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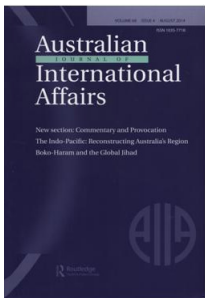

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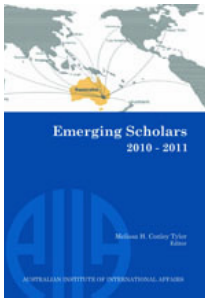

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QUARTERLY ACCESS

YOUR KEY TO INTERNATIONAL AFFAIRS IN AUSTRALIA & THE PACIFIC

Quarterly Access (QA) is the national quarterly publication of the young professionals' networks of the Australian Institute of International Affairs (AIIA).

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From the Editor-in-Chief & Deputy Editor

Welcome to the latest issue of Quarterly Access. We must start by extending a big thank you to our outgoing Editor-in-Chief, Hector Sharp. He has worked hard to bring a new and better version of the journal as well as continuing to provide excellent leadership to our team. Many thanks to you Hector for everything you have done!

We are proud to present this fascinating issue to all our readers, as QA goes in-depth on issues in women's rights, peace, security, international aid, and climate challenges.

Alejandra Pineda offers a unique and personal insight into women's experiences of peace, security and conflict in Colombia. At a most significant time for Colombia, Alejandra reminds us what not to forget in endeavours towards lasting peace and security.

Elisa Solomon has recently spent time working in the Japanese Parliament investigating gender inequality. She delivers some incredibly in-depth personal attitudes coming from current MPs that she has been interviewing this year.

Nina Roxburgh bridges overlapping elements of the abortion debate, uniting the issue from a moral question, to the concern of public health, and international law. She provokes readers to think about what ultimately makes us human, and how we can mitigate competing rights.

Jack presents readers with the issue of transboundary haze pollution. He maps out the potential environmental and economic effects and provides solutions and ideas on how to mitigate these costs, underlining the importance of cooperation and action.

Caleb explores the ongoing theoretical and practical implications of humanitarian aid in the context of terrorism. He takes us through the pressures that arise between impartial and neutral aid, and its relationship with counter-terrorism laws and efforts, presenting some solutions to this discord.

Also a very big thankyou to our graphic design support from Alicia Sherman.

Nina Roxburgh, Editor-in-Chief & Tamara Tubakovic, Deputy Editor

Justice, Peace and Security in Colombia

Article by ***Alejandra Pineda***

Alejandra holds a Bachelor degree in International Relations from La Trobe University and has a graduate certificate in Conflict Resolution and Peace Building from Johns Hopkins University. She is keenly interested in the topics of gender issues and peace building, and their intersection. She strongly advocates for women´s empowerment.

In a patriarchal society like Colombia's, violence and militarism are strongly linked, and rooted in culture and politics. Violence and militarism are connected to the norms of masculinity. The stereotype of men as providers and defenders of the nation and its women has nurtured violence and the use of weapons for longer than 60 years, even since colonial times.

But I am not going to go that far back. I would like to explore how I understand peace, security and justice from a gender lens, and discuss some of the issues that I am concerned with in the juncture of peace processes in my country. Since August 2012 the government and the Revolutionary Armed Forces of Colombia People's Army (FARC) have been negotiating peace in Habana Cuba, after 18 months of secret negotiations between the president Juan Manuel Santos and the guerilla commanders This year the National Liberation Army (ELN), a smaller left guerrilla group, also began conversations with the government and on June 23rd the FARC and the government signed the peace agreement. It is the first time in a while that peace seems to be around the corner for Colombians.

I understand peace however, not only to be the absence of war, but also to be economic justice, gender equality and pacific negotiation to conflicts, as well as the prevention of war and security – to be able to live life free from any form of violence.

In fact, according to the United Nations Development Program, a society with economic inequality, exclusion and discrimination, and marginalization, is a society where violence and armed conflict have more probability of occurring.[1] I think this explains why Colombia is such a strongly militarised and violent society.

Colombia is the seventh most unequal country in the world. Despite being a middle-income country, 34.2 percent of people nationwide live in poverty. In the rural areas, the situation is even worse with 42.6 percent of people living in poverty.[2] Colombia is an unequal society and it has been for a long time. Inequality is one of the reasons the current conflict started in 1960, and why the FARC were created.

The Fuerzas Armadas Revolucionarias de Colombia (FARC) were born as a Marxist-leninist guerrilla, whose goal was to bring about land reform, redistributing land ownership among the farmers and the working class. The idea was to erase the latifundios and for normal people to be able to have access to more equal opportunities and to the means of production. The civil war that started in 1960 between the state, the FARC and the extreme right wing armed paramilitaries, supported by the terratenientes and the state, has its roots in La Violencia. This was a civil war carried out between 1948 and 1958 when the Liberal party (representing the working class) and the conservative party (representing the caquices) were fighting each other for political power.

My grandfather used to tell me the stories of leaving the family during this period to go hiding because he was an active liberal/communist political leader, and people were looking to kill him because of it. He actually lived a few months in the top of a tree. That was his hiding place.

My grandpa was part of the Communist Party of Colombia. He was a farmer and a political activist. He used to read me the communist manifesto and Karl Marx. He believed in the idea of communism and in what the FARC stood for back in the day. I think many other Colombians like him did as well.

My grandpa was only one of the 2 million people who had to leave their homes as a consequence of this period of conflict. However, the current civil war as of January 2016 has left 6.9 million people internally displaced, and this is one of the highest rates of forced internal displacement worldwide.[3]

Political persecution against civil society, political polarisation and strongly marked economic differences among Colombians are the causes of the conflicts that have plagued our society for over eight decades and created the violent and militarised society that Colombia is today.

Colombia also has the tenth highest rate of femicide worldwide.[4] Salvador, Honduras and Guatemala have higher rates but Latin America in general makes up for 14 out of the 25 countries with the highest global rates.[5] I refer to femicide here specifically as the number of women who have been shot and stabbed, which has been increasing frighteningly.[6] In my country four women are assassinated each day and 90% of those deaths go unpunished.[7]

1 UNDG, (2011), World Development Report, http://www.hdr.undp.org/sites/default/files/reports/271/hdr_2011_en_complete.pdf

2 ABColombia, Sisma Mujer & U.S Office on Colombia, (2013) 'Colombia:Mujeres, Violencia Sexual en el Conflicto y el Proceso de Paz, p.6.

