor and verify the Agreement and to support the implementation of the CPA as provided for under Chapter VI of the UN Charter. Note that it is based on Chapter VI, not Chapter VII.

Secondly, the Security Council Resolution is partly authorised under Chapter VII of the UN Charter, but this was not acknowledged at an initial stage.³ In a way, both parties initially recognised that the UN mandate was only authorised under Chapter VI of the UN Charter. Preamble 7 of the Security Council Resolution states, however, 'to take all necessary action' to prevent further violations of human rights and international humanitarian law in Sudan. Paragraph 16 also authorises the mission 'to take all necessary action' to protect civilians under imminent threat of physical violence without prejudice to

2 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) adopted by the Special Summit of the Union held in Kampala, Uganda 22nd October 2009.
www.africa-union.org/root/au/Documents/Treaties/text/Convention%20on%20IDPs_Eng.pdf accessed 29 October 2009.

3 Sakai 2008, p. 189

the responsibility of the Government of Sudan under Chapter VII. This 'all necessary action' is a significant factor in relation to the recent debate on 'responsibility to protect,' which will be considered in the next section. Moreover, preamble 8 emphasises the concerns of the civilian population: in particular, refugees and IDPs. Preamble 9 then considers that the voluntary and sustainable return of refugees and IDPs will be a critical factor in the consolidation of the peace process.

It must be kept in mind that the repatriation of refugees and IDPs is guaranteed to be 'voluntary', and once they repatriate to their original places of habitation, usually their original villages, sustainability is a key issue: whether they can integrate a normal life as before. This is not easy, however, to implement, since assessment of 'voluntary' is very difficult, and 'sustainability' requires better coordination with other agencies involved in development assistance, such as UNDP, UNHCR and UNICEF. It also depends upon the cluster approach framework of the international agencies. Moreover, preamble 10 raises concerns over the security of humanitarian workers and their access to refugees and IDPs. Paragraph 4 (b) states 'to facilitate and coordinate, within its capabilities and in its areas of deployment, the voluntary return of refugees and IDPs, and humanitarian assistance, inter alia, by helping to establish the necessary security conditions.'

Indeed, UNMIS is requested to coordinate to maintain 'necessary security conditions' in terms of refugee and IDP repatriation assistance. This applies not only to refugees and IDPs but also to the protection of civilians as a whole: paragraph 4 (d) states that the mandate of UNMIS is, 'to contribute towards international efforts to protect and promote human rights in Sudan, as well as to coordinate international efforts towards the protection of civilians with particular attention to vulnerable groups including IDPs, returning refugees.'

We also must keep in mind that the coordination of civilian protection, particularly returnees as a vulnerable group, is necessary to the protection of human rights. These paragraphs invoke the spirit of international refugee law, in particular, the 1969 OAU Refugee Convention Article 5 Paragraph 2 Voluntary Repatriation. I earlier referred to the 1951 Convention. Unfortunately, there is no specific provision under the 1951 Convention stipulating voluntary repatriation itself. The drafting process of the 1951 Convention was almost two decades before the OAU Refugee Convention, and a robust solution was not actively discussed at that time. More importantly, the number of repatriates is usually immense in Africa. That is why the OAU Convention is oriented towards a more robust solution than the 1951 Convention.

Currently, guidelines on the protection of civilians are under discussion in the UN Department of Peacekeeping Operations (DPKO). There is no doubt that the UN PKO mandate was extended to protect civilians such as non-military peacekeepers, refugees, IDPs and humanitarian workers, but there have been no guidelines up to now. A case-by-case approach has been taken at the field level. One civilian protection officer has reported that there was no effective communication between the field office and DPKO headquarters. Therefore, the head of the peacekeeping operation is now taking this into account to implement effective measures based on the 'responsibility to protect'.

III. RESPONSIBILITY TO PROTECT REFUGEES AND IDPS

The situation in Sudan is an important test case for the international community as a whole. For instance, the ‘responsibility to protect’ is a significant aspect of the debate over how to handle the situation in Sudan. In order to properly analyse the protection of people in conflicts and crises, we must take into account the ongoing situation in Sudan. The mandate of UNMIS clearly requires the protection of civilians under Chap VII of the UN Charter, reflecting on tragedies such as the Rwandan Genocide and the mass killings in Srebrenica under the watch of the Security Council and UN Peacekeepers.⁴ In fact, 2005 was a turning point of ‘Responsibility to Protect’ with the world summit reflecting the Darfur situation. Of course in 2001, the International Commission on Intervention and State Sovereignty (ICISS) published its report ‘The Responsibility to Protect’. However, at that time there seemed to be something of a gap between theory and practice.

Looking at the Darfur situation, primary responsibility lies with the government of Sudan, in other words, the Khartoum government in Northern Sudan. If it were a failed state such as Somalia, the issue would be much easier. Although the current President Omar Hassan Ahmad al-Bashir was indicted by the International Criminal Court (ICC) based on accusations of crimes against humanity and war crimes, sovereignty is still a basic structure of international law. Therefore, it is not easy to implement ‘responsibility to protect’ in a simple manner. In response to the situation, this year the Secretary-General’s ‘Implementing the Responsibility to Protect’ report was published. It is a more specific approach to how to implement the ‘Responsibility to Protect’ in this world and says that the development of UN strategy, standards, processes, tools and practices for the responsibility to protect would be the best way to discourage states from misusing it. The report contains a good guidelines; however, it still remains theoretical and has not been implemented in practice.

IV. ICC UNDER CHAPTER VII OF THE UN CHARTER

When considering peace and stability in the Sudan, we cannot ignore the ongoing activity of the ICC. Therefore, Security Council Resolution 1593, adopted 31st March 2005, declared that the ICC must also examine the situation.⁵ The basis of the referral was the determination that the situation in Darfur continues to constitute ‘a threat to

4 Report of the Secretary-General ‘Implementing the responsibility to protect’ (A/63/677) 12 January 2009, para.5.

5 Security Council Resolution 1593 (2005) Adopted by the Security Council at its 5158th meeting on 31 March 2005 (S/RES/1593).

international peace and security' under Chapter VII of the UN Charter. However, the author cannot agree with this opinion. It is true that Resolution 1593 provides a legal basis for referring the case to the prosecutor of the ICC. The resolution says:

Acting under Chapter VII of the Charter of the United Nations,

1. Decides to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court.

It was adopted by a vote of 11 in favour, none against with 4 abstentions, by Algeria, Brazil, China and United States.⁶ Article 13(b) of the ICC Statute stipulates that,

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations.

Article 5 stipulates 4 crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression. When an individual, including an acting head of state or government, is accused of serious crimes, it will be expected to refrain from those serious crimes. The ICC Statute clearly indicates the jurisdiction to prosecute an acting head of state or government under Article 27(1). However, there is a question whether this is binding on a state that is not party to the ICC. Sudan has yet to ratify the ICC Statute.

As described above, the indictment of President Bashir is justified by the Security Council Resolution on the basis of Chapter VII of the UN Charter. Some say that Sudan is not a party to the ICC, but Sudan is a member of the UN, and therefore has an obligation to comply with the decision of the Security Council. This basis seems to be based on Article 25 of the UN Charter.⁷ However, it must be determined to be 'a threat to interna-

6 Summary Record of the Security Council Sixtieth year 5158th meeting, Thursday, 31 March 2005, 10.30 p.m. New York (S/PV.5158) 31 March 2005.
<http://daccess-dds-ny.un.org/doc/UNDOC/PRO/N05/292/47/PDF/N0529247.pdf?OpenElement> accessed 29 October 2009.

7 The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

tional peace and security' under Chapter VII of the UN Charter.

When determining 'a threat to international peace and security' under Article 39 of the UN Charter, the Security Council may decide what measures, not involving the use of armed force, are to be employed to implement its decisions under Article 41. If measures limited to those stipulated in Article 41 would be inadequate or have proved to be inadequate, the Security Council may take measures including the use of armed force under Article 42. But Resolution 1593 itself is silent on whether the situation of Sudan is determined by the Security Council to be 'a threat to international peace and security'. We can see the term 'a threat to international peace and security' only in the preamble not the body of the text, of the resolution. Since the preamble has no binding effect, it is questionable whether the resolution is legally binding on member states of the United Nations. Nevertheless, the resolution is still significant in applying a restraining effect through international pressure.

This ongoing ICC activity regarding the Sudan cannot be considered in isolation, but must be related to concerns over the civilian population, including humanitarian workers who are involved with refugee and IDP assistance, since a considerable number of refugees and IDPs have been affected. The referral is a positive step in international criminal justice.⁸ From the point of view of international criminal law, this is a remarkable step, a positive development for not only international criminal law, but the international community as a whole. However, the difficulty remains that the Security Council is a political body. A veto could be utilised to block a resolution on a similar case in the future. The international community seems to be aware that President Bashir will not be appearing before the ICC. The arrest warrant is most likely the expression of political pressure by the international community on the head of state. After the arrest warrant was issued by the ICC prosecutor, 13 international NGOs were expelled from Darfur.

There was then anxiety about the stability of Sudan if further negative impacts arose as a consequence of the arrest warrant. A government official later announced that the NGOs could resume their activities if they changed their names and logos. This might be a sign that they would not take further negative action, because the expulsion of the international NGOs had led directly to serious malnutrition for IDPs in Darfur. It is not a good idea to increase internal frustration before the general election in 2010. Thus, it is unlikely that President Bashir will take more negative action against the international community when potential gains are taken into account.

V. JAPAN'S CONTRIBUTION TO INTERNATIONAL PEACE COOPERATION

Lastly, we come to an explanation of Japan's current activities concerning the Sudan. Figure 1 shows the organisational chart of the Secretariat of the International Peace Cooperation Headquarters under the Prime Minister, for which the author works.

8 Cryer 2006.

In point of fact, Japan may currently be undergoing a period of transition in terms of the related policies, because control of the government changed in September of 2009 to leadership by the Democratic Party (Minshuto) after the long reign of the Liberal Democratic Party (Jiyuminshuto). Japanese participation in UN PKO is based on International Peace Cooperation Law (Law No.79 of 1992) of 19th June 1992 (Law concerning Cooperation for United Nations Peace-Keeping Operations and Other Operations). Article 3 is highly significant on the subject of the protection and the role of military. As you may know, Article 9 of the Japanese Constitution strictly limits some activities even within UN PKO mandates. There are three main activities to which Japan can contribute based on International Peace Cooperation Law: firstly, UN PKOs (para.1), secondly, international humanitarian relief operations (para.2), and thirdly, international electoral observation (para.2-2).

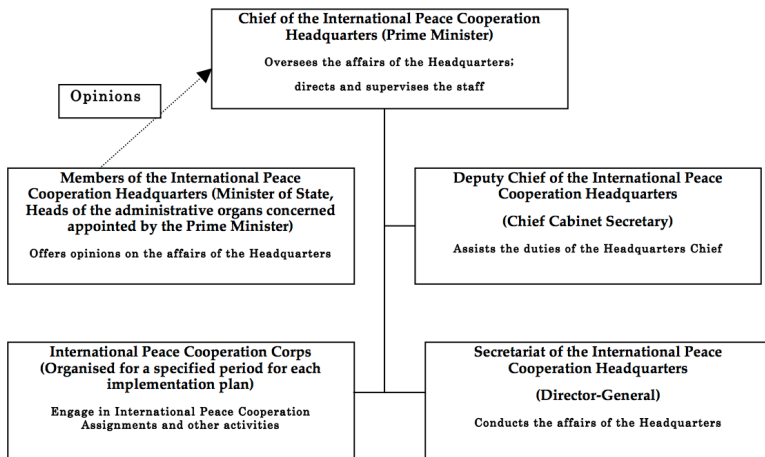


Figure 1. Organisational Chart of International Peace Cooperation Headquarters

In order to participate in UN PKOs, the following five principles are strictly examined in Japan. There are traditional UN PKO principles: i) Cease-fire agreement, ii) Consent of host countries/parties to armed conflict, iii) Impartiality/Impartiality, and iv) Use of weapons solely for self-defence. Japan's five principles are the above four principles plus, in the event that one of the above i), ii), or iii) is not met, the dispatch is suspended. If the situation does not recover shortly, the dispatch must be withdrawn.

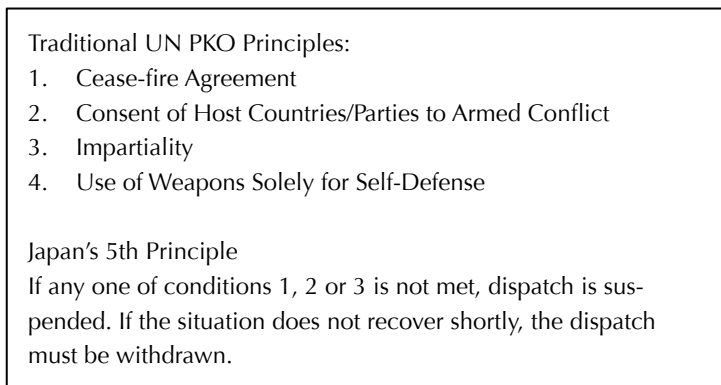


Figure 2. UN PKOs 5 PRINCIPLES IN JAPAN (Sanka 5 Gensoku)

Secondly, Japan may contribute to international humanitarian relief operations on the condition that (Article3(2))...

It must be requested by:

- (1) A resolution of the General Assembly or Security Council, or ECOSOC.
- (2) International Agencies such as: (i) OCHA, (ro) UNHCR, (ha) UNRWA, (ni) UNICEF, (ho) UNV, (he) UNDP, (to) UNEP, (chi) WFP, (ri) FAO, (nu) WHO
- (3) IOM

Although Japanese Law has the above restrictions, it should be noted that beneficiaries of Japanese international humanitarian relief operations are unique from the beneficiaries covered by international law. The (Japanese) International Cooperation Law focuses on 'Affected Persons (Hisaimin)'. This is defined as civilian populations and others who are affected or will be affected by armed conflict. There are four activities for affected persons in this respect:

- (a) Searching/rescuing/assisting repatriation of affected persons. Article 3(3)(ru)
- (b) Providing food/clothing/medical supplies to affected persons. Article 3(3)(o)
- (c) Establishing shelter/facilities for affected persons. Article 3(3)(wa)
- (d) Repairing daily facilities damaged by armed conflicts for affected persons. Article 3(3)(ka)

This is a protection-oriented definition rather than a definition of refugees and IDPs.