3 UNHCR, (2016), 'La Situación Colombiana', http://www.acnur.org/donde-trabaja/america/colombia/

4 Small Arms Survey, (2012), Research Notes, 'Femicide: A Global Problem', http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-14.pdf p. 3.

5 El Espectador (2016), 'Alerta por aumento de feminicidios en America Latina', http://www.elespectador.com/noticias/elmundo/alerta-aumento-de-feminicidios-america-latina-articulo-626730

6 The word femicide refers to the killing of females by males because they are female. It also includes girls and infants.

7 El Ciudadano, (2015), 'Ni una mujer menos: en Colombia hay 4 feminicidios al dia y un 90% de impunidad', http://www.elciudadano.cl/2016/02/01/252996/ni-una-mujer-menos-en-colombia-hay-4-femicidios-al-dia-y-un-90-de-impunidad/

Throughout the war the three parties, the paramilitares, the FARC and the state, have used sexual violence as a weapon of war and legitimisation of their power. They all have done it in differing ways, but all of them have perpetuated the connection between patriarchy, violence, militarism and gender.

The FARC called themselves the people's army, so it is within their practical and ideological interests to forbid their troops to use sexual violence as a weapon of war. Yet, they have raped men and women during the conflict as well. They have used women in their troops as sex providers for the men and have controlled their bodies by forcing them to have abortions in the middle of the jungle if they became pregnant.

The paramilitares, use sexual violence to impose social and territorial control over the women and the communities and to enforce their norms of conduct. Women have been shot publically as punishment for the disobedience of the standards of behavior established by the commanders. Moreover, these groups have created and monopolized the business of forced prostitution in the 146 municipalities where they operate.[8]

On the other hand the state has also committed sexual abuse and crimes against women. One of the most prominent cases is that of lieutenant Raul Muños in Floramarillo Cauca, and his troops who raped two teen girls (14 and 13) and killed one of them, along with her two little brothers who were only 9 and 6. His case has been one of the very few taken to court.[9] Generally the army has used sexual harassment and threats against women as means to establish their domain in the communities where they had no prior presence. The sexual violence committed by the Colombian army has a bigger impact among society, and it is important to notice this, as it is the state's duty to protect its citizens. When it is the state that is harming its citizens, people no longer have an authority to turn to when seeking justice. They are met with impunity and silence.

But this only gets worse; Indigenous and afrodescendant communities are actually disappearing as consequence of crimes based on gender. The Colombian Constitutional Court in 2011 declared that 34 indigenous communities are at risk of physical and cultural extinction.[10]

On the 7th of April 2011, in the pacific coast of Colombia, Maria Cecilia Bailarín Domicó, from the Embera indigenous group disappeared; she was pregnant at the time. The indigenous guard found her dead. She had been victim of sexual violence.[11]

Patriarchy and violence are also reaffirmed outside the conflict, in normal life, on a day-to- day basis with acts of gender based violence. In Colombia, 75% of attacks with acid are committed against women, and since 2010 there have been more than 100 victims per year.[12] These figures put us on the level of Iran, Afghanistan, Pakistan and East Africa.[13] According to the Colombian Institute of Forensic Medicine only in 2014 more than 17,996 cases of female raped were registered.[14]

The most known case of acid attack against a woman is the case of Natalia Ponce, a 33 years old entrepreneur who was attacked at the reception of her building by an old neighbor who was obsessed with her. The attack affected 2/3 of Natalia's body. She did not show her face for 2 years while undergoing more than 20 surgeries and reconstructions. On the 27th of March of this year the Colombian congress passed a new law called "Natalia Ponce's law" making acid attacks a crime. Before this, acid attacks were simply judged as a personal injury, leaving 98 per cent of cases in impunity.[15]

This law is a step towards justice and security but it does not change the consequences of patriarchy and violence on women's bodies and lives. Colombia has underestimated the many different forms of violence that women in particular are frequently victims of, by treating civil security from a logic of war.

This makes me wonder how likely it is for Colombia to attain sustainable peace. What does justice look like in a society where women have been the most affected by generations of patriarchy, militarism and violence?

I believe skepticism around the peace process and the probability of Colombia finally becoming a society without armed conflict is high. People's opinions are divided, and that is the reflection of a stratified society

8 Consejo de Seguridad de la ONU, (2013), 'Violencia sexual relacionada con los conflictos Informe del Secretario General', paragraph 9.

9 Amnistía Internacional, Informe anual 2013, Colombia.

10 United Nations, Addition to the Report of Independent Expert on Minority Issues, Ms. Gay McDougall, Mission to Colombia, January 25th, 2011, paragraph 44.

11 Organización Indigena de Colombia ONIC, (2012), ´Mujeres Indígenas, Victimas Invisibles Del Conflicto Armado En Colombia: La Violencia sexual una estrategia de guerra´, Report presented to UNSG Special Representative Margot Wallström, Colombia, p. 4.

12 BBC Mundo, (2016), ´Natilia Ponce de León: La mujer que se convirtió en el rostro de los ataques con ácido en Colombia´, http://www.bbc.com/mundo/noticias/2016/01/160118_colombia_ley_natalia_ponce_ataques_acido_bm

13 PBI Colombia, (2016), ´AGAINST WIND AND TIDE´, https://pbicolombia.org/2016/03/14/against-wind-and-tide/

14 El Tiempo, (no date), ´Ellas no callan´, http://www.eltiempo.com/multimedia/especiales/violacion-de-mujeres-que-no-callan-en-colombia/15806496/1

15 El Espectador, (2015), ´La Indignación de Natalia Ponce por Impunidad en ataques con ácido´, http://www.elespectador.com/noticias/judicial/indignacion-de-natalia-ponce-impunidad-ataques-acido-articulo-585266

with polarised political views. However, I also wonder how the state is going to be able to give justice to the victims and build stronger institutions for sustainable peace to take place, because this war, our war, is about inequality, poverty and gender.

But one thing is for sure. Women in my country who have been the most affected by the war both directly and indirectly believe that peace is possible. More than 5000 women marched in Bogota, in December 2015, to express their support for the Colombian peace process.[16]

It has been the women who have been brave enough to start peace-building initiatives within their communities, because they believe peace is possible, but not necessarily a consequence of a peace process. Indigenous and afrodescendant women are speaking up and organising their communities to bring themselves security and justice to their lives.

Even if Colombia is making an effort to move forward, there cannot be sustainable peace without security and peace for women. It is time to change our perception of what security means as a nation and start understanding security not through a logic of war but poverty, inequality and gender issues.

16 Ruta Pacifica de las Mujeres, (2015), "Mas de 5.000 mujeres recorren el país por la refrendación de la paz", http://www.rutapacifica.org.co/sala-de-prensa/comunicados/2015/314-mas-de-5000-mujeres-recorren-el-pais-por-la-refrendacion-de-la-paz

Women's Participation in the Japanese Government:

Will Parliament Reach the 30 per cent Target by 2020?

Article by ***Elisa Solomon***

Elisa is a final year law student at the University of Queensland. She has lived in Japan for 10 years and previously worked in Tokyo for Trade and Investment Queensland and the Australian Embassy. She recently spent two months working at the Japanese Parliament researching developments in women's policies in Japan. She hopes to work in improving labour conditions within the Asia-Pacific, with a focus on women's rights.

This year marks seventy years since Japanese women first exercised their right of suffrage. In the same amendment to the electoral laws that enfranchised women in Japan, was the recognition of their right to run for political office.[1] The election following this landmark reform saw 67 per cent of eligible women vote and 39 women elected into Parliament, comprising 8.4 per cent of the Lower House.[2] However, seventy years later, the percentage of women in the Lower House of Parliament has increased by only 1.1 per cent.[3] Despite having the right of participation for seventy years, women remain just as grossly under-represented in government as in 1946.

The dismal participation rate of women is just another reflection of the slow movement in the status of women and gender equality in Japan.[4] According to Usui, Rose, & Kageyama the reason progress has been slow is that women are 'over-embedded in the networks of family and community based on the traditional division of gender roles.'[5] Although the rigid patriarchal structures and the damaging stereotypes relegating women to the household have gradually broken down since the post-war period,[6] elements of the antiquated biases still exist today. Just this year, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) produced a report raising concerns over the persistence of stereotypes in Japan that are 'reflected in the media…and [have] an impact on educational choices and the sharing of family and domestic responsibilities between women and men.'[7]

The gender inequality behind the poor representation of women in Parliament may at first seem isolated to Japan. However, similar barriers for women's participation exist in Australia, including the traditions surrounding women's role in society and the burden of balancing both work and family commitments.[8]

It is therefore important that these issues are considered in a broad, international context as a means of understanding the reason behind women's under-representation globally and working towards gender equality in all decision-making bodies.

Early movement towards 30 per cent target

The 30 per cent target for women in leadership roles was first announced by then Prime Minister Junichiro Koizumi in 2003.[9] The target was to be fulfilled by 2020 and applied to leadership positions across all sectors of society including politicians and government ministry heads.[10] However, by 2006 Koizumi had vacated the office with little progress in creating a lasting reform of the embedded gendered system within parliament.[11] Nearly a decade later, Prime Minister Abe resumed his predecessor's efforts with an unprecedented level of fervor; surprising many who recalled his contrary disposition towards women's advancement between 2006-2007.[12] His party went on to make a commitment in 2012 to achieve the 30 per cent leadership target 'without fail.'[13]

Women in Parliament

Reaching the 30 per cent target in the political sphere in Japan appears to be a substantial and almost impossible task when considering Japan's internationally lamentable representation of women in Parliament. This year the Lower House comprised only 9.5 per cent of women while the Upper House was marginally higher and comprised 15.7 per cent of women.[14] Comparatively, Japan placed 157th among the 191 countries surveyed for the percentage of women in the Lower House.[15] Australia ranked 100 places ahead at 56th.[16]

The reasons behind Japan's relentlessly dismal participation rates are manifold. Academics have identified damaging structural and cultural obstacles from the post-war period that have continued to reinforce the dominance of men in politics.[17] Japanese members of the present Parliament attribute the flaws in the

1 Beauchamp, Edward R. (1998) Women and Women's Issues in Post World War II Japan (Dimensions in Contemporary Japan), Garland Publishing, Inc: New York & London, 61.

2 "Getting more women in the Diet" in The Japan Times, 12 May 2016, available at http://www.japantimes.co.jp/opinion/2016/05/12/editorials/getting-women-diet/#.V1D7hpN96Rs.

3 "Women in national parliaments" (2016), Inter-Parliamentary Union, available at <http://www.ipu.org/wmn-e/classif.htm>.

4 Usui, Chikako, Suzanna Rose & Reiko Kageyama (2003) "Women, Institutions and Leadership in Japan" in Asian Perspective, Vol. 27, No. 3, 85, 91.

5 Usui, Chikako, Suzanna Rose & Reiko Kageyama (2003), above n 4, 120.

6 Takenaka, Chiharu (2009) "Peace, Democracy and Women in Postwar Japan" in Peace and Change, Vol. 12, No. 3-4, 69, 75.

7 "Concluding observations on the combined seventh and eighth periodic reports of Japan" (2016), UN Committee on the Elimination of Discrimination against Women, 5.

8 "Representation of women in Australian parliaments" (2014) in Parliamentary Library - Research Paper Series 2014-2015, Department of Parliamentary Services, Parliament of Australia.

9 "Holding back half the nation" in The Economist, 29 March 2014, available at http://www.economist.com/news/briefing/21599763-womens-lowly-status-japanese-workplace-has-barely-improved-decades-and-country.

10 "Gov't lowers numerical goals for promoting women to leadership positions" in The Mainichi, 4 December 2015, available at <http://mainichi.jp/articles/20151204/ddm/001/010/152000c>.

11 Dalton, Emma (2015) Women and Politics in Contemporary Japan, Taylor and Francis, 66.

12 Kano, Ayako and Vera Mackie, "Is Sinzo Abe Really a Feminist?" in East Asia Forum, 9 November 2013, available at <http://www.eastasiaforum.org/2013/11/09/is-shinzo-abe-really-a-feminist/>.

13 "Gov't lowers numerical goals for promoting women to leadership positions", above n 10.

14 "Women in national parliaments", above n 3.

15 "Women in national parliaments", above n 3.

16 "Women in national parliaments", above n 3.