Relief supplies were contributed by Japan through UNHCR and UNMIS. Also, since last year two personnel from the Self-Defence Force have been dispatched to UNMIS

Headquarters. One is in charge of logistics; another is in charge of information analysis, such as database maintenance.

Table 1. Japan's Contribution to Sudan

Relief Supplies	5 Oct. 2004	UNHCR	700 tents
Relief Supplies	29 July 2005	UNMIS	27 4WD vehicles, 60 land mine detectors, 20 big tents
Relief Supplies	6 Nov. 2007	UNHCR	10,000 blankets, 10,000 sleeping mats, 10,000 water vessels, 4000 plastic sheets
PKO	3 Oct. 2008	UNMIS	Logistics: 1 person Information analysis: 1 person
Relief Supplies	28 Oct. 2008	UNHCR	60 water purifiers

*Date of Cabinet Approval

VI. CONCLUSIONS

In conclusion, the author would like to raise the challenge to the government of Japan to broaden its future contributions to refugee and IDP repatriation assistance. As mentioned above, according to International Peace Cooperation Law Article 3(3)(ru), it is possible to contribute to refugee and IDP repatriation assistance in a legal sense. However, Japan has no experience of direct repatriation assistance for refugees and IDPs. Of course, every activity must meet the five principles and Article 3 of the International Peace Cooperation Law, and it must be approved in a cabinet meeting. If every condition is met, 'Searching or rescuing, or assisting repatriation of affected persons.' under Article 3(3)(ru) might be possible to help to ensure the effective protection of refugees and IDPs.

cf. Rwandan Refugee Relief, September to December 1994. Timor-Leste Displaced Relief, November 1999 to February 2000.

It has already been indicated that the year 2005 was a turning point for UN PKOs, since the mandate was clearly extended to multifunctional activities. The significant aspect is whether the consent of the government should be considered, irrespective of the objective of the activities, such as protection by international human rights law, international humanitarian law and international refugee law. As suggested by Judge Antônio Cançado Trindade of the International Court of Justice in the general course of the Hague Academy of International Law in 2005 these three, international human rights

law, international humanitarian law and international refugee law, comprise a “New Jus Gentium”⁹.

If a mandate is properly implemented, it would certainly contribute to the protection of people in conflict and crisis, which would be a very welcome change in the world. However, challenges still remain. For instance, Chapter VII of the UN Charter is written in very strong terms that can affect the structure of the international community. In other words, one cannot ignore the fact that the responsibility “to take the necessary action” may deliberately be abused. We should, therefore, carefully examine every single step without authorising a *carte blanche*. There was a very understandable frustration during and after the Rwandan experience, because when the genocide occurred, the mandate of UN PKO was fairly limited and the Blue Helmets could not stop the mass killings. As a consequence, genocide was committed before the very eyes the UN Peacekeepers. Nevertheless, the risk of issuing a *carte blanche* should be considered as it may be intentionally or unintentionally misused. Political will sometimes drives in the wrong direction. Being vigilant not to go in that direction is one of the significant responsibilities for the international community, especially for social scientists.

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9 Cançado Trindade 2006, pp. 160–166.

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THE PROTECTION OF PERSONS IN THE EVENT OF DISASTERS: EVOLUTION OF THE CONCEPT AND CONSIDERATION IN THE INTERNATIONAL LAW COMMISSION

Emika TOKUNAGA*

ABSTRACT

The image of the devastating Indian Ocean tsunami, Cyclone Nargis in Myanmar, and the Sichuan earthquake in China are still fresh in our minds. In respect of the protection of persons in the event of disasters, states and other actors would save affected people in relief operation, while planning for and responding to the risks and consequences resulted from future disasters as well as minimizing the damage. However, various legal issues remain unsolved and therefore it is more urgent that we construct a comprehensive international legal framework in this area. The purpose of this study is to explore the concept of the protection of persons in the event of disasters by analyzing the preliminary report of Mr. Eduardo Valencia-Ospina, Special Rapporteur of this topic and the consideration of the 60th session of the ILC, from the point of view of international law, especially international human rights law and international humanitarian law.

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I. INTRODUCTION

The image of the devastating Indian Ocean tsunami, Cyclone Nargis in Myanmar, and the Sichuan earthquake in China are still fresh in our minds. Disasters are on the rise in all regions of the world; each year, large numbers of people are affected, causing tremendous loss of life and injury. Moreover, in the case that an affected state, which is incapable for humanitarian assistance, rejects the offers of help from assisting actors, the situation grow worse because of shortage in food and medicine as well as inefficient transport methods of relief supplies. In respect of the protection of persons in the event of disasters, states and other actors would save affected people in relief operation, while planning for and responding to the risks and consequences resulted from future disasters as well as minimizing the damage. However, there are various legal problems among assisting states, affected states and aid organizations; therefore, it is more urgent that we construct a comprehensive international legal framework in the area of disaster response and management.

The International Law Commission (ILC), which is one of subsidiary organs under the UN General Assembly, has began to substantively consider the topic of the protection of persons in the event of disasters from the 60th meeting in 2008.¹ The ILC has began to address the problem within international law with the aim of formulating the first international legal document dealing with general aspects and scopes of the topic both universally and comprehensively. The ILC has significantly contributed to the promotion of the progressive development of international law and its codification in accordance with article 13(1)(a) of the Charter of the UN. It prepares draft conventions on subjects which have not yet been regulated by international law or in areas where the law has not yet been sufficiently developed in the practice of States. It also formulates and systematizes rules of international law in fields where there has already been extensive State practice, precedent and doctrine.

The purpose of this study is to explore the concept of the protection of persons in the event of disasters by analyzing the preliminary report² of Mr. Eduardo Valencia-Ospina, Special Rapporteur of this topic and the consideration of the 60th session of the ILC, from the point of view of international law, especially international human rights law and international humanitarian law. I would like to examine the evolution and development of the concept of the protection of persons in the event of disasters as well as to identify the scope and content of the topic.

The present paper begins with the examination of the preliminary report by the Special Rapporteur. Next, I refer to the consideration of the 60th session of the ILC. Finally, this paper presents the findings derived from both the preliminary report and the

1 Official Record of the General Assembly, Sixty-third session, Supplement No.10 (A/63/10).

2 A/CN.4/598.

discussion of the session.

II. PRELIMINARY REPORT, BY MR. EDUARDO VALENCIA-OSPINA, SPECIAL RAPPORTEUR

A. Approach to the Topic

In the beginning of the preliminary report, Mr. Eduardo Valencia-Ospina, Special Rapporteur, presented a rights-based approach to deal with the topic of “protection of persons in the event of disasters.” A rights-based approach is a conceptual framework that is normatively based on international human rights standards; it identifies rights holders and their entitlements and corresponding duty-bearers and their obligations. The approach works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations. The main reason why he suggests a rights-based approach to the topic is as follows: the way how the topic of “protection of persons in the event of disasters” was decided and validity of the approach.

In regard to including the topic in the long-term work programme of the commission, the Special Rapporteur took note of the fact that there are no official records that would throw light on the reasons that might have led the Commission to single out “protection of persons” over “relief” or “assistance.” In his view, the “protection of persons” had connotations of a broader concept, and therefore there was a need at the preliminary stage to clearly define the topic, elucidating its core principles and concepts.

He also indicated that the essence of a rights-based approach to protection and assistance would mean the identification of a specific standard of treatment to a victim of a disaster. The standard would focus on the individual as the victim and informs the operational mechanisms of protection. In this light, victims of disasters are confronted with a distinct factual situation with specific needs that requires addressing and there would be a need to take into account the victims as well as a multiplicity of actors involved in disaster situations, although the concept of protection does not entail nor constitute a separate legal category on its own.

B. Evolution of the Protection of Persons in the Event of Disasters

As to the evolution of the protection of persons in the event of disasters, the Special Rapporteur pointed out the following three points: the foundation of the International Committee of the Red Cross (ICRC), the formation of the International Red Cross and Red Crescent Movement and the establishment of the International Relief Union (IRU), and adaptation of the International Disaster Response Laws (IDRL) by the International Federation of Red Cross and Red Crescent Societies (IFRC).

To begin with, ICRC was founded in 1863 in order to aid wounded soldiers during armed conflict, in response to the proposal made by Henri Dunant and the adoption of the Geneva Convention of 1864. Nowadays, it is an international organization which has made an important role in the area of humanitarian assistance all over the world, especially in situations of around armed conflict. The Special Rapporteur indicated that the establishment of the ICRC was the first international arrangement in the protection of persons in the event of disasters and that it also means a significant international framework of the protection and assistance provided to certain groups of persons under the context of armed conflict as a form of disaster. However, he also noted that the activities of the ICRC at the early stage focused on the assistance and relief of victims of war, and was not involved in other disasters.

Next, in the view of the Special Rapporteur, it was important to show the formation of the International Red Cross and Red Crescent Movement and the establishment of the IRU. From the second half of the nineteenth century to the beginning of twenty century, the National Red Cross and Red Crescent Societies had suggested that they should provide assistance and relief to affected people in the event of disasters which may require preparation and provision of immediate and organized assistance similar to situations of armed conflict. In 1919, five representatives of the national societies, from the U.S., U.K., France, Italy, and Japan, formed the IFRC. Thus, the International Red Cross and Red Crescent Movement was formed, which consists of the ICRC, IFRC, and the national societies, and the extension of the scope of humanitarian assistance and relief, including in situations of armed conflict and natural disaster.

At the same time, the provision of international assistance to victims of disasters other than armed conflict was recognized as one of the major issues on the agenda of the international community. In 1927, the League of Nations adopted the Convention and Statute Establishing an International Relief Union, which is the first attempt to construct an intergovernmental organization explicitly for the protection of persons in the event of disasters.

The Special Rapporteur stressed that in each case, international disaster relief began to make its way into the realm of international law and from then on, international regulatory frameworks have increased mostly on a bilateral basis. Organization has also developed through the organs of the UN, its specialized agencies, and entities such as IFRC.

Finally, the Special Rapporteur considered the IDRL project of the IFRC, which have been conducted since 2001. In this project, the IFRC has undertaken to evaluate the dispersed body of existing international and national norms relating to disaster relief to develop the legal framework on disasters. In November 2007, based on the project's results, the International Red Cross and Red Crescent Movement adopted a set of operational guidelines on assistance in the event of disasters. In his view, according to the IFRC, the legal core of IDRL consists of laws, principles applicable to the access, facilitation, coordination, quality and accountability of international disaster response activities in times of non-conflict were related to disasters; IDRL emphasises on assistance, which is the operational side of protection. Moreover, the Special Rapporteur recognized that

IDRL has been closely connected with international humanitarian law, international human rights law, and international law on refugees and internally displaced persons, and that they share a significant number of fundamental principles which would identify the sources and usefully guide the development on international disaster relief and assistance. At the same time, there were various difficult problems in the precepts making up IDRL such as identifying the scope and content differed from one another in material, spatial, and temporal dimensions.

C. SOURCES

As to the sources relevant to the topic, the Special Rapporteur showed four kinds of legal structures: international humanitarian law, international human rights law, international law on refugees and internally displaced persons, and legal instruments specifically applicable to assistance in the event of disasters.

First, international humanitarian law has been developed from the agreements among states recognizing the conducts during armed conflict, and the body of specific standards of the conduct that has been formed gradually as customary rules and codified in a comprehensive manner based on the principles of humanity, neutrality and impartiality. For example, the Geneva Conventions of 1949 and the Additional Protocols thereto, of 1977 are typical of the embodied rules. The Special Rapporteur indicated that the application of international humanitarian law was conditioned both on the existence of an armed conflict and on the persons belonging to specific categories, while the multifaceted layers of protection offered by international humanitarian law envisage the individual as the ultimate beneficiary and therefore may even be applied by analogy, to the extent that a rule is relevant to disaster situations other than armed conflict.

Secondly, international human rights law includes a number of human rights that are particularly important in the context of disasters. The relevant examples in the event of disasters are the right to life, the right to food, the right to adequate housing, clothing and sanitation, and the right not to be discriminated against, among others. In this regard, however, the link between international human rights law and disasters has not yet been generally reflected in existing hard law instruments on either subject. To date, only two international human rights instruments are expressly applicable in the event of disasters: the Convention on the Rights of Persons with Disabilities, and the African Charter on the Rights and Welfare of the Child. The Special Rapporteur examined that the nature of the provisions in both conventions would seem to set public order standards for states and be based on the principle of humanity rather than that of individual rights.

Thirdly, disasters often generate the mass displacement of persons, either across borders (refugees) or within those of a disaster-affected state (internally displaced persons). International refugee law has been developed against the background of displacement caused by persecution and destruction during armed conflict, and occurrence of a disaster is not envisaged as grounds for granting refugee status. However, the Special

Rapporteur noted that persecution or destruction, which is one of the legal grounds for the granting of refugee status, is also likely to take place during an emergency situation such as a disaster. Consequently, both international law on refugees and internally displaced persons fall within the protection of people in the event of disasters, nevertheless they are generally treated as distinct categories entitled to particular rights by virtue of a situation-specific protection regime.

In respect of internally displaced persons, although there is no legally binding instrument providing them at the present time, the Special Rapporteur noted that the Guiding Principles on Internal Displacement, elaborated by the Representative of the Secretary-General on Internally Displaced Persons is the authoritative source of norms guiding the protection of internally displaced persons, and therein prescribe for, among other things, protection of those displaced by a natural or man-made disaster.

In addition to these sources, the Special Rapporteur found that although there was no binding convention dealing with the general aspects of the protection of persons in the event of disasters, a number of legal instruments, both universal and regional, dealt with specific aspects of assistance in and around disasters. Furthermore, a significant number of non-legal pronouncements have been adopted by the United Nations, in collaboration with non-governmental community, represented by the IFRC. He noted that these are key instruments, including either legal or non-legal, to the protection of persons, which complement the existing legal instruments. He also added that one of the universal treaties in force, which contained general rules for the provision of international assistance, could influence more general future codification: the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, adopted in 1998 and which entered into force in 2005. It provides telecommunications assistance during disaster relief operations, which includes not only the coordination of such assistance and the reduction of regulatory barriers, but also the statutory limitation to its applicability in armed conflict.

All the more, as to customary international law, the Special Rapporteur indicated that the topic of the protection of persons in the event of disasters seemed to be the subject of progressive development; in principle, the possibility of identifying applicable customary norms should not be excluded. He confined that the study concerning the framing of IDRL by the IFRC might produce evidence warranting reconsideration of that point.

D. Scope of the Topic

The Special Rapporteur showed three aspects of scope of this topic: *ratione materiae*, *ratione personae*, and *ratione temporis*.

1. *Ratione materiae*

He considered *ratione materiae* in two categories: the concept and classification of disasters, and the concept of protection of persons

(a) *The concept and classification of disasters*

In respect of the concept and classification of disasters, the Special Rapporteur noted that there was no generally accepted legal definition of the term “disaster. Although disasters manifest themselves in different forms, according to their cause, duration, and the context, in which the disaster occurs, they share common elements. He therefore indicated that the need for protection could be equally demanded in all disaster situations. In his view, it was significant to take a holistic approach to this topic. It would imply the consideration of all disasters, whether natural or man-made, as well as the issues revolving around the various phases of a disaster, namely the pre-, in- and post-disaster phases, which corresponded to, although not necessarily coextensive with, concepts of prevention and mitigation, response, and rehabilitation. However, he emphasized that armed conflict per se would be excluded because there was the particular legal field of international humanitarian law, which was an applicable, highly developed instrument dealing in great detail with such situations.

(b) *The concept of protection of persons*

In the first place, there would be a need to consider the concept of protection, especially whether it should be seen as distinct from response, relief, and assistance, or as encompassing all of them. Any disaster situation could be distinguished from three phases by the chronology: pre-disaster, the disaster proper and post-disaster. The Special Rapporteur noted that the concept of response restricts itself temporally to the disaster phase, and that relief was a broader concept such as the concept of assistance, which encompassed the pre-disaster stage as well as the stage beyond immediate response. In respect of assistance, in his view, this concept could be described as the availability and distribution of the goods, materials and services essential to the survival of the population. The elements of the concept of protection placed undue reliance on the context or area of law in which the concept was employed. Accordingly, he concluded that the concept of protection included all specific aspects of response, relief, and assistance. Meanwhile, the title of the topic explicitly was relevant to the protection of property and the environment as well as of persons. In this respect, the Special Rapporteur required the guidance of the Commission as to whether these elements should also be treated, and with what degree to be specified.

Furthermore, it should be added to consider the rights and obligations which enter

into play in disaster situations, and also the consequences which may flow from such rights and obligations, namely examining the right to humanitarian assistance and the responsibility to protect.

In connection with the right to humanitarian assistance, such a right might have been implicitly recognized as a matter of law in international human rights law, but the nature and content of the right and the corresponding obligation are unclear. However, the Special Rapporteur suggested that this right was pertinent as it was currently uncertain whether the existing international law took into account of any legitimate needs of persons affected by disaster. He also noted that it could be argued that formulating and elaborating such a right to assistance in the event of disasters, as a matter of progressive development of the law, which would prevent the risk of fragmentation of existing human rights. Furthermore, in his view the consideration of the right to humanitarian assistance could be regarded as a challenge to the principle of the sovereignty and non-intervention, according to which the State had primary responsibility to offer protection and assistance to those affected by disasters on its territory, which could create tension between these principles and international human rights law.

On the other hand, the responsibility to protect is the concept that was suggested in the International Commission on Intervention and State Sovereignty (ICISS) and therein was organized in their report, which was presented to the UN on December 2001. The concept was also taken in the outcome document of the Summit Conference of the UN on September 2005.

In the view of ICISS, they suggests that the concept of the responsibility to protect is the principle of the state sovereignty and non-intervention, and that: “[s]tate sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.”

In their report, they showed that the idea of the responsibility to protect has three elements underlying the basic principle on a basis of foundation, namely the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. In their view the responsibility to prevent implies “to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk,” the responsibility to react implies “to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention,” and the responsibility to rebuild implies “to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.” The ICISS also noted that the foundation of the concept is a guiding principle for the international community of states and therefore lies in “obligations inherent in the concept of sovereignty; the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security; specific legal obligations under human rights and human protection declarations,

covenants and treaties, international humanitarian law and national law; the developing practice of states, regional organizations and the Security Council itself.”

In connection to the protection of persons in the event of disasters, the Special Rapporteur underscored that although the responsibility to prevent, react, and rebuild, corresponded respectively to the three phases of a disaster situation, namely the pre-, in- and post-disaster phases, there should be careful consideration to both the appropriateness of extending the concept of responsibility to protect and its relevance to the present topic, as its implications would be unclear and therefore should be considered deliberately, even though the responsibility to protect were to be recognized in the context of protection and assistance of persons in and around disasters.

2. Ratione personae

It should be noted that multiple actors involved in a disaster situation is a highly pertinent factor. The Special Rapporteur described that it is important to take into account the role of international organizations, non-governmental organizations, and commercial entities as well as that of state actors. It would require analyzing the practice of non-state actors and the responsibility to be accorded to it, so as to place them properly within the framework of protection of persons in the event of disasters.

3. Ratione temporis

In his view, the Special Rapporteur suggested that the broad approach would require not only the phase of disaster response to provide disaster assistance but also the other series of phases of a disaster, such as pre-disaster and post-disaster, corresponding to prevention and mitigation on the one hand, and rehabilitation on the other. However, it should not be ignored that although rehabilitation is properly related to the response phase, addressing the immediate needs of individuals affected by a disaster, this should be distinguished from development activities, which can imply support to and implementation of autonomous development policies.

E. Form of the work

With regard to form of work, the Special Rapporteur noted that the outcome of the final product, such as a model rule, principle, guideline, declaration, code, or framework convention, among others, would be dependent upon whether the commission would place the emphasis on the codification or progressive development in order to consider this topic. He described that although he would like to resume his work without preju-

dice of the result of its work in draft article, he would require the commission to decide their place related to the form of work at the early stage.

III. CONSIDERATION OF THE 60TH SESSION OF THE INTERNATIONAL LAW COMMISSION

A. Approach to the topic

Regarding the approach to the topic, the Special Rapporteur suggested a rights-based approach. In the consideration of the 60th session, while several members agreed with his suggestion, some members objected the approach. Those who affirmed to apply a rights-based approach to the topic showed that this approach was significant since it added paramount value to human needs, accompanying consequences that gave rise to obligations and responsibilities of society towards individuals, that it is based on international humanitarian law, international human rights law, international refugee law and the law relating to internally displaced persons, and that it should not be seen as inconsistent with or contradicting principles of the State sovereignty and non-intervention.

On the other hand, some members who expressed unfavorable idea against a rights-based approach noted that the topic put stress on the contemporary nature and high visibility and therefore the Commission should assess discreetly whether a rights-based approach would be the most appropriate approach, and that it is important to consider how there should be assured the rights of persons affected by disasters and what there would be imposed to the affected States and assisting actors, including States offering assistance, international, non-governmental organizations.

Furthermore, in the view of some members there would be needed to understand what was meant by a rights-based approach for the purposes of the topic. In connection of this, several members hold that a rights approach should not only be regarded as the protection of the individual but also take into account community interests, particularly the vulnerable groups, that the jurisprudence of human rights law allowed certain derogations in case that there happened emergency and therein could be drawn as to what rights and duties would apply in disaster situations, and that there was need to be respectful of the rights of the affected States, in particular their sovereignty and, consistent with the principle of subsidiarity, their role in the initiation, organization, coordination and implementation of humanitarian assistance.

B. Scope of the topic

In respect of scope of the topic, the Commission considered it from four aspects of scope of this topic: *ratione materiae*, *ratione personae*, *ratione temporis*, *ratione loci*,

while the Special Rapporteur had suggested all the scope above, except of the viewpoint of location.

1. *Scope ratione materiae*

In the view of the Special Rapporteur, although the term of disaster would be classified into various meanings on the basis on the cause, duration, and context, each disaster had some common aspects and the need for protection of affected persons by disasters. He therefore noted that it was important to take a holistic approach to the topic of the protection of persons in the event of disasters, and it is appropriate to consider all disasters, caused by natural or man-made, except armed conflict, in the session of the Commission.

In the debate of the 60th session, while there were some opinions that it was significant to consider all disasters, whether natural or man-made, as such those were suggested by the Special Rapporteur, there were some remarks that they should focus on a natural disaster. As to the former opinions, some members suggested that they should discuss the issue evolved from both natural and man-made disasters, since there would be involved complex emergencies in many disaster situations and it was not always easy to determine the cause of a disaster. In the latter, some members indicated that the primary focus should be on natural disasters and man-made disasters should be included only if they seemed to effect to natural disasters. In addition to them, most members agreed with the view of the Special Rapporteur that armed conflict, which was one of a man-made disaster, should be excluded from the consideration further, as there was a well-defined legal regime that governed such conflicts, as *lex specialis*.

In respect of the exploration of the concept of protection, the Special Rapporteur suggested that this concept should include all specific aspects of response, relief, and assistance. Although most members agreed with his proposition, some members underlined to define the rights and obligations of the different actors in a disaster situation, which thereby helped to illuminate the content of obligations *erga omnes*. It was also highlighted that a range of human rights was connected to the issues in and around disaster, including the right to life, the right to food, the right to the supply of water, the right to adequate shelter or housing, clothing and sanitation, and the right not to be discriminated against, among others. Furthermore, there were some opinions that it was necessary to stress both the primary role of the affected State as a general principle and the subsidiary role of the other actors, which would contribute to international cooperation and solidarity.

2. *Scope ratione personae*

In the view of the Special Rapporteur there would be needed to take into account

the multiple actors involved in disaster, including individual, States actors, international organizations, non-governmental organizations, and commercial entities as well as that of State actors, in order to put them appropriately within the framework of protection of persons in a disaster situation. Although most members agreed with his suggestion, there were some ideas that it is significant to address the status, rights and obligations not only of the affected individuals and the affected states, but also of the providers of relief and assistance, including other states, international organizations, and non-governmental organizations,. In addition to this point, it was also noted that there is a need to further analyze whether the notion of protection of “persons” should include both natural and legal persons.

3. Scope ratione temporis and Scope ratione loci

With regard to the *ratione temporis*, the Special Rapporteur suggested that in the consideration of this topic, it is appropriate to explore the issues of the phase of disaster response as well as the other series of phases, such as pre-disaster and post-disaster, which they are equivalent to prevention and mitigation on the one hand, and rehabilitation on the other hand. However, in the view of the Commission, although there were some favourable opinions to the suggestion of the Special Rapporteur, there were several opinions which indicated the necessity to be cautious so as not to excessively extend the scope, and that in some cases there were different rights and obligations to ensue for different phases, which needs to be identified from each other. Therefore, at least at the early stage of the consideration of this topic, the Commission should put response and assistance immediately after a disaster before prevention during the pre-disaster phase. Furthermore, in the view of some members, it should be considered whether natural disasters with a sudden onset would require different treatment from disasters with a slow onset.

C. Rights and Obligations

1. Right to humanitarian assistance

In respect of the right to humanitarian assistance, the Special Rapporteur expressed positively that although the nature and content of the right and the corresponding obligation are unclear, this right was relevant to whether the existing international law took into account of any legitimate needs of persons affected by disaster. It could also be considered that elaboration of such a right to assistance in the event of disasters, as a matter of progressive development of the law, which would prevent the risk of fragmentation of

existing human rights.

However, in the discussion of the Commission there was a collision of views as to whether the right to humanitarian assistance should be involved into the topic. While several members agreed with the idea of the Special Rapporteur, some members objected to the existence of the right. Those who affirmed to include the consideration of the right to humanitarian assistance in the session indicated the following ideas: although there could be existence of the right in international law, it should be not the right to impose assistance on the affected state which did not want it; it would be considered as a "right to provide assistance," not as "a right to impose assistance"; and the right to humanitarian assistance was recognized not only as an individual right but also as implicit right in international humanitarian law and international human rights law.

On the other hand, some members who expressed an unfavorable idea against the right to humanitarian assistance contended that the existence of such a right in international customary law did not exist, that the recognition of the existence of the right would be in conflict with the principles of sovereignty and non-intervention as well as contrary to the need for consent of the affected states. Furthermore, although sovereignty entailed obligations that a state owed to its inhabitants, including protection, an affected state should not act in a manner that denied victims access to assistance, particularly led to a controversial situation in which the state refused assistance amidst continuing human suffering. In addition, there were other opinions that it was too untimely to discuss the nature of a right to humanitarian assistance and it could be a subject by the Special Rapporteur at a later stage.

2. Relevance of the responsibility to protect

Regarding the relevance of the responsibility to protect, the Special Rapporteur underlined that although the three elements which were at the core of the concept, namely the responsibility to prevent, react, and rebuild, are correspondent respectively to the three phases of a disaster situation, including the pre-, in- and post-disaster phases, it should be careful to consider both whether it was appropriate to extend the concept of responsibility to protect and whether it was pertinent to the present topic. He also noted that its meaning of the concept of the responsibility to protect would be unclear and therefore should be considered discreetly, even if the responsibility to protect were to be viewed in the context of protection and assistance of persons in the event of disasters.