17 Dalton, Emma (2015) above n 11, 22.

campaign process that still disadvantage women, and the difficulty in balancing family commitments with the demands of Parliament. The underlying issue common to these individual factors is the prevailing societal idea that women are the primary attendants of the household, and the expectation that they continue to perform these defined, compartmentalised roles alongside any personal ambitions they may have. The natural political consequence of these perceptions has been summarised by Dalton; 'When women are overwhelmingly burdened with family duties and are socialised into roles that do not facilitate full participation in public or political life, it is little surprise that public positions of power, including electoral politics, are dominated by men.'[18]

It is perplexing to note that despite these continuing barriers to women's political engagement, the major political parties have demonstrated little interest in the issue. The challenges women face are the same as those identified 10, 20 years ago and are likely to exist well into the future without drastic institutional change.[19] There is some degree of hope, however, with the introduction of two unprecedented bills that aim to balance the number of female candidates and promote a voluntary quota system within political parties.

Lack of campaign support

Women continue to face a number of hurdles in the campaign process including a lack of support from their parties, communities, and families. Independent MP Michiyo Yakushiji indicated that families tend to discourage their relatives from running for office because they believe it is embarrassing. Other familial objections stem from the traditionally irreconcilable idea of a woman, especially one with children, working in politics.[20] A Democratic Party (DP) MP explained, 'Even when women were initially given the right to run for office, attached was a caveat that they were to first obtain the permission of their husbands… for fear of their family unit being thrown into disarray.' A high-ranking member in the DP Policy Affairs Research Council explained the DP's strategy in increasing female candidates in recent years, which have included persuading the families (often husbands) to allow women to run.

A related concern is their lack of financial independence. According to representatives in Parliament, many women rely on the husband's income and would not be able to fund their campaign individually, should the families disapprove. They also receive little financial support from their parties. As a male DP MP explained, 'candidates running in single member districts are substantially responsible for their own funding and receive little support from their parties.' He proposed that parties should assist female candidates in campaign efforts.

The communities can also be very critical of candidates. Female candidates with young children have faced criticism from many in their local communities, especially from other women. Two MPs detailed the highly prejudiced views that sengyo-shufu (full-time housewives) hold against working mothers. 'They believe that these women are selfishly abandoning their role as mothers' commented one MP. He explained that these views become very prohibitive during election periods when there is an ostensible lack of support from sengyo-shufu, which is normally a large volunteer group in the campaigning process. A senior female Liberal Democratic Party (LDP) MP, who declined to be named, commented on the difficulty in overcoming this prejudice in collecting donations: 'some people are hesitant about supporting and providing funding to women because they have doubts as to how long these women will stay in Parliament.'

Balancing commitments in Parliament

As women have been historically absent from the political process, it is not surprising that politics is still largely perceived as a man's domain. A high-ranking member in the DP Policy Affairs Research Council commented, 'Women who wish to succeed in politics must become men.' However, with the demands of childcare being unilaterally entrusted to women, they are not able to abdicate themselves of their parental duties, as is common among male legislators. Two female MPs stated that although they work as politicians during the day, they, unlike their male counterparts, must still be mothers when they return home in the evening.

This is problematic in a society where many work related discussions are held after hours through nominication (open communication through drinking).[21] Female politicians with children have not been invited or were otherwise unable to attend these gatherings and are consequently left out of important, albeit dubious, decision-making processes. To address these issues, LDP MP Noriko Miyagawa has been actively promoting a stronger, more imbedded system of support for female representatives within Parliament. However, there has been minimal movement towards actual implementation of such rules.

Female politicians are also left disadvantaged by their limited capacity to attend as many events in their electorate as their male counterparts. Two MPs stated that it is common for wives of politicians to attend events on behalf of the representative who would otherwise be unable to travel so frequently to their local districts. This does not apply equally to female politicians, as some are unmarried or have working husbands, requiring them to fulfill all of these responsibilities alone.[22] Despite these hindering practices, a senior female LDP representative noted that things were changing and men were becoming less reliant on their wives to support their political careers.

18 Dalton, Emma (2015) above n 11, 65.

19 Dalton, Emma (2015) above n 11, 23.

20 Patricia (1999) The Mountain is Moving – Japanese Women's Lives, UBC Press: Vancouver, 137; Dalton, Emma (2015) above n 11, 22-23.

21 Witt, Michael A. (2006) Changing Japanese Capitalism: Societal Coordination and Institutional Adjustment, Cambridge University Press: Cambridge, 99.

22 Dalton, Emma (2015) above n 11, 106.

Consequences of inadequate representation

Given the imbalance in the number of barriers facing women wanting to run for office, it is natural that very few women raise their hands. However, the ramifications of maintaining this status quo are serious and pose a significant threat to the advancement of women. A senior female LDP representative, who would not go on the record, stated 'the reason why women's policies in Japan are so behind is because we have had very few female members of Parliament. The declining population, childcare facilities, women's working environments… Japan is about 10 years behind in these areas.'

Two other representatives explained that women's interests in relation to sexual harassment, childcare and domestic violence are not being adequately represented and tend to be legislated through a man's perspective. There have also been instances where Parliamentary committees reviewing cases of sexual harassment on women have consisted mostly of men, sometimes only having one female member. One DP representative on such a committee commented that the male committee members 'may have more room to forgive, or they would understand why [the perpetrator] would do such a thing, whereas it would be difficult for a woman to understand… so in that kind of committee half of the people have to be women.'

Beginning of structural change?

As a step forward in achieving the 30 per cent target, a nonpartisan group for the promotion of women in the field of politics was established in February 2015.[23] The group proposed a bill encouraging all political parties to work towards nominating an even number of male and female candidates. However, there was a disagreement in the target between the LDP and the DP. Both major parties are now set to propose two separate bills, stalling momentum yet again. The DP also put forward an amendment to the Public Offices Election Law that would allow candidates on a party's proportional representation list to be grouped by gender and then apportioned seats alternately. The amendment would result in establishing a voluntary electoral quota to increase the number of women in the Lower House.

This is the first time that any major party in Japan has taken legislative steps to actively increase the number of women in Parliament. As identified by Dalton, 'political parties, and particularly the LDP, have been instrumental in keeping women out of politics.'[24] The LDP has been repeatedly criticized for their historically limited interest in women's advancement and rigid objection towards establishing a quota system.[25] The DP had shared similar reservations and their position towards quotas had been ambivalent.[26] However, the DP has since emerged with impassioned support and endorsement of positive action to secure women's political participation. Many male and female DP representatives are now in favour of establishing a quota system in contrast to many LDP representatives and some independents who are still reluctant to demonstrate support.