In the discussion of the 60th session, while several members agreed with the opinion of the Special Rapporteur, there was a conflict of opinions in respect of the relevance between the responsibility to protect and the topic of the protection of persons in the event of disasters. There were some negative opinions against the concept that it would be doubtful whether the concept existed, that the concept was still primarily a political and a moral concept -- the legal parameters of which were yet to be developed, and that its emergence as a principle was limited to the case of extreme circumstances, namely

situations of persistent and gross violations of human rights and could not be easily transferable to disaster relief without state support.

On the other hand, some favorable ideas showed that it was inevitable to consider the relevance of the responsibility to protect and to address the various contentious issues from the point of view of the broad approach to the topic, and that there were a connection between protection and aspects of human security which needed to be explored.

Added to these, in the view of some members, the responsibility to protect border upon the concept of humanitarian intervention. Therefore, the Commission should be cautious to consider the concept, and that the concept existed as a legal obligation without necessarily extending to the use of force.

D. Sources relevant to the consideration of the topic

With regard to the sources relevant to the consideration of the topic, the Special Rapporteur showed four kinds of legal structures including: international humanitarian law, international human rights law, international law on refugees and internally displaced persons, and legal instruments specifically applicable to assistance in the event of disasters.

In the debate of the Commission, while almost members agreed with the suggestion of the Special Rapporteur, there were some opinions that he did address in his preliminary report. Some members expressed that solution of the practical problem could be underscored, concentrating on areas where there was a rule deficit and fragment and taking into account lessons learned in previous disasters, and that it was significant not only to aim at normatively elaborating a series of rules of conduct for the actors concerned, but also to consider institutional aspects, such as the establishment of a specialized agency to coordinate responses to and assistance in large-scale disasters. Other members suggested that other fields of law, such as the international law relating to immunities and privileges, customs law and transportation law were also closely linked with the topic.

E. Future programme of work and final form

In regards to the of final form of work, the Special Rapporteur expressed that he would require the commission to decide on the form of work relatively at the early stage of the consideration of the topic. In the discussion of the Commission, while there were positive opinions to the suggestion of the Special Rapporteur, some members contended that it was premature to take a decision on the final form and such a decision could be deferred until a later stage. Moreover, some members pointed that the fact that in respect of this topic the Commission's work would largely be in the area of progressive devel-

opment than codification, the goal of the project would be to lay down a framework of legal rules, guidelines or mechanisms which will facilitate practical international cooperation in disaster response.

F. Concluding remarks of the Special Rapporteur

In the aftermath of the discussion of the 60th session, the Special Rapporteur summarized the consideration of the topic of the protection of persons in the event of disasters, and expressed that he would prepare the next report to elaborate draft articles without prejudice to the final form, both on the basis of the detailed observations and in the light of the practice and experience of relevant key actors, including the United Nations and the International Federation of the Red Cross and Red Crescent. He also welcomed the general support given to taking a broad approach in the consideration of the topic and recognized that it was feasible to proceed by focusing initially on natural disasters, without prejudice to the possible consideration of the international principles and rules governing actions undertaken in the context of other types of disasters except for armed conflict. In addition to these, regarding the consideration of protection, he pointed out that the focus should be on response, at least initially, without necessarily excluding the study of prevention and mitigation on the one hand and rehabilitation at a later stage. He also added that the final form would be a convention or a declaration incorporating a model or guidelines.

IV. CONCLUSION

In this study I have assessed both the preliminary report by Mr. Eduardo Valencia-Ospina, Special Rapporteur of the topic: “the protection of persons in the event of disasters,” and the consideration of this topic during the 60th meeting in the ILC, from the point of view of international law. The findings made as a result of the consideration on the 60th session of the Commission show the adoption of a rights-based approach to the topic, the source, and the scope to deal with the protection of persons in and around disasters, including the definition of disaster, the concept of protection of persons, and the relevance either to the right to humanitarian assistance or Responsibility to Protect, from the point of views of *ratione materiae*, *ratione personae*, and *ratione temporis*.

However, as mentioned above, this topic encompasses not only a large extent of the rights and corresponding their obligation but also sensitive issues, including the possibility of interference with the principles of sovereignty and non-intervention, and contrary to the need for consent of the affected states. Also, other relevant questions could be raised from these issues. For example, in the case where it is not be appropriate for an affected state to manage the non-governmental organization within its territory, how

should the pertinent factor in disaster situation act? The consideration of the topic is still at the early stage. Henceforth I would continuously conduct this study, with a focus on the protection of persons in the event of disasters and for the purpose of exploring the concept by means of analysis via consideration of the ILC, from the viewpoint of international law, especially international human rights law and international humanitarian law.

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LONG-TERM EFFECTS OF CLUSTER MUNITIONS AND MEASURES TAKEN IN POST-CONFLICT PHASE: THE STRUCTURE OF THE CONVENTION ON CLUSTER MUNITIONS

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ABSTRACT

The long term-effect of cluster munitions has been controversial because it endangers people's lives even after the end of conflict. To address this problem, on 30 May 2008, over 100 states and NGOs gathered in Dublin and adopted the Convention on Cluster Munitions (CCM) which obliges state parties to clear cluster munition remnants and to assist cluster munition victims. The CCM focuses on post-conflict measures and thus the number of casualties from duds is expected to be reduced. However, the CCM is a law with some loopholes. Whether the CCM can be successful or not may depend on how the states will implement the duties of the Convention according to its purposes.

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I. INTRODUCTION

Every munition has a potential to become failed if it is used during conflict; such failed munitions may remain dangerous even after the end of conflict. There has been a great concern about the problems caused by such failed munitions. Above all, unexploded ordinances of cluster munitions have been hugely controversial. It is said that cluster munitions have a severe impact on civilians either during and after conflict due to their indiscriminate effects and unexploded submunitions. The unexploded submunitions, which may be a result of faulty mechanisms of the munition, are more problematic; the indiscriminate effects and danger of duds continues over the long-term and extends beyond the post-conflict phase. This situation jeopardizes the people living in peace. In fact, the number of casualties from duds is generally larger than those from direct impact during conflict; the duds also prevents postwar reconstruction.

To tackle the problem caused by the long-term effect of cluster munitions, on 30 May 2008, over 100 states participated in the Dublin Diplomatic Conference (it is the final step of the so-called "the Oslo Process") and adopted the Convention on Cluster Munitions (CCM) that prohibits the states parties to use, develop, produce, acquire, stockpile, retain or transfer to anyone, directly or indirectly cluster munitions that cause unacceptable harm to civilians. In addition, the CCM has some provisions which introduce the clearance of cluster munitions remnants and victim assistance. Such ex-post facto measures should be inevitable to address the problems raised by unexploded submunitions.

The CCM, which bans the use of cluster munitions and stipulates subsequent measures is expected to successfully resolve the problems caused by the use of cluster munitions thus far. However, it should also be noted that the CCM is not a perfect treaty and has some problems. If so, could the CCM adequately play a role of problem-solver as it is anticipated? This paper is to answer this question.

Although research on how the CCM was negotiated and adopted are popular among experts of international politics and international relations, there has been little legal study done concerning the interpretation of each provision of the CCM. Consequently, more detailed legal analysis of the CCM is needed in order to confirm and see what the CCM is.

The main purpose of this paper is to analyze the CCM from the legal standpoint, especially focusing on the provisions concerning the post-conflict phase. Part I of this paper introduces the history of cluster munitions, the definition of cluster munitions, where and when they were used, and how they damaged civilians. Part II explains the legal status of cluster munitions and how the legal instruments concerning cluster munitions prior to the CCM have developed. Finally, based on the discussions in the previous chapters, part III examines how the ex-post facto measures of the CCM work. The paper concludes that the CCM is not enough to resolve the problems caused by cluster munitions and will not enable it to reduce civilian casualties dramatically.

II. THE DEFINITION AND HISTORY OF CLUSTER MUNITIONS

Although there had not been a specific definition of cluster munitions until the CCM was adopted, cluster munitions, in general terms, were said to be area weapons composed of a container (also called parent-munition) designed to disperse or release multiple explosive submunitions. The explosive submunitions generally have an anti-tank, anti-material, or anti-personnel function. Cluster munitions have been used by approximately 15 states in about 30 areas or armed conflicts worldwide. They were massively used, *inter alia*, in Southeast Asian countries during the Second Indochina War (Cambodia, the Lao People's Democratic Republic and Vietnam (1965-1975)). It is said that the recent usage of cluster munitions in Iraq (1991 and 2003), in the Federal Republic of Yugoslavia (1999) and Lebanon (2006) caught the attention of international public opinion and led to the adoption of the CCM.

Cluster munitions are imprecise weapons, designed to strike a greater surface area by dispersing explosive submunitions. The submunitions scattered on the surface create a footprint, and the size of the foot print of a single cluster munitions strike is often hundreds of meters wide. Within the footprint, more than 1,000 submunitions indiscriminately kill and injure not only military targets but also civilians. The serious problem is that large numbers of submunitions would fail to explode on impact. Since the failure rates depend on soil and weather conditions, they are often significantly higher than official failure rates or optimal test conditions. According to the research by Handicap International, around 4 million submunitions were delivered by Israel Defense Forces in the 2006 conflict and their failure rates are estimated at 40 percent overall. This would mean that 1.28 to 1.6 million unexploded submunitions remained on the ground. Consequently, the risk from unexploded submunitions remains until they are fully removed.

In fact, many of casualties from unexploded submunitions actualize in post-strike and post-conflict phase, after bombing. In Lebanon, from 1975 to 2006, a total of 441 victims were recorded in post-strike and post-conflict phase while 53 were recorded at the time of strike. The case of Lao PDR is more serious; victims of unexploded submunitions from 1973 to 2006 amount to 4813. The number of casualties indicates how the after-effects of cluster munitions are harmful. Most injuries and deaths happen when civilians clean up the rubble of their war-torn homes, children play with the curiosity-provoking submunitions, and civilians simply move around villages as part of everyday life; therefore, unexploded submunitions are an impediment to postwar reconstruction.

III. LEGAL STATUS OF CLUSTER MUNITIONS AND PRINCIPLE OF PROPORTIONALITY

While the use of cluster munitions had not been banned explicitly under international law, some states and NGOs claimed that it should be restricted as it would be contrary to customary international humanitarian law as defined by the 1977 Additional Protocol I to the 1949 Geneva Conventions (AP I). The use of cluster munitions would be

contrary, *prima facie*, to the principle of distinction (Article 48), the ban on the use of weapons that have indiscriminate effects (Article 51.4) and the principle of proportionality (Article 51.5(b)).

What is to be noted is the fact that the after-effect of cluster munitions is increasingly interpreted to be taken into consideration in the proportionality calculus as the casualties of unexploded submunitions increase. According to the principle of proportionality articulated in AP I, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians[...], which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. Some countries and scholars advocate that the long-term effects of cluster munitions are contrary to the principle because the civilian harm caused by significant numbers of unexploded submunitions can be expected and it outweighs the military advantage anticipated.

Meanwhile, some scholars controvert such argument. For example, Christopher Greenwood questions whether the risk that some of the munitions used will not explode as intended, thereby creating ERW (Explosive Remnants of War) which may endanger civilians can cause an attack to violate Article 51(5) of AP I. In addition, he says that:

“This principle has usually been discussed by reference to the harm caused to civilians by the impact of munitions and the immediate damage and destruction caused by those munition. The dangers posed by unexploded munitions appears to have been considered rarely if at all.”

Thus, states and NGOs have tried to prohibit the use of cluster munitions, asserting that the long-term effect of unexploded submunitions is contrary to the principle of proportionality while there were conflicting ideas on how to interpret the principle. The principle of proportionality, however, does not amount to prohibitive rule but is susceptible to divergent interpretations because of its very ambiguous terms. Consequently, the specific legal binding rule which directly restrains the use of cluster munitions was needed.

Although diplomatic discussions in the law of armed conflict context about unexploded ordinances of cluster munitions began in the 1970s, the discussions calling for a new international legal instrument to ban the use of cluster munitions eventually moved into full swing in the meetings of the state parties to the Convention on Certain Conventional Weapons (CCW) as the humanitarian impact of cluster munitions used in Kosovo in 1999 emerged. At the CCW Second Review Conference in December 2001, a mandate was adopted to discuss ways and means to address ERW and in November 2003, after two years of official work, the Protocol on Explosive Remnants of War (Protocol V) was adopted.

Protocol V obliges Member States to clear the explosive remnants of war (Article 3) and provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war (Article 8(2)); it is expected to reduce the victims of unexploded munitions. The Protocol, however, only provides post-conflict remedial measures, shelving the ban on the use of weapons, and many of the obligations have qualifying language that could serve to weaken compliance; the Protocol was not a comprehensive response to the problems caused by cluster munitions. Hence, many

states and NGOs felt that the Protocol V contained a number of weaknesses and another legal instrument which not only treats post-conflict measures but also bans the use of cluster munitions was needed.

The argument about the new instrument concerning cluster munitions continued in the framework of the CCW after the adoption of Protocol V. However, decision making within CCW that requires consensus among the states party inhibited the development of an argument. Some states asserted a need of a total ban on cluster munitions while military powers like the U. S and Russia opposed strict regulation; consequently, there was no achievement of consensus at the CCW Review Conference. Spurred on by the situation in Lebanon in 2006 and the failure in the CCW context, Norway pledged to initiate a treaty process outside the CCW to ban the use of cluster munitions that have unacceptable humanitarian consequences.

In February 2007, the diplomatic conference attended by forty-nine countries and NGOs was held in Oslo, Norway and the Oslo Declaration was adopted by forty-six countries. The Declaration called for a prohibition on the use, production, transfer, and stockpiling of cluster munitions that cause unacceptable harm to civilians as well as measures on clearance and victim assistance. The meeting in Oslo was the first step of the Oslo Process and subsequent international diplomatic conferences in Lima, Vienna, Wellington, and Dublin followed. On 30 May, at the final step of the Oslo Process, in Dublin, 107 participating states agreed to adopt a new instrument that prohibits the use of cluster munitions and introduces the provisions implemented in the post-conflict phase. The Oslo Process accomplished in fifteen months what other initiatives had been unable to do in more than thirty years.

IV. STRUCTURE OF THE CCM

A. Definition

The CCM expands the coverage of weapons treaties to deal with munitions both when they function properly and when they do not, while past weapons treaties have mainly addressed the former.

The CCM is the first-ever treaty which bans the use of cluster munitions (Article 1(1)(a)) and introduces a definition of cluster munition (Article 2(2)). The interpretation of the definition, however, remains controversial because it contains some exceptions (Article 2(2)(a)-(c)). Some scholars criticize the CCM for its partial ban on cluster munitions and concern that such exceptions may allow the use of those that comply with the standard set by Article 2(2). However, it should be noted that the harm on civilians will not be so serious if such exceptive cluster munitions are used because of its small number of submunitions (fewer than ten explosive submunitions) and equipped self-destruction or deactivating feature.

B. Clearance and Destruction of Unexploded Submunitions

Article 4(1) articulates that each state party undertakes to clear and destroy, or ensure the clearance and destruction of cluster munitions remnants located in contaminated area under its jurisdiction or control. Clearance and destruction of unexploded submunitions left by a state party prior to the entry into force of the CCM shall be completed not later ten years after entry into force of the treaty (Article 4(1)(a)). After entry into force of the CCM, such clearance and destruction must be completed not later than ten years after the end of the active hostilities during which such cluster munitions became remnants (Article 4(1)(b)). While the CCW Protocol V has a provision similar to Article 4 of the CCW, it does not indicate a time frame; the CCM expressly sets a ten-year deadline to clean up cluster munition remnants. Configuring the time limit is expected to contribute to reducing the victims of unexploded submunitions.

However, it should be pointed out that it is not the user of cluster munitions that cleans and destroys unexploded munitions; instead, the state holding duds under its jurisdiction or control have an obligation to do this. This is problematic because the states in which cluster munitions remnants located under its jurisdiction or control may have difficulty implementing the obligation due to financial difficulties and technical capacity. Therefore, the support from other states including the user of cluster munitions are indispensable for the implementation of the treaty. In this regard, Article 4(4)(a) says that once the treaty enters into force, for both the cluster munitions user state is “strongly encouraged” to provide clearance assistance to the affected state. Although Article 4(4)(a) is said to be the first provision to impose retroactive responsibility on user states to assist with clearance of failed weapons, it is not a legal responsibility, but is subject to voluntary action. On the other hand, Article 6 stipulates international cooperation and assistance and each state party is entitled to seek and receive assistance. However, the actor to reply to such state’s right is not clear from the provision; as Article 6(2) ambiguously state “Each State Party in a position to do so” shall provide assistance to states parties affected by cluster munitions, such cooperation and assistance can be avoided if the supporters indicate that they are not in a position to do so.

C. Victim assistance

Article 5 of the CCM introduces victim assistance obligations. This is the most groundbreaking achievement of the CCM because previous weapons treaties do not include such independent provision for victims. In addition, Article 2(1) provides a broad definition of victims where there was none before. It encompasses a wide range of people affected by cluster munitions, all of whom are entitled to receive assistance. These provisions reflect the aim of the treaty that establishes a framework for victim assistance.

Paragraph 1 of Article 5 requires that states parties adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological

support, as well as provide for their social and economic inclusion for victims within their jurisdiction. Concerning victim assistance, as with the clearance of unexploded submunitions, a primary obligation is not imposed on the user of cluster munitions, but on the state where the victims actually exist in its jurisdiction.

V. CONCLUSION

It is noteworthy that the CCM addresses the humanitarian and socio-economic impact of cluster munitions and introduces a new standard for the protection of civilians and victim assistance. The way it covers both munitions that function properly and those that do not has not been seen in past weapons treaties. This new approach is a positive development and is expected to break new ground for future weapons treaties.

The new instrument, however, might not completely satisfy the expectations of those who call for a responsibility of cluster munitions users. As mentioned above, if a state illegally uses the cluster munitions and accordingly duds occur, such state has no legal obligations for clearance of unexploded submunitions and victim assistance. It seems odd that the CCM does not call for any legal responsibilities of violators, while it prohibits the use of cluster munitions.

In order to properly put an end to the suffering of victims and prevent casualties caused by cluster munitions, violators should be legally involved in the ex-post facto measures and cooperation. Assistance of other states are need to be more proactive and specific. As a result of these measures, the CCM would be more effective and consequently contribute to the postwar reconstruction.

Although there is no room to discuss further details, it should be noted that the CCM has other controversial issues; major producers or users of cluster munitions (like the United States, Russia and Israel) did not participate in the Oslo Process. Therefore, states parties to the CCM should reconsider how to enhance the effectiveness of the treaty without such military superpowers.

INTERVIEWS

INTERVIEW OF PROFESSOR YUKIE OSA

Interviewed by Yukiko ABE, and translated by
Mizuo KUDO*

PROFILE OF INTERVIEWEE

Professor Yukie OSA, Professor at Rikkyo University was born in Tokyo. She is also Chairperson of the Association for Aid and Relief. She received a Ph. D in Human Security from The University of Tokyo in 2007. Between 1991 and 2003, she worked on the provision of emergent humanitarian assistance in areas under armed conflict including Bosnia, Chechnya, Afghanistan, and Pakistan, and she was also active in the International Campaign to Ban Landmines (ICBL) in Cambodia, Kosovo, and Afghanistan while with the Association for Aid and Relief. Her Ph.D dissertation entitled “Srebrenica—A Study on Genocide” has been published and is in print. Since 2006, she has served as co-representative of the Japan Platform. Since July 2008, she has served as a chairperson on the board of directors of the Association for Aid and Relief. Since April, 2009, she has held the position of Professor at Rikkyo University’s Graduate School of Social Design Studies. Her favorite words are “*Kokorozashi* (in Japanese)” (meaning purpose, will, and determination) and Yutaka Akino’s (deceased) “*Odosarezu-Odorasarezu-Odoru* (in Japanese)”.

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Q1. What made you work with refugees?

My primary interest was not refugees, but the minority and aboriginal/Native American issues. When I was an undergraduate student at Waseda University, I took a chance to study in Indiana on an exchange program. In an environment with 95% of the student body being Caucasian, I was discriminated against for being an Asian along with African-American students. At Catholic Church, even the Father did not make eye contact with me. This was how minority issues, especially of Native Americans, became the focus of my academic interest. Upon graduation, I studied at Waseda University for a Master's degree. There I wanted to research political participation of world's minorities, but since I felt that I needed to know more about my own country, I wrote a Master's thesis on political participation of Ainu tribe in Japan. When I was searching for a job to work with minority groups, a person from the Ministry of Foreign Affairs introduced me several jobs including the Association for Aid and Relief. I began volunteering with the NGO while working, and became full-time after a year.

Q2. How did Association for Aid and Relief develop and expanded its work overseas?

In 1979, it started as "Indochina Association for Aid and Relief" in response to a growing number of refugees from the Indochinese Peninsula. The founder is Mika Soma, daughter of Yukio Ozaki. It started with two objectives—1. To provide refugee assistance, and 2. To open up the minds of Japanese people through its activities—and both are still pursued by the Group. Primarily it provided assistance to Vietnamese, Laotian, and Cambodian refugees in both Japan and in the Indochina, and it expanded its activities in Africa in response to famine in 1984. That's when the name changed to the current one, Association for Aid and Relief. In 1992, "Sapouto21 (or, Support 21)" has been founded and it is dedicated to assist refugees residing in Japan.

Q3. What is the role of the Association being non-state, non-UN actor?

The UN often requests NGOs to provide the actual assistance activities on the ground, so in that sense NGOs are in the forefront of refugee assistance. Our association especially focuses on emergent humanitarian assistance, landmine removal, bomb disposal, and care for the disabled. As we provide care for the disabled even during the emergent humanitarian assistance under the idea of helping the weakest and the most underprivileged, we also provide care for the non-refugee, disabled people in Cambodia, Myanmar, Laos, Afghanistan, and Tajikistan. Our annual budget is approximately 1

billion yen (US \$ 10 million), and half of it is made up of our money from donations, and the rest is a government subsidy. We could do bigger activities if we relied more on the subsidy, yet this way enables us to pursue independency and sustainability. NGOs need to be focused on specific activities in consideration of their budgetary concerns.

Q4. Are there any trends in today's NGO activities?

Its activities have been increasingly specialized. As hospital care is divided into the internal, obstetrics and gynecology, and urology departments, our assistance has been subdivided into food, landmines, and human rights for instance. In a way, it works well. Only specialized professionals can provide the best kind of assistance and otherwise the weak might be in danger. For example, although “sending powdered milk to Africa” sounds like a good thing, it requires clean water and a container to make drinkable milk. At some refugee camps, even contaminated water is in scarce supply. Giving powdered milk to a mother of a starving baby might lead to an unintentional murder of the baby due to the milk made with the contaminated water. Hence we need specialized professionals who possess adequate information regarding the people we assist. On the other hand, there is a problem in too much specializing. Organizations specialized in food usually report only on food issues regardless of landmines or health issues such as tuberculosis. Landmine NGOs report problems only related to landmines and do not take interest in human rights abuse or health concerns. One of the main focuses today is to find a well-balanced solution to the drawback of the specialized activities. Personally I believe that such an approach is the concept of human security. Refugee assistance tends to utilize the concept of “protection” so that the refugees are not only provided with medical services and education but also protected in terms of human rights.

Q5. Association for Aid and Relief has worked in more than 50 countries so far. What kinds of efforts have been made to inform the Japanese public about your activities as well as things your staff has felt and seen on the ground?

We hold school trips, provide a school supporter system, and hold many events to inform Japanese people about our activities. Our illustrated book on landmines, “Give Us Flowers Not Mines” sold over 500 thousand copies, making a great result in terms of both public education as well as fundraising. We also work with businesses to spread the ban on landmine campaign. A difficult point is that although Japanese people are very helpful in case of natural disaster relief, they keep a little distance when it comes to the assistance to the conflict areas in fear of problems regarding politics. Now we are trying to find ways to change such thinking.

Q6. Your Group also works on landmine removals. How are refugees and landmines connected?

Every place I have been for refugee assistance has had landmines around. At first, I thought of landmines either as the problems of the disabled people/health problem or politico-military issues unrelated to NGOs. Yet, after witnessing civilians suffering from injuries and deaths caused by landmines in post-conflict areas, I concluded that landmines are a problem that NGOs must actively engage with on a humanitarian ground beyond the limited scopes of refugee assistance or politico-military concerns. Association for Aid and Relief has advocated and lobbied for the Japanese government to sign the Ottawa Treaty. In 1998, we lobbied to choose Chris Moon, an English man who lost his right arm and leg due to landmine explosion, as a flame-bearer at the Olympics held in Nagano, Japan.

Q7. You worked with Association for Aid and Relief, then went back to being a student, and finished a Ph.D program in Human Security at the University of Tokyo. How did you motivate yourself? In detail, what kind of research did you do as a Ph.D candidate?

In 2003, I left the NGO because I was kind of burned out. Although I did not plan to go back to school primarily, I heard about the Human Security Program at the University of Tokyo at one of the symposiums I attended, and so I entered the program in April, 2004. There, I chose International Humanitarian Law and the Srebrenica Genocide as my research topic. I was in Bosnia and Herzegovina in 1995 while working with Association for Aid and Relief, and the genocide occurred near me. I even had a chance to meet with the ringleaders of the crime. It was something I thought that I have to write about.

Q8. What are good points of doing academic research in addition to having a practical experience?

I learned to organize the work we have done on the ground over the years, and now I can see it objectively. Our campaign on banning landmines ended up making the government [to sign the treaty]. There is a huge responsibility in pointing out the issues and problems as civic activities can make such a tremendous impact. In addition, I noticed that there are ideas upon which all of our works are based. When Mika Soma, the founder of the Association for Aid and Relief, showed up on News Station, Hiroshi Kume, then anchorman of the TV program, remarked that “the electorates are also bad for electing today’s terrible politicians.” In response, Soma exclaimed: “not also, but the electorates are bad.” It is the same for the international society. At first I thought that the stake-

holders of the international issues and problems to be America or the UN, but I have now realized that every voter has his or her stake. The genocide in Srebrenica might have been avoided if sufficient air raids had taken place. Yet, the troops had communication problems and the Netherlands demanded to stop the air raid since their soldiers were held hostage there. It was obvious that the hostages would have been murdered if the raid occurred. But we cannot say that the genocide happened because of the Dutch government. If Japan's national guard were there and in the same situation as the Dutch soldiers, Japanese public would have disapproved the raid just the same way. In the end, the stakeholder in case of avoiding genocide is the individual voters in democratic countries.

Q9. What activities do you do now? Let us also know your future plans.

I was offered the chair position at the Association for Aid and Relief in July 2008, just when I was trying to continue both my academic and practical work. Now I am a professor at Rikkyo University as well as a chair at the NGO. I would like to continue being both a field worker and academic researcher at the same time. Also, from now on I would like to add Japan-ness in the works I do.

(Interviewer: Yukiko Abe, The University of Tokyo, The Documentation Centre on Refugees. Translator: Mizuo kudo, The University of Tokyo, Graduate School of Arts and Sciences)

INTERVIEW OF PROFESSOR SABURO TAKIZAWA

Interviewed by Yukiko ABE, and translated by Satomi HIYAMA, Jordan NOGAKI, and Yukiko ABE*

PROFILE OF INTERVIEWEE

Saburo Takizawa, Professor at Toyo Eiwa University was born in Nagano prefecture. He graduated from Saitama University in 1972. He completed a doctoral program at Tokyo Metropolitan University. He joined the Ministry of Justice in Japan in 1976, and then received an MBA from the Graduate School of Business at the University of California Berkeley. He is a Certified Public Accountant (CPA) of America. In 1981, he joined the United Nations Office in Geneva, and then worked for the United Nations Relief and Works Agency for Palestine Refugees (UNRWA). He held prominent positions such as Director of Program Coordination the United Nations Industrial Development Organization (UNIDO) and Controller and Director at the United Nations High Commissioner for Refugees (UNHCR), headquarters in Geneva. He was appointed as the first Japanese UNCHR Representative in Japan from January 2007 to August 2008. Since April 2009 he has been in his present post as a professor at Toyo Eiwa Jogakuin University. He also has taught at the University of Tokyo since October 2009. His favorite word is 'challenge.'