'It is too early for a quota system,' commented female independent MP Michiyo Yakushiji 'first, women need to receive the proper training and education necessary to be effective in leadership positions. It is not always the case that the position creates the person. If women are suddenly given a role they feel they cannot fulfill, they may carry a lot of stress and eventually fade out. It may be better to wait another 5, 10 years.' Similarly, two LDP MPs expressed apprehension as to the effectiveness of a quota system in raising women's status in Parliament. One senior female LDP MP commented 'Some male politicians believe that it will amount to reverse discrimination and if women are elected in this manner, the quality of politicians and work will decline. This perception is very damaging for female politicians as their colleagues may believe that she was only elected because of her gender.' As the other LDP MP Noriko Miyagawa stated 'the women who are elected should be recognised for their skills and abilities, and should not have to be wrongfully targeted because of the failings of a non-meritocratic system.'

Another LDP MP emphasised the need for support in the positions leading to candidacy for a parliamentary seat, such as in prefectural assemblies. 'They need to understand how the legislature, and creating legislation, works. Otherwise if they suddenly become members of Parliament they will not know what to do.' In contrast, DP MP Kenta Izumi expressed that 'there is a misunderstanding that women cannot speak well and cannot fulfill their roles, but that is false. Parliament is just simply not utilising women's skills to the full extent. If Parliament secures particular seats for women, this will allow those women to use their skills. In the current Parliament, men have taken away women's ability to voice their opinions.' This view is common amongst the DP, which is in strong support of a quota system to increase women's participation.

A long road ahead

Despite the DP's progressive positioning within Japanese politics, there is substantial doubt that it will be enough to instigate the structural changes necessary to meet the 30 per cent target. Modern Japanese and international political science and gender issues expert Professor Mari Miura believes that the DP's weakness lies in it's own implementation of the policies it propagates. 'They have

23 "女性議員増へ足並み乱れ　超党派、法案提出できず　女性団体「政争の具、もうやめて」", in the Asahi Shinbun, 9 June 2016.

24 Dalton, Emma (2015) above n 11, 123.

25 Dalton, Emma, "Japanese politics still a man's world" in East Asia Forum, 9 June 2016, available at <http://www.eastasiaforum.org/2016/06/09/japanese-politics-still-a-mans-world-2/>.

26 Dalton, Emma (2015) above n 11, 130.

not embodied their own principles and established an internal quota system within the party, despite advocating for a bill which would require parties to work towards implementing such a system.' There are also only a few examples of female leadership within the party, which again brings into question their commitment to women's participation and advancement.

According to Professor Miura, the current government's lack of commitment and action makes attaining the target nearly impossible. 'Even if they do not meet the target, there will not be much public or political backlash... because the population is not very concerned with this issue. In Japan there just isn't a consensus that we need to increase the number of women [in Parliament]. It is accepted that for economic reasons women should participate more in the workforce, but this has not extended to the Parliament.' She explained that if there were greater pressure from the general public, the LDP would have no option but to reflect those views. However, the current public interest is ambivalent at best.

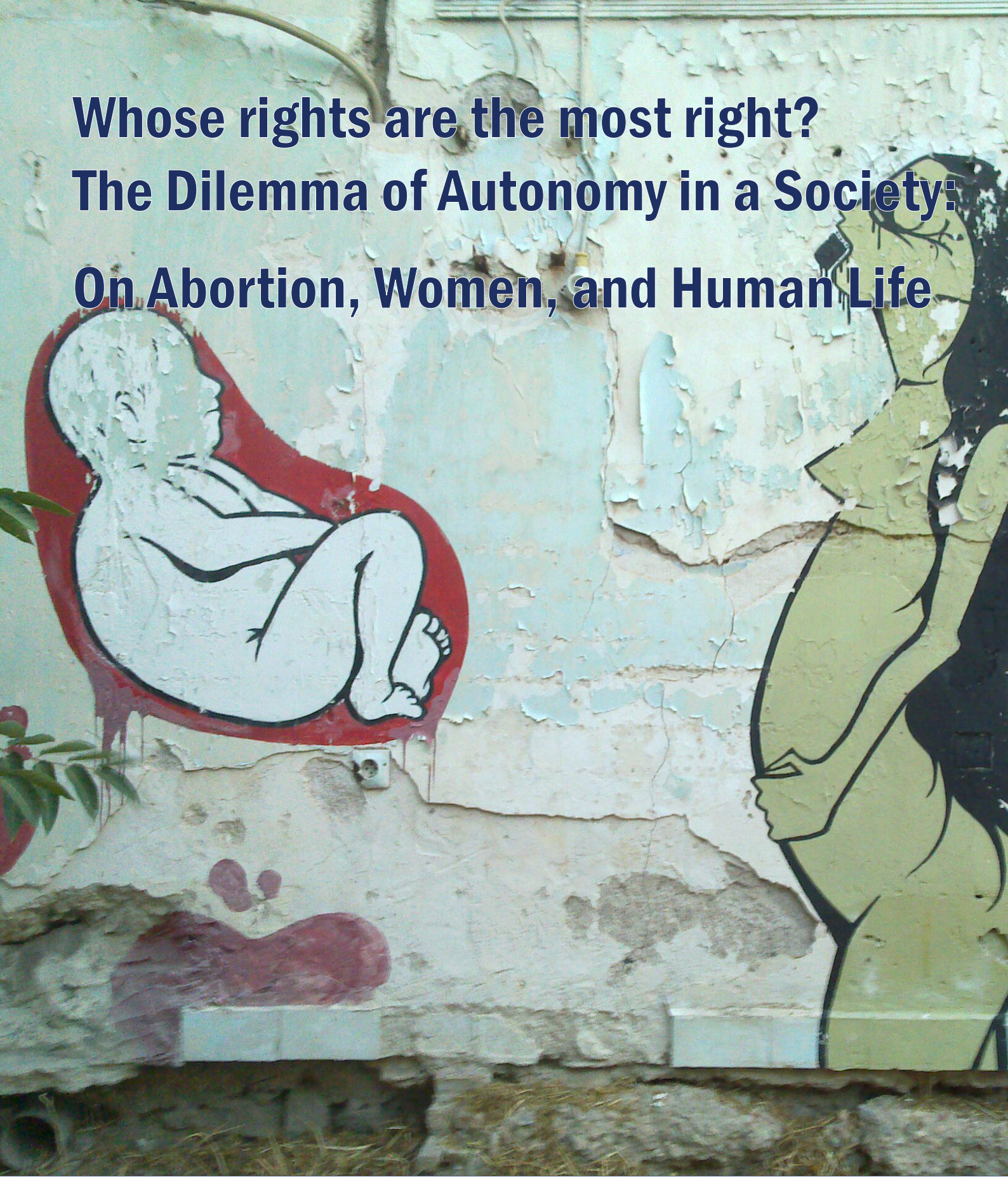
Legislators have also recognized this problem as crucial for women's participation, leading some to advocate for greater political engagement by women and young people. However, with a notoriously complicated electoral system and a generally politically apathetic public, it is unlikely that voters will adopt the banner of feminism and change the political landscape, even with the reduced voting age of 18 from this year.