* ABE and NOGAKI: CDR Staff; HIYAMA: CDR Intern.

Q1. What triggered of your involvement in refugee issues? Please tell me about your previous and current involvement in refugee issues.

After joining the Ministry of Justice in 1976, I was first assigned to work in the Immigration Bureau. It was the time when refugees from Indochina area started arriving in Japan as 'boat people'. Then, while working in the United Nations (hereafter U.N.) for 28 years, I was in the organization called UNRWA for nine years and in the UNHCR for around six years. Half of my career in the U.N. was related to refugee issues.

My professional background is finance and accounting, so it is in a sense by accident that I started working with refugees. However, I studied hard on the issue while working in the UNRWA and the UNHCR. Especially, being the Japanese citizen myself, in the UNHCR, I was particularly interested in the refugee protection in Japan. I volunteered to be the UNHCR representative in Japan about two years before my retirement. Refugee issues have significant meaning not only to refugees themselves but also to societies which accept refugees. After my retirement from the U.N., I continue working on refugee protection and their social integration in Japan. This is my life-work.

Q2. How would you evaluate Japan's refugee policies?

In recent years Japan's refugee policies have become a lot better. For example, the Japanese government revised the Immigration Control and Refugee Recognition Law in 2004 and this revision established the refugee examination counselor (nanmin sanyoin seido) system. After the revision, the number of asylum seekers in Japan has been notably increasing.

In addition, the Japanese government launched a three-year pilot program beginning in 2010 to resettle 30 Burmese refugees each year for three years from a camp in Thailand. Many Japanese came to pay attention towards refugee issues through NGO movements and the media reporting. Japan has been criticized as being a 'passive refugee accepting country' within international communities for a long time. However, now the government has opened its heavy door narrowly for refugees. We need to continue to open the door wider.

Q3. It is widely said that you played a significant role in the process by which the Japanese government decided to launch the resettlement programs for refugees in camps. What is your motivation for this?

The basic purpose was to end Japan's passive policy of accepting refugees. The launch of the resettlement program is one way to address this situation. The acceptance of convention refugees is a duty under the U.N. Refugee Convention. However, the ac-

ceptance of the resettlement refugees is not a duty but a voluntary action. Even if the acceptance number per year, 30 refugees, is quite small, this is a pivotal point at which Japan has changed its passive refugee policy to a more active one. In this moment, refugee communities in Japan are small and this situation does not encourage new asylum seekers to flee to Japan. Enlarged refugee communities through the planned resettlement program would encourage more refugees or asylum seekers to seek protection in Japanese society.

I also hope that due to the resettlement program, Japanese people will pay more attention to refugee issues around the world and open Japan's door to more refugees. In 2007 when I first addressed the launch of the resettlement program, the reaction by the Japanese government was not good. It was initially claimed that "a resettlement program which is not obligatory under the U.N. Refugee Convention is difficult because Japan does not even accept convention refugees." However, I found an opportunity to advance the issue. In recent years acceptance of 'immigrants' has been widely discussed in Japanese society because of the shrinking and aging population. I reframed the issue as accepting 'humanitarian immigrants.'

The scale of the resettlement program is 30 people per year and very small, but this will set a new agenda (of refugee issues). By receiving a fixed number of resettled refugees every year, national attention will continue to be focused on refugee issues and this will lead to the improvement of refugee policy in Japan. This will certainly have a positive impact on the acceptance and social integration of Convention refugees. Let's not forget that there are six million refugees worldwide who are confined in refugee camps and cannot by themselves find solutions to their plight. Even though the acceptance number is small, the launch of the resettlement program in Japan is an important step forward to address this 'protracted refugee situation.'

Q4. So, you had an intention of setting a new 'agenda' on refugee issues in Japan through the launch of the resettlement programs.

Yes, agenda setting is very important when we try to start things moving. Someone has to set an agenda by making statements like "there are such problems here," and say "let's make these kinds of actions" and make efforts to realize the agenda by collaborating with other people. We can use the agenda to draw public attention and discuss the agenda with the government to realize it. Japanese people are not very good at handling this strategy. However, this is a very important business skill. While I worked as the UNHCR Representative in Japan, we organized parades and walk rallies called 'Omotesando-jack' in Harajuku area in Tokyo to advocate refugee issues. Media reported our unusual event, drawing more people's attention, and this caused them to ask "What are refugee issues?"

Q5. What kind of impressions do the refugees in the camps have of Japan?

In 2007, I visited a Burmese refugee camp in the mountains of Thailand where there was no electricity at all. I asked refugees there, "Do you wish to go to Japan?" Although there were some who showed interest, unfortunately, there was no one who answered clearly, "Yes, I want to go to Japan". Some of them hardly knew about Japan. However, even those who knew about Japan had a kind of distrust of Japan. They mentioned, "Japan has been supporting the Burmese government through Official Development Assistance (ODA), although the Burmese government persecutes us." I realized that these refugees also had notions that they would not be happy by going to Japan. I understand that only a few dozen refugees showed interest in being resettled to Japan when the Japanese government officials went to a refugee camp in Thailand this February to select refugees for resettlement in Japan.

Thirty years ago, the same thing happened when Japan accepted thousands of Indo-Chinese refugees. Most Indo-Chinese refugees came to Japan because they could not go to the U.S., Canada or Australia. It is sad that few refugees wish to come to Japan. However, this does not mean that Japan does not have to do anything. We must put a full stop to the mindset that Japan is 'not a desirable place for refugees to settle'. We must change Japanese society so that more refugees wish to seek asylum in Japan. One of the reasons that refugees hesitated to come to Japan is their concern about discrimination. Discrimination against refugees has a relationship with discrimination against, and exclusion of, those who are somewhat 'different' or 'weak'. Refugee acceptance can be a chance to fix the discrimination problems remaining in Japan.

Q6. In 2009, UNHCR issued a report on the settlement of Indo-Chinese refugees in Japan. As a result of the settlement of these Indo-Chinese, what was learned about Japanese refugee policy?

One of the things revealed in the survey is that Japanese language education in the early settlement period was overwhelmingly insufficient. Although the Indochinese refugees received about four months of language training, it was by far too short. Due to lack of language skills they could only get the so-called "3K" jobs -kiken (dangerous), kitanai (dirty), and kitsui(hard), and their income level is low. They are too busy to continue to learn the Japanese because of long working hours, etc. The vicious cycle continues. At home, kids can speak Japanese but the parents often cannot, so parent-child communication is an issue. After the 4 months of training at the resettlement center, there was no more help from the UNHCR or the Japanese government. Moreover, there was little help from the local governments; it was as if one day local government officials just realized that refugees were in their city. There was no subsidy (financial support) from the central government for the local governments or NGOs to help them assist in social integration.

The social safety net, including medical insurance and social security, was not sufficient, so it was difficult for them to live independently. There also was no job training, and refugees could not utilize their skills. Many ended up as unskilled laborers. Quite a few are believed to have left Japan for other countries. So here in Japan, I would say that there is a kind of 'Protracted Refugee Situation.'

As a side note, of the 3,000 letters sent out to Indochinese Refugees for this survey, 1,500 were returned to sender. This indicates that they no longer lived at their given address. The 3,000 addresses were provided by the Refugee Assistance Headquarters (RHQ), which is a quasi-governmental organization in charge of supporting these refugees, as a representative sample, considering gender, age, nationality and so on. Though we followed up on the 1,500 letters that got through with a phone call, in the end, only 250 people gave an interview. Many people responded, "Why do you conduct a survey now?" and, "We have been surveyed several times without any improvement." We realized that over the past thirty years, the distance between the government and UNHCR on one hand, and the Indochinese refugees on the other, has widened. We must apply these lessons in the implementation of the new third country resettlement program as well as for the future acceptance and social integration of convention refugees.

Q7. After retiring from the U.N., you became a professor at Toyo Eiwa Jogakuin University and at the University of Tokyo Graduate School. What kind of topics do you teach?

At Toyo Eiwa Jogakuin University I am teaching "Theory of Refugees and Migrants," "International Organizations," "Theory of International Cooperation," "Theory of Development," and "Ethnic Issues" to mostly undergraduate students in the social science department. Each grade has about 250 students, and in any of my classes there are roughly 100 students. They are all pure students with passion. Some people might say that Toyo Eiwa Jogakuin is a wealthy girls school, and actually these young female students most of whom went to a mission school during middle and high school, come to realize how lucky they are to be raised and educated in such a privileged environment as they learn about refugee problems. They have a house, food to eat, their parents, and can buy clothes that they like. The students, surprised that the things they take for granted are not available for many people in the world, become more thankful for the blessings they have. Also, some students even say, "I want to do something to help people in need," and take action themselves. As a professor at a university, it makes me so happy to see this kind of change in young students.

In the seminar in the Human Security Program at the University of Tokyo I lead a "Theory of Refugees and Migrants" course in which we study, for instance, the migration cycle, reasons for voluntary and forced migration, migration dynamics, and issues related to integration in destination countries. Graduate students in the class are studying topics like 'Education of Refugees,' 'Refugees and Media,' and 'The Possibilities for Accepting

Refugees in Rural Areas.’ Since winter semester last year, we have made an abridged translation of *The Age of Migration*, fourth edition, by Stephen Castles. This is a big accomplishment, which will be shared with other people, inside and outside the University of Tokyo. In the future I expect that a number of researchers and practitioners who are concerned with “people on the move” will come out of this seminar.

Q8. Tell us the significance of ‘Refugee Studies’ in Japan

Japan’s passive and exclusive stance on refugees can be attributed to the absence of appropriate refugee policies. When we talk about the refugee issues in Japan, we use the term of ‘refugee policies’. However, actually, there are almost no ‘refugee (or migration) policies’ to speak of in Japan. Lack of research and researchers in refugee field is one cause for this situation. Especially in Japan, the field of refugee studies is narrowly focused on refugee status determination (RSD) issues. However, RSD is only one phase of the cycle of forced displacement of people. We need to broaden our research perspective and look at such issues as root causes of forced displacement in the countries of origin, Internally Displaced Persons (IDPs), RSD, local integration in the countries of asylum and repatriation to home countries.

For instance, Japan is not a country favored by asylum seekers. Why do asylum seekers/refugees not want to come to Japan? We cannot explain it by simply saying that the Japan’s RSD process is too strict. We could learn in more depth about Japanese refugee policy and Japanese society itself through the eyes of refugees who decided not to seek asylum in Japan. This takes on significance beyond the field of “Refugee Studies”. It will take decades in order to reach an academic level like the U.S., England and Canada; countries that have accumulated knowledge and experiences on refugees and migration, but nonetheless I hope to move ‘Refugee and Migrants Studies’ in Japan forward and educate students who would become good refugee researchers and scholars in the future.

Q9. What is your current goal?

‘Research’ and ‘Action’. One action is promoting a new mechanism for local integration of refugees in local cities and towns. In April 2009, I established a citizen’s group in Matsumoto City, Nagano Prefecture to explore the possibility of inviting resettled Myanmar refugees to live there. In cooperation with HSP/CDR, we have organized symposia, charity concerts and seminars advocating for acceptance of refugees in the city. Indeed, there are thousands of foreign laborers (migrants) in Matsumoto area but no refugees. I would say the region is void of refugees. Most people might think it is impossible to accept refugees in local cities like Matsumoto, but I would like to challenge that notion. The Mayor of Matsumoto, Mr. Akira Sugeno, has been a leading member of an

international humanitarian NGO, and understands the importance of humanitarian actions. We named our initiative in Matsumoto the "Humanitarian City, Matsumoto Project". I want to see Matsumoto city become a model for "local" integration of refugees in all parts of Japan.

One critical factor for successful refugee settlement is self-reliance. In consultation with Karen refugees, we are exploring possible job opportunities for resettled refugees such as weaving and agriculture, taking into account their skills and potential. Of course, deciding where to settle is up to the refugees. In my view, unless alternatives are shown to them, most of the resettled Karen refugees would remain in Shinjuku area where the initial 6 months orientation program is conducted. I am concerned that some of the refugees who have spent years in mountain area in Myanmar/Thailand may find it difficult to live in such a metropolitan city. One may wish urban life, while some others may wish to live in rural areas like Matsumoto. What I want to offer them is more than one option, that is, a few alternatives from which they can choose one. The Japanese government has committed to "share responsibility" internationally to accept refugees by the new resettlement program. It is time for local governments and citizens to "share responsibility" within Japan.

Another goal of mine is to create a textbook on refugee issues for use at universities. Currently, interest towards refugee issues is increasing but there are few Japanese textbooks on the subject. My hope is to produce a textbook that covers a wide range issues such as conflicts, IDPs and human mobility. Last year, when I visited the Refugee Studies Center at the Oxford University, among the thousands of books displayed, there were only two English books concerning Japan's refugee policy. There is also a desperate need of providing information on Japanese refugee problems through English texts so that information is shared with policy makers, researchers and practitioners across the globe.

REPORTS OF SEMINARS

REPORT ON THE “IMMIGRATION POLICY IN JAPAN” AND THE “REFUGEE POLICY IN JAPAN” LECTURES of April 14th and 17th, 2010

Report Prepared by Vanessa Macaraig*

ABOUT THE LECTURES

The “Immigration Policy in Japan” and the “Refugee Policy in Japan” lectures were a joint project of the Center for Documentation of Refugees and Migrants of the University of Tokyo and the Graduate School of Asia-Pacific Studies of Waseda University. The lectures took place in English on April 14th and April 17th of 2010 at Waseda University, Tokyo, Japan.

They consisted of presentations by and question and answer with Mr. Hidenori Sakanaka and Mr. Taro Kono on April 14th, and presentations by and question and answer time with Mr. Azuma Konno and Mr. Tin Win on April 17th. The lectures were also broadcast online through the USTREM in real time, and online participants were able to participate in the question and answer time as well.