Conclusion

The Abe government's 2020 deadline is moving ever closer. There have been some promising legislative movements towards a quota system by the DP and other opposition parties. However, the lack of genuine commitment by the DP, the impotency of any proposal bereft of the majority LDP support, and the LDP's reluctance towards a quota system makes the 30 per cent leadership target in the political realm almost entirely unachievable. This conclusion is further reinforced by the concern amongst academics whether the figure will even reach 20 per cent in the next 10 years.

Without public awareness and pressure, it is difficult to foresee any significant change to the number of women in parliament. The Japanese public must acknowledge the low political participation rate as an issue worthy of concern and activism, and understand the underlying gender inequality that creates the disproportionally high number of barriers for women. People must realize that the entrenched division of labor in the household is in dire need of liberation and women must have the freedom to pursue political careers. They must unitedly and proactively call for Parliament to challenge the stereotypes and prejudice towards women in Japanese society. Until there is such a widespread movement placing pressure on the Parliament to implement comprehensive measures, the number of women in the Japanese Parliament will continue to be dismal, along with Japan's prospects of achieving a gender equal society.

Whose rights are the most right? The Dilemma of Autonomy in a Society: On Abortion, Women, and Human Life



Article by ***Nina Roxburgh***

Nina graduated with a Bachelor of International Relations with Honours in 2015, and now works are a researcher in the Department of Politics and Philosophy at La Trobe University. Her research is largely focused on sexual exploitation and abuse in peacekeeping operations and intervenor programs, as well as trafficking in women and children for sexual exploitation.

In debates on reproductive rights, the moral status of the embryo and fetus is largely at the centre of analysis. Women's interests and choices have been only incorporated fully in the discussion since the 1970s. Subsequently, a growing number of Supreme Court decisions and government efforts throughout the world have led to the wider recognition of the right to abortion, or in some cases, the right to privacy which leads to a right to abortion. This trend has seen the increase in identifying abortion as a women's health issue, rather than a question of the embryo's or fetus' right to life. However, there is still strong opposition to the legalisation and decriminalisation of abortion from Catholic moral philosophers and other pro-life advocates. The primary conflict between feminist philosophers and pro-life advocates is the weighing of one set of rights over another (if it is accepted that the embryo or fetus have any claim to rights).

Pro-life advocates argue the embryo and fetus have potential personhood, which means that if carried to term, the fetus will most likely grow into an adult with full social and political rights. In contrast, pro-choice advocates argue that the embryo or fetus cannot have a claim to the rights it will inherit in the possible future adult life, and that the individual bodily autonomy of the woman trumps the fetus' potential life and potential rights. The woman is already a full grown adult with rights. There are varying standpoints in between these two contentions, with some arguing the fetus is in a way the same as a rapist, insofar as it is unwanted and imposed on the woman, without consent to be in her body, whereas others see the opposition to women accessing abortions as a reflection of broader patriarchal issues of women's inequality in society, and the perpetuation of the role of women as natural child bearers and child carers.

Abortion rights are also contemplated in relation to international human rights discourse, and how this relationship can conclude the debate surrounding the fetus' right to life. There are several examples throughout the world where the development of abortion legislation has been underpinned by international commitments to human rights and the rights of women. Building on David Luban's rights thesis and maintaining a feminist position on abortion, this paper presents 'humanness' as a social construct, whereby no one writer or philosopher has managed to pinpoint what actually makes someone human other than that it is attributed by other groups of people. In exploring these different lenses, the question of morality surrounding abortion appears inconsequential, since political rights and morality are just constructs in order to organise society so that it is predictable and stable. Pro-life advocates represent the lifelong oppression of women's rights, independence, sexual freedom and equality. This is reflective of the dominant Christian doctrine of procreation, which has influenced the design of gender roles in social settings. Ultimately, the embryo and fetus are not human, and do not have a right to life. Even if the embryo or fetus were empirically proven to be human, it would still stand that the rights of the woman trump the claimed rights of the embryo or fetus.

Pro-life and the "Humanness" of the Fetus

The foundations of the dominant pro-life status stems from Aristotle's potentiality principal, which has been adopted by Catholic philosophers to justify the moral status of embryos and fetuses.[1] Aristotle argued, 'All living things, including mindless plants, have a good or an end proper to their species toward which they naturally tend to develop from a formless or potential state.'[2] Borrowing from this reasoning, Catholic philosophers claim that it is therefore inherently wrong to kill embryos or fetuses because they will eventually become a full grown adult later in life. It is the potential of the embryo and fetus to become a being of sentience, self-consciousness and rationality that ordains it with a right to life.[3] Following from this claim, there are several lines of reasoning which pro-life advocates and Catholic philosophers alike purport as justifications for the denial of abortion to women. Archetypal pro-life arguments assert that human life begins from conception. Fetuses display the physical characteristics of humans and a genetic code that is sufficient for being human. If it is wrong to kill human beings, it is therefore wrong to have an abortion, since fetuses share the same biological attributes as born humans.[4] But the wrongness of killing is a moral dilemma. What is right and wrong is defined by morality, and the biological attributes of a human or fetus do not make a case for moral obligations surrounding abortion and killing. If this were so, reasoning could be used to claim it is wrong to kill anything that shows biological life. Furthermore, Peter Singer suggests that while pro-life advocates claim human life occurs from the moment of conception, this is problematic because for a period after conception, the embryo can split into twins, therefore suggesting that the moment of conception is a clump of cells rather than a human being.[5] Consequently these ideas have been expanded to answer the question of the moral dimension of fetuses and abortion.

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1 Lynn M. Morgan (2013) "The Potentiality Principal from Aristotle to Abortion", in Current Anthropology, Vol. 54, No. 7, 15; L. W. Sumner (1981) Abortion and Moral Theory. Princeton University Press: Princeton, New Jersey,169

2 Morgan "The Potentiality Principal", 16

3 Charles C. Camosy (2012) Peter Singer and Christian Ethics: Beyond Polarization, Cambridge University Press: Cambridge, 27

4 Marquis, Don (1989) "Why Abortion is Immoral", in The Journal of Philosophy, Vol. 86, No. 4, 184

5 Singer, Peter (1994) Rethinking Life & Death. The Text Publishing Company: Melbourne, Australia, 94

Don Marquis presents an argument for the immorality of abortion that claims that deliberate abortion is impermissible and is the in the same category as murder or killing an innocent adult person, with the exception of some rare cases.[6] His central thesis for why it is wrong to have an abortion is that it deprives the embryo or fetus of a 'future like ours.'[7] Being killed means an individual loses their opportunity for 'experiences, activities, projects and enjoyments' that would have compounded that individual's future.[8] Marquis follows this reasoning with the idea that the only circumstance where the loss of the fetus' life is justified is if the consequences of the failure to abort results in a loss as great as that potential life.[9] In other words, if the mother is destined to die if she continues with the pregnancy, then it is permissible to terminate the fetus. In additional cases, if the pregnancy is a result of rape or incest it is also permissible. It is argued by critics of the pro-life standpoint that the penchant to make exceptions for abortions in cases of rape and incest suggest that pro-life advocates are less compelled by the 'innocence' of the fetus, and more so by the desire to impose virtue on women.[10] Furthermore, if Marquis' deprivation of future justification were accepted, this would mean that almost any human activity that threatens a fetus' future livelihood could be considered morally detestable or wrong. For example, if humans consumed all the fish in the sea, it could be argued that we threatened the future rights of those fetuses to access fish. Martin Rhonheimer suggests that the fetus does not become a person if it was already biologically a human individual. Rather the fetus is a human being that eventually actualises its personhood.[11] Rhonheimer justifies his claim by proposing the idea of 'retrospective identity.' By this, he suggests it would violate the present self's interest in survival and right to life if he/she had been killed via abortion.[12] In this way, it can be assumed that the present fetus would wish the same survival and right to life.[13] These conceptualisations of what constitutes human life in moral terms, and whether the embryo or fetus has a right to life, have influenced the access women have had to abortions and their reproductive rights for a considerable time. However, even if the fetus was proved to have moral value, this does not necessarily lead to the conclusion that abortion should be abolished.

With regard to the abortion debate, there is evidence leading to a collision of rights in our society. Consider the following hypothetical exercise:

> *Imagine a woman is pregnant with Siamese twins. The doctor says they will die within 6 months after birth unless they are separated when they are born, in which case one twin will live for a full adult life, while the other will die almost immediately. Is it wrong to let one die to save the other? Or is it right/ wrong to let them both die?*

This example demonstrates the puzzle of competing rights. If it is wrong to abort a fetus because of their right to life, then it follows that it is wrong to kill a newborn baby. However if the woman does not choose the option to separate the twins they will both die. If the mother chooses the surgery, she violates the right to life of the twin that will die. But the twin will die inevitably; it is just a matter of time. Saving a guaranteed life is valued higher than saving a potential (however short) life.

Michael Tooley firmly rejects the notion that the fetus possesses a right to life. Tooley argues that 'an organism possess a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states.'[14] He suggests that a person is only a person if they can have a desire to continue existing.[15] This raises a significant issue when considering someone in a coma. A comatose person is unable to express a desire to continue existing. In this kind of situation, the comatose individuals are still considered persons. Perhaps because of their past experiences of social interaction, emotion, thought and expression, or simply because they were each validated as persons by the society in which they live, both politically (with citizenship and formal rights) as well as socially (with relationships).

Ayn Rand claims that 'to equate a potential with an actual is vicious: to advocate the sacrifice of the latter to the former, is unspeakable.'[16] Peter Singer suggests according a fetus or embryo no higher moral status than that of a nonhuman animal at a similar capacity for rationality, self-awareness, or emotional recognition. No fetus should have a claim to life at the same level as a person.[17] Rand further suggests that

6 Marquis "Why Abortion is Immoral", 183

7 Morgan "The Potentiality Principal", 18

8 Marquis "Why Abortion is Immoral", 189; Tooley, Michael(2014) "Abortion" in Luper, Steven (ed), The Oxford Companion of Life and Death, Cambridge University Press: Cambridge, 247

9 Marquis "Why Abortion is Immoral", 194

10 Allen, Anita L. (1991) "Tribe's Judicious Feminism: Essay Review of 'Abortion: The Clash of Absolutes' by Laurence H. Tribe", in Stanford Law Review, Vol. 44, No. 1, 191

11 Rhonheimer, Martin (2010) Ethics of Procreation & the Defense of Human Life: Contraception, Artificial Fertilization, and Abortion, The Catholic University of America Press: Washington DC, 199

12 Rhonheimer, Ethics of Procreation & the Defense of Human Life, 200

13 Rhonheimer, Ethics of Procreation & the Defense of Human Life, 200

14 Tooley, Michael (1972) "Abortion and Infanticide", in Philosophy and Public Affairs, Vol. 2, No. 1, 44

15 Tooley, "Abortion and Infanticide", 46

16 Morgan, "The Potentiality Principal", 16

17 Singer, Peter (1993) Practical Ethics, 2nd Edition. Cambridge University Press: Cambridge, 395

if it were accepted that aborting an embryo or fetus was morally wrong because of its potential life, then it can be argued that destroying or wasting the sperm or egg is equally immoral.[18] Along this reasoning, anytime a man ejaculates, it could be said he is destroying or killing the potential life of those sperm, likewise with any menstrual cycle of a woman, which destroys the potential life of the egg. It is clear that there are issues surrounding the pro-life perspective. There are still conceptual hurdles regarding the moral status of the embryo and fetus, and there is an issue regarding the collision of rights. This is addressed further by feminist philosophy on abortion.