The full video of both days will be available through the CDR website at <cdr.c.u-tokyo.ac.jp>.

* Graduate student at the Graduate School of Asia-Pacific Studies of Waseda University. Lectures were broadcasted by Sae SHIMAUCHI, Rui HIWATASHI and Tomoji TAKEUCHI. Yukiko ABE facilitated these events as the MC in English, and Ralph HOSOKI and Nikki TSUKAMOTO worked as an interpreter for two speakers.

I. APRIL 14TH LECTURES

Speakers: Taro Kono and Mr. Hidenori Sakanaka

Part 1: “Prospects of Japan’s Immigration Policy” by Mr. Taro Kono

- Mr. Kono began his lecture by sharing his experience as the Senior Vice Minister at the Ministry of Justice during the Koizumi administration.
- The official government policy at that time was to let in “high-end foreign workers” (college graduates), but Japan was still closed to the “lower echelon” (manual laborers).
- The reality was that while Japan’s “front door” was closed to the manual laborers, the “back door” was open to satisfy the demand of Japanese manufacturers for cheap labor. The following loopholes were created:
 - Trainee Program: So-called trainees from China were brought to Japan, not to undergo training, but to work for factories. This cheap labor program was under the guise of an educational aid project.
 - Nikkeijin Program: Foreign nationals with Japanese blood (mostly from Brazil and Peru) are allowed to come to Japan with a special visa, and they are hired as cheap factory workers.
- These two “loophole” programs led to several problems:
 - Since laborers were not officially registered as workers, they were not covered or protected by labor laws, and this led to abuse and unfair working conditions.
 - Research conducted by the Health and Justice Ministries showed that the ill effects of bad working conditions were worse than expected.
 - The “trainees” were not really being trained to be able to contribute to their home countries, so it should not have been considered foreign aid.
 - The Nikkeijins started settling in Japan, but because they never received proper Japanese language training, they were unable to integrate into Japanese society. This led to the creation of “ghetto communities,” comprised mainly of these Nikkeijins who choose to stick close to each other because of their inability to interact with the Japanese.

- Mr. Kono's Proposed Solution to this problem:
 - Terminate these two "loophole" programs and give immigrants 3-year working permits instead. -- "Open the front door."
 - Japanese language ability should be made a requirement for acquiring a working permit.
 - These foreign workers should be entitled to renew their permit after 3 years. If granted, then they should be allowed to bring their families (spouse and children) to Japan.
 - They should be allowed to renew their permits as long as they want to.
 - Manufacturers and the government should provide further Japanese language education to the workers.
- Criticism from the Japanese Public
 - Women who want to work again after having children can fill the labor gap.
 - Senior citizens who want to earn extra income can also work in factories.
- Mr. Kono's Counterarguments
 - The labor market is still declining (even if we factor in the women and the senior citizens) due to the declining population rate.
 - Japan must focus on its goal of making Tokyo a financial center.
 - Tokyo must improve the English proficiency of its residents
 - At the moment, only the top two companies are allowed to sponsor English-speaking nannies.
 - Mr. Kono proposes to open this market further, to attract other financial companies in Tokyo.
 - At present, the Japanese economy is stagnant.
 - Deregulation of certain government duties is needed to revive the economy.
 - One of the key things that should be deregulated is immigration.
 - Opening Japan up (quantitatively and qualitatively speaking) would make Japanese society more creative and productive.
 - The government has to talk to the Japanese people about the benefits of opening the country up.

- We have to start the debate as soon as possible, so that we may be able to reach a consensus.
- Other Immigration Problems that Mr. Kono wants to deal with:
 - Certain Koreans who were brought over to Japan to work here have a special permanent residency
 - Some of them have been here for decades, but they have not been given a chance to apply for citizenship
 - Proposal: Terminate this special status, and then allow them to apply for citizenship after 10 years.
 - They should be given a choice of nationality.
 - Japan has Zero Tolerance for Dual Citizenship
 - This has led to significant “losses” for Japan
 - Yoichiro Nambu, who won the Nobel Prize for Physics, had to renounce his Japanese citizenship when he became a naturalized American citizen in 1970.
 - Athletes with Japanese blood have represented other countries in the Olympics, because they were not allowed to keep their Japanese citizenship.
 - Proposal: Allow dual citizenship in Japan, except for special cases like when one decides to run for office or join the armed forces overseas.
 - Point: Japanese citizens should be given a choice to have a dual citizenship.
 - Refugee Problem
 - This is discussed in more detail at the talk on Japanese Refugee Policy, April 17, 2010.
 - Current implementation: inefficient and expensive.
 - Taking in 5 refugee families costs the Japanese government 100 million yen, because they are resettled in Shinjuku.
 - Proposal: Use the empty schools in other areas (Japan has an increasing number of schools closing down because of the declining population rate). This will save the government a lot of money.
 - The refugees should be integrated into Japanese communities, not isolated in foreigner communities.

- Long Queues for Foreigners at Japanese Airports
 - The maximum waiting time should be 20 minutes, but right now, it can last as long as two hours.
 - Japan needs a more efficient system, similar to that of Hong Kong (registered foreigners don't need to line up at the counter; they are given a card they could swipe on a machine instead).
 - Hiring more immigration officers is not necessary (and impractical, considering Japan's current budget deficit). The problem lies with the inefficiency of current system and staff.
 - Case in point: Fukuoka Airport's long lines are caused by an inefficient shift schedule created 25 years ago (flight schedules have changed a lot since then, so they are no longer synchronized with the staff's shifts).
 - Proposal: Update the system and the schedules—make them more efficient.
- Image of the Immigration Bureau
 - The Immigration Bureau invokes fear among foreigners, instead of being approachable and helpful.
 - There is a need to create trust between foreigners and the Immigration Office.
 - Proposal: Change image of the Immigration Bureau from intimidating to kind and helpful.
- Japan has a severe lack of foreign language capability
 - To be able to open up to foreign countries, the Japanese need to learn English, and if possible, another foreign language.
 - The Japanese are increasingly inward looking.
 - The Japanese economy needs workers who are globally competitive (not just able to succeed here).
 - Proposal: Japanese English Program should be changed
 - Former Prime Minister Koizumi wanted to set up public grammar schools and junior high schools with a full English curriculum in the areas with American bases, but the Ministry of Education blocked this plan.
- The Key to All These Problems: OPEN THE DEBATE (Discourse).
- Open Japan up, and then review the immigration policy again when the for-

eign labor percentage reaches 4% (which is just below the European threshold).

Part 2: “A Japanese-Style National Immigration Plan” by Mr. Hidenori Sakanaka

- Mr. Sakanaka begins his discussion by talking about the youth today.
- He then proceeds to share his thoughts on letting the students decide on whether Japan should open up, or instead remain a small, unattractive society on its way to decline.
- The main topic of his talk is Japan’s ageing population problem. He says that the world is waiting for Japan’s response to this crisis.
- He also says the world is aware of Japan’s problems with its immigration policies, which have been labeled as “isolationist” by certain publications.
- He believes that changing Japan’s immigration policies is key to the solving ageing population problem.
- He published an article in 2007 in response to the declaration of the ageing population problem in 2005, and he pointed out the importance of opening Japan up to immigrants as a possible solution.
- He claims the problem is worse than is commonly perceived: right now, the ratio of people in the labor force to retirees is 3:1, but in 40 years, it will become 1.3:1.
- He emphasizes a need for educational reform:
 - Some academic institutions may go bankrupt if they are not soon converted to training centers for foreign laborers.
 - This should be part of a Japanese Immigration Policy that enhances the quality of life of foreigners as well.
- He also agrees with Mr. Kono that dual citizenship should be allowed in Japan.
- Although he was not able to cover everything he wanted to discuss, he wrote most of his ideas in the booklets distributed to the members of the audience.

Part 3: Discussion facilitated by Professor Glenda Roberts

- Comment from Prof. Roberts: Migration has been a seemingly taboo topic in Japanese Society, so this seminar has been a great opportunity to finally get it out in the open.

Question: How do we bring Japan to debate about the issue of migration?

- Mr. Kono: The problem is that the current ruling party, DPJ, is heavily backed by trade unions that are anti-immigration. LDP is in a better position to start this debate. It still has its share of right-wingers, but we “just have to overcome them.”
- Mr. Sakanaka says that he has been writing about this issue, expecting some response from the Japanese public, but unfortunately, he hasn’t been so successful. He believes that politicians should take the initiative, and the media can also do its part in making the immigration discussion mainstream.

Question: Japan has the lowest naturalization rates among the OECD countries. This has implications not good for Japan as a liberal democracy. What are your positions regarding this issue?

- Mr. Kono says that he hopes that when immigration policies have changed, naturalization rates will go up. He emphasizes the need to focus on the future.
- Mr. Sakanaka points out that some people shy away from naturalizing because of the absence of the dual citizenship option. Perhaps in dual citizenship is allowed, rates would go up.

Question: French and Australian immigration policies have set standards that are currently being talked about by the international community. Will Japan face the same issues they are facing?

- Mr. Kono: Religious issues and the tolerance for public displays of faith (i.e. Muslims wearing scarves) has to be discussed and debated.

- Mr. Sakanaka: Japan must focus on education: Japan must educate foreigners in Japanese language and culture (especially 2nd generation foreigners here). Also, Japanese children must be taught about multiethnicity.

Question: What do you think about recent cases of human rights violations done by the Immigration bureau? (Cites the case of the Ghanaian man who died during deportation.)

- Mr. Kono declined to comment.
- Mr. Sakanaka: Human rights should be universal, not just an issue for immigration. There are international human rights laws, but no local ones. Perhaps Japan should enact domestic laws to protect people from discrimination.

Question: African immigrants in France can speak French, but they are still not properly integrated in the French society. So aside from language training, what else can address the issue of properly integrating foreigners into Japanese society?

- Just learning the language is certainly not enough, but it is the bare minimum. The Japanese must also be open to the culture from the foreigners.
- What should also be open for debate is whether quotas should be set for immigrants from different backgrounds.

Question: Even among the Japanese youth, anti-immigrant sentiments are quite strong. So where is the hope in this?

- Give them time. They can be compared to the Southern Americans who believed that they were right in keeping black slaves, but eventually realized that they had to change because they were wrong all along.
- The Japanese have to realize that the country is opening up for its own good, not for the sake of the foreigners.

Question: What should be done about the undocumented foreign workers?

- Mr. Kono: “Kick them out.” There can be no tolerance for foreigners staying and working in Japan under illegal circumstances.

The seminar ended with Prof. Roberts thanking the two speakers, the translator, and everyone who attended.

II. APRIL 17TH LECTURES

Speakers: Mr. Azuma Konno and Mr. Tin Win

Part 1: Lecture titled :“A Refugee Who Cannot Be Recognized as a Refugee” by Mr. Azuma Konno

- Mr. Konno began his lecture by talking about his experience as a Member of Parliament.
 - The 9/11 terrorist attacks occurred early in his career, in 2001, and President Bush declared the War on Terror.
 - The Japanese Parliament signed a law officially declaring Japan’s support for the War on Terror.
 - It was around this time that Kayoko Ikeda, author of “If the World were a Village of 100 People,” contacted Mr. Konno to discuss Japan’s refugee problem.
- Ms. Ikeda then took Mr. Konno to the Immigration Bureau’s Detention Center in Ibaraki City, Osaka Prefecture (West Japan Immigration Center).
 - Mr. Konno said he was shocked by the living conditions of those detained there.
 - Those applying for refugee status were held there while their applications were being processed.
 - The detention center was like a prison: there were metal bars, and a 14-tatami room housed 11 people.
 - He met the asylum seekers, and some of them were even moved to tears because such contact was rare.

- When he asked them why they chose to come to Japan, they said that they thought that Japan's past experiences with war would make the people here more understanding of the refugees' situations.
- Upon arriving in Japan, the refugees soon realized that this assumption was wrong.
- Mr. Konno was asked: "Why is Japan so cold to refugees?"
 - Japan's situation is unique: its language, together with its geographic situation, sets it apart from other countries.
 - The Japanese people are not used to living with those who have a different culture and language.
- Mr. Konno's brief discussion of the National Constitution
 - Article 13 deals with liberty, respect for the individual, and human rights.
 - Articles 25, 26, and 27 cover the rights to health, education, and work respectively.
 - The constitution neglects mention of the rights of foreigners.
- In 1981, Japan ratified the UN Refugee Convention and Protocol, thereby accepting the responsibility to protect refugees.
 - The reality, however, is that those who come to seek asylum are locked up in immigration centers while their applications are being processed.
 - Mr. Konno, together with Ms. Keiko Chiba (the current Minister of Justice), passed a proposal to entrust the refugees to a third-party group, because at that time one body was responsible for both refugees and violators of immigration law.
 - In 2009, 1380 people applied for refugee status, but only 30 requests were granted.
 - The top priority for refugee status in Japan is those from Burma.
 - The Japanese Immigration Bureau only acknowledges members of Burma's NLD as refugees.
 - No Kurd has ever been granted refugee status in Japan. (Kurds should actually qualify as refugees, but Japan fears that accepting them would endanger its relationship with Turkey.)
- Hurdles that the refugees face in Japan:
 - Refugees are held in the same conditions as illegal immigrants and

those who have overstayed because they are handled by the same organization.

- The requirements for achieving refugee status are difficult to fulfill.
- The temporary visa system is also full of hurdles:
 - The applicant must come straight from his/ her home country to Japan (this does not acknowledge refugees who had to make a stopover in a different country before coming to Japan).
 - Those who come to seek asylum must apply for refugee status within 6 months of arriving in Japan.
 - Each applicant is supposed to have access to a third party opinion through an advisor when their initial application is rejected, but this does not really help in their appeal.
 - The advisors are supposed to be independent, but this is impossible because they are hired by the Immigration Bureau.
 - The Ministry of Justice is supposed to be in charge of hiring these third party advisors.
 - There is no system that allows the applicants to make a living while waiting for their application to be processed.
 - The applicants are supposed to receive four months of protection allowance (1,500 JPY daily for people ages 12 and up, and 750 JPY for children below the age of 12), but not everyone receives this.
 - Mr. Konno's stand: Even people who have not yet been granted refugee status should be given a living allowance, or at least allowed to work.
 - Mr. Konno compares Japan to other first world countries, which have systems that allow applicants to earn a living while they wait for the final decision.
- Important Point: The process of evaluating the applications for refugee status takes too long: 1.5 to 2 years on average.
 - Some people have waited for up to 4 years for the decision.
 - This situation is made worse by the fact that they can't work while waiting for the result.
- Cases of injustice in the process:
 - A Peruvian mother and child were deceived into coming to the Immi-

gration Bureau to “discuss certain matters,” but were arrested instead for immediate deportation without a chance to consult their lawyer and defend themselves.

- A Ghanaian man died on the plane after he was gagged and sedated by Immigration authorities because he refused to be deported quietly.
- All these concerns have led Mr. Konno to come to the conclusion that Japan needs to change its refugee policy.

Part 2: Discussion facilitated by Professor Glenda Roberts

- The first question was about Japan’s past diplomatic ties and whether or not it accepted refugees from North and South Korea.
 - Mr. Konno answered that during and after the Korean War, not many Korean refugees came to Japan seeking asylum.
 - During the Vietnam War, however, some refugees came to Japan.
- The next questioner asked about who the third party advisors to refugees are.
 - People from NGOs, university professors, and other experts usually serve in this role.
- There was also a question about the need to educate the refugees in the Japanese Language.
 - Mr. Konno agreed that this was indeed a valid point, and that the government should provide this service.
- A Burmese refugee currently living in Japan asked whom they could consult on certain legal and technical issues when they have inquiries about incoming refugees or those who are currently applying.
 - Mr. Konno said that at the moment, it is quite difficult to determine whom exactly to approach, but there are some groups who are able to help.
- The concern over what should be done to help the refugees after they received refugee status was also raised.
 - Mr. Konno said that the refugees must be given adequate support so that they may integrate properly into Japanese society, and live normal lives.
- Someone from the Internet asked what social benefits Japan would enjoy if they accepted refugees.

- Japan cannot ignore that it is becoming increasingly globalized, and it must do its part in cooperating with the international community.
- Benefits may not be immediately felt, but will be evident in the long run.

Part 3: “Japan’s Refugee Policy from the Viewpoint of a Convention Refugee in Japan” by Mr. Tin Win

- Mr. Tin Win began his talk with a brief overview of the context of Japan’s Refugee Policy
 - He said there is a strong emphasis on the social security of the Japanese, but Human Rights and Humanitarian Concerns are not given proper consideration here.
 - He gave examples of Japanese aversion to activism, both here and in Burma.
 - He compared this attitude to that of others from Western First World countries, which were more eager to help and support his cause.
 - He mentioned some exceptions, like Mr. Azuma Konno, whom he praised for supporting not just the cause of the refugees, but also Burma’s fight for democracy and the release of Aung San Suu Kyi.
 - He recalled Mr. Kono’s statement on undocumented foreign workers on April 14: “Kick them out.”
 - He noted that the above statement ignores the fact that the undocumented foreign workers are here precisely because Japan needed them during the labor shortage of the 1980s.
 - Japan had a so-called “one eye closed” policy to satisfy the demand for cheap labor.
 - Employers or owners of manufacturing companies support those fighting for the rights of these migrant workers because they also benefit from the cheap labor.
- He went on to call for the empowerment of refugees, who he says have not received adequate support from the Japanese public.
 - Jobs available to refugees are limited to manual labor regardless of educational background.
 - Those who were medical doctors in their home countries have

been reduced to dishwashers here in Japan.

- Mr. Tin Win was an economist and a journalist in Burma, but he works in a motorcar parts making factory in Gunma Prefecture.
- Foreign workers are treated unfairly in some factories.
 - Mr. Tin Win was refused his lunch subsidy because he is not Japanese.
 - He is now a supervisor, but he is aware that the Japanese who work under him earn more than he does.
- Support for refugees comes mainly from Christian communities here, and not from the government or the Japanese public.
- Integration Problems
 - Because of the difficulty of integrating into Japanese society, ethnic communities and enclaves of immigrants have popped up in different areas in Japan.
 - The refugees, even after receiving their legal status, remain marginalized:
 - Recent changes in visa provisions have caused a lot of foreign workers to lose certain benefits.
 - It is very difficult for foreigners and refugees to get jobs in Japan.
 - The language barrier further marginalizes the refugees.
 - Job opportunities will remain limited for refugees if they are not given a Japanese language education.
- Mr. Tin Win ended his lecture with a brief discussion on the situation of Burmese refugees in Japan.

Part 4: Discussion facilitated by Professor Glenda Roberts

- Question: Are there support groups in rural areas (such as Gunma Prefecture, where Mr. Tin Win currently resides) that cater to the needs of refugees?
 - Mr. Tin Win responded that he spends his weekends in Tokyo for his activities as chairman of Burma's Civil Union in Japan, so he does not have adequate information to respond to that question.
- Mr. Tin Win also chose to respond to a question raised after the first lecture, in which the questioner asked about the benefits to Japan if they accept refugees,

and he said that the current generation of refugees (including him) may still be considered burdens, but the next generation, like his children (all of whom are currently enrolled in Japanese universities, and are receiving full scholarships), may be able to contribute to the growth and betterment of the Japanese society.

- Prof. Roberts ended the seminar by thanking Mr. Tin Win, and noting that what he presented was already a valuable contribution to Japanese society.

RECENT DEVELOPMENTS OF HMS/CDR

Satoshi YAMAMOTO and Jordan NOGAKI*

I. STARTING UP OF HMS

Since May 2009, under a private company donation initiative the Graduate Program on Human Security of the University of Tokyo has been conducting a cooperative research project called the Center for Documentation of Refugees and Migrants (CDR) with Hogakukan Co.Ltd. The aim of the research project is to expand a global networking between and among practitioners and academic researchers. The CDR has also worked to develop an online bibliographic database cataloging all kinds of documentation relating to the issues of voluntary and forcibly displaced migrants. The project, through the newly created lecture series on Human Mobility Studies (HMS) is also endeavouring to establish human mobility studies as a newly organised discipline to tackle with the modern issues of movements of people.

The new project was started in April 2010 at Komaba Campus of the University of Tokyo. Since then, several events have already been held. For more information see the list of these on the following page.

II. STAFF AS OF APRIL TO AUGUST 2010

General policy of CDR is decided by the CDR Executive Committee in its monthly meetings. The daily work of CDR is managed by the following 7 staff and 2 student interns.

*A. Members of the CDR Committee**

- Professor Yasunobu Sato (Chair)
- Professor Shinji Yamashita
- Professor Mitsugi Endo

* YAMAMOTO and NOGAKI: CDR staffs.

B. Staff

- Yasunobu Sato (Director)
- Satoshi Yamamoto (Vice Director)
- Takuto Sakamoto (Web Server Manager)
- Jordan Nogaki (DB Manager / Internship Manager)
- Yukiko Abe (Outreach / DB Contents Development)
- Yasuko Yamada (Secretary / DB Contents Development)
- Magdalena Ionescu (CDRQ Editorial Assistant)

C. Intern

- Satomi HIYAMA (Undergraduate, International Christian University (Tokyo), June and July 2010)
- Stephanie YASUNAGA (*Undergraduate*, Harvard University (Cambridge), July and August 2010)

III. EVENTS

A. Past HSP-CDR Seminars and Other Events

The CDR hosted nine seminars and a summer intensive course on refugee law in 2009. It also hosted several symposia co-sponsored with the Graduate Program on Human Security in 2009. These seminars were specially named as “HSP-CDR Seminar Series” and a list is available at: <<http://human-security.c.u-tokyo.ac.jp/events.htm>>.

Since this April, the CDR has organised two HSP-CDR Seminars. The first one (10th HSP-CDR SS, 19 May) was titled “Introduction to Zotero”. The reporter was Mr. Jordan Nogaki (CDR Staff). Mr. Nogaki explained the current situation regarding information sharing on research resources such as books and magazines on the web. The CDR has been assembling contents on refugee studies using Zotero software under the initiatives of Mr. Nogaki.

The second seminar (11th HSP-CDR SS, 26 May) was titled “Insights from Diamond Extractive Industries in Sierra Leone”. Ms. Kazumi Kawamoto, the reporter has visited sites in Sierra Leone and conducted fieldwork research on this issue. Based on her experience, she presented concrete images of the issues relating to the diamond extractive

industries and offered an analysis from the viewpoint of international politics.

The CDR also cooperated with the UNGC Workshop in Tokyo titled "United Nations Global Compact Business and Peace Workshop: Business' contribution to Peace and Development through Multi-stakeholder Collaboration" on 25 April 2010. Participants from around the world including UN experts and eminent scholars discussed issues surrounding Corporate Social Responsibilities in the field of peace-building. Discussion also related to the issues of the movement of people, as the factors of displacement have been becoming more complex, especially in a war-torn societies in which rehabilitation of demobilised combatants and resettlement of returnees are serious issues requiring multi-dimensional cooperation, including that of private corporations.

On July 3rd and 4th two symposia were held to discuss the resettlement of refugees in Japan. These were especially focused on plans for the launch of the resettlement program in Japan through which about 30 Burmese refugees will be resettled annually for a trial period of three years. The July 3rd Symposium was held at the University of Tokyo's Komaba Campus. Opening remarks were made by Prof. Shinji Yamashita of the University of Tokyo, Human Security Program. Keynote speakers included Dr. Martin Ford, Associate Director, Maryland Office for Refugees and Asylees at the Department of Human Resources; and Prof. Yasushi IGUCHI, Professor, School of Economics, Kwansei Gakuin University.

There was also a panel discussion entitled, "The Roles of Local Governments and NGOs in Refugee Integration". The panel discussion was moderated by Dr. Petrice FLOWERS, Assistant Professor, Department of Political Science, University of Hawaii and Fulbright scholar, Faculty of Law, Hosei University. The Panelists were: Dr. Martin FORD; Mr. Robert CAREY, Vice President, Resettlement and Migration Policy, the International Rescue Committee (IRC); Ms. Eri ISHIKAWA, Secretary General, Japan Association for Refugees; Mr. Daniel ALKHAL, Senior Protection Officer, United Nations High Commissioner for Refugees (UNHCR) Representation in Japan; and Ms. Marip SENG BU, Burmese Refugee. Closing remarks were made by Prof. Hiroshi HOMMA, Senior Advisor, Japan Association for Refugees and Professor Emeritus, Hosei University; and Mr. Hiroaki ISHII, Deputy Secretary General, Japan Association for Refugees. For the July 3rd symposium, The Japan Association for Refugees was the lead organiser for this symposium, and the CDR was the co-organiser.

The July 4th symposium was held in Matsumoto City, Nagano Prefecture, Japan, and was organised by the following organisations: CDR; Shinshu Hatsu Kokusai Kouken Kai; JAR; and Sustainable Peace Studies. Speakers included: Prof. Yasunobu Sato, University of Tokyo; Martin Ford; Yasuyuki Kitawaki, former Mayor of Hamamatsu City; Naoko Hashimoto, Program Manager at IOM Tokyo; Eri Ishikawa, Secretary General, Japan Association for Refugees; Myo Myint Swe, Kwansei Gakuin University Policy Studies, Keisuke Nose, Central Shinshu Intercultural Network; and Dr. Satoshi Yamamoto (Moderator). The symposium was held at the behest of a group of citizens interested in assisting refugees to resettle in Matsumoto City.

B. Upcoming Events

HMS/CDR will organise a summer intensive course on the rights of refugees under international law this year (22 - 25 September). The coursework is designed to allow participants to grasp the general situation of refugee rights in the world, with an special focus on issues relating to Japan. Asylum seekers are smuggled in many occasions and this means that some asylum seekers face the risk of detention by the authority in the asylum countries. These cases are very common in Japan too and the situation sometimes seem to violate some basic human rights of the asylum seekers. To comment on the situation, the HMS/CDR will invite professor James C. Hathaway as a main guest lecturer for the intensive course. There will also be a cross discussion session with practitioners. For more details, please visit our official website <<http://cdr.c.u-tokyo.ac.jp>>.

The last part of the intensive course will be run in conjunction with the Human Security Consortium 2010. The consortium is for students and researchers who are interested in the issues of human security. This annual research meeting has been held since 2007. This year's research meeting will be hosted by the Graduate Program on Human Security and the grand theme is to be "Human Diversity and Business". Professor Hathaway's lecture will be shared by the consortium as the keynote speech and panel discussion session.

C. Website Renewal (September 2010)

The staff at the CDR have prepared to renew its official website this September. The contents include series of "Shortbooks" in which readers can find encyclopedia-like descriptions of issues relating to of refugees and migrants with specific points of interest and references. The website also includes interviews of eminent researchers and practitioners in this field. The site is designed to help readers to understand not only the current situations of refugees and migrants, but also systematic relationship between independent issues.

In addition to these features, the website also equipped with explanation of and links to our "Zotero" bibliographic database. This online database system has been under creation at the CDR for over a year, and already includes over 300 entries with more being added each week. Some of the bibliographic entries include notes and "tags" applied by the staff at CDR.

CALL FOR CONTRIBUTIONS

CDRQ is an open journal published quarterly basis. The aim of the journal is to disseminate information collected from research activities of CDR and related partners. It also welcomes contributions not only from academics but also from practitioners who are facing real social problems. This journal focuses on issues of movement of people basically. However the contents also include variety of related areas such as governance and conflict resolution and prevention, as these issues induce and escalate forced displacement and more longer-term movement of people. The purpose of the journal is to provide a crosscut perspectives on refugee and migrant issues with comprehensive awareness to the issues of movement of people.

For more details, please access to the official website of the CDR and download the "CDRQ Handbook": http://cdr.c.u-tokyo.ac.jp/Quarterly/Q_handbook.pdf