The Pro-Choice Argument: A Woman's Right to Bodily Autonomy

'A ban [on abortion] places women, by accident of their biology, in permanently and irrevocably subordinate positions to men.'[19]

Traditional gender and sexual roles, as well as economic and political structures, have encouraged the domination of women by men throughout history.[20] In 1965, an indiscriminate survey of Americans was used to assess attitudes towards legal abortions. Unsurprisingly the highest approval rate (between 55% and 71%) for abortion related to cases where the woman's health was in danger, the pregnancy was a result of rape, or there was a substantial chance of deformity in the fetus. However, if the abortion was a result of financial issues, emotional issues, or simply an unwanted pregnancy, approval rated much lower (between 15% and 21%).[21] This is reflective of a broader attitude cultivated by norms and values relating to patterns of sexual behavior and traditional roles for women as child-bearers, caregivers, mothers and wives.[22]

The evolution of abortion in law is often linked to the United States Supreme Court's 1973 decision in Roe v. Wade. This found that a constitutional right to privacy encompasses the right to decide to have an abortion.[23] However, this did not mean that women's access to abortions would be fair, in terms of government funding. The State established a principal of non-interference in women's decisions to have an abortion, but as a consequence this non-interference in "private matters" would mean women could make no claim for public support to provide abortions.[24] As Catherine MacKinnon states, 'Women were granted the abortion right as a private privilege, not as a public right.'[25] McKinnon rejects the privacy rationale, arguing that privacy traditionally sits in the domestic sphere were men have held positions of power in the organisation of sex and the home life.[26] Since then, feminist writers and philosophers have been working to address the issue of abortion from a perspective of the woman's rights, rather than the fetus' right to life.

Judith Jarvis Thomson offered the groundbreaking argument that women have property interest in their bodies, and that the fetus is a trespasser on the woman's property. The woman is therefore entitled to rid herself of the intrusion of the fetus.[27] Thomson uses the analogy of the violinist to illustrate her point:

> *You wake to find yourself back to back with an unconscious violinist who is extremely famous. He has a fatal kidney ailment, and you are the only one who has the right blood type to help. The Society of Music Lovers kidnapped you, so you are there involuntarily. If you unplug yourself from him, he will die. However if you stay there for nine months, he will recover. The question is whether it is morally wrong to not save his life?*[28]

This idea begs the question of whether humans have an obligation or a moral duty to save those who cannot save themselves. The fetus, like the comatose, the Siamese twin, and the Violinist, lack the ability to make rational choices, express desires, and pursue survival. Under these circumstances, it is permissible to act in one's self interest over saving the other's life, in particular if it means sacrificing one's own needs and desires. This leaves us asking: whose rights are the most right?

Proponents of feminism such as the National Women's Health Network argue that the right to an abortion is an inalienable right of all women to control their own bodies and lives.[29] The major concern for feminist pro-choice advocates is that even if the fetus has a right to life, the right to exist in the body of the woman is

18 Singer, Rethinking Life & Death, 99

19 Allen, "Tribe's Judicious Feminism", 190-191

20 Ferguson, Ann (1994) "Twenty Years of Feminist Philosophy", in Hypatia, Vol. 9, No.3, 201

21 Schur, Edwin M. (1968) "Abortion", in The Annals of the American Academy of Political and Social Science, Vol. 376, 144

22 Schur, 'Abortion', 137

23 MacKinnon, Catherine A. (1989) Towards a Feminist Theory of the State, Harvard University Press: Cambridge, 186

24 MacKinnon, Towards a Feminist Theory of the State, 187-188; 192; Hatouni, Valerie (1997) Cultural Conceptions: On Reproductive Technologies and the Remaking of Life, University of Minnesota Press: Minneapolis, 33

25 MacKinnon, Towards a Feminist Theory of the State, 192

26 Allen, "Tribe's Judicious Feminism", 191

27 Allen, "Tribe's Judicious Feminism", 193

28 Kazcor, Christopher (2011) The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice, Routledge: New York, 146

29 Staggenborg, Suzanne (1991) The Pro-choice Movement: Organisation and Activism in the Abortion Conflict, Oxford University Press: New York, 114

not guaranteed.[30] If there is no consent to pregnancy, or even if there was but that consent is withdrawn, then the fetus has no claim to the woman's body, or her resources.[31] In this way, it is necessary to imagine consent as temporary, and always dependent on the authority of that consent. Much like in cases of sexual intercourse, a women's consent is needed for it not to be rape, however she can withdraw that consent at any time during intercourse. The same applies when a woman falls pregnant due to ineffective contraception.[32] If the condom breaks, or the pill fails to inhibit fertilization, the woman has clearly not consented to be impregnated with a fetus given she and her sexual partner took steps to stop conception, regardless of its failure. Along this reasoning, if a woman falls pregnant by accident, she has a right to 'evict' the fetus from her body. Stephen Kershnar follows this claiming that in cases a rape, women have the right to use lethal force to terminate.[33]

Pro-choice advocate Alison Jaggar argues that in societies where mothers bear responsibility for birthing, child rearing, and other unpaid domestic work, they should control the decision regarding abortion.[34] In places where abortion is legal, the freedom and rights of women's autonomy over their bodies is often impeded by the statutory requirement for waiting periods after abortion requests. This implies that women's decision-making is erroneous, and that they are acting impulsively.[35] Clearly the treatment of abortion and women's rights reflect sexual and gender norms embedded in political and social institutions. To achieve absolute equality and emancipation of women, the right, and importantly access to, abortions are fundamental to the right to sexual freedom and the freedom to adopt any social, economic or political role, regardless of gender.

Women's Right to Health and State Variance in Implementation

If a woman decides she wants an abortion there is generally good reason. In most cases she will try to access an abortion, regardless of whether she considers the procedure adequately safe. According to a recent World Health Organisation (WHO) report on unsafe abortions, 21.6 million women experience an unsafe abortion worldwide annually, 18.5 million of which occur in developing countries, where poorer women have limited access to safe abortion. Of these, 47,000 women die from complications of unsafe abortions each year, constituting roughly 13% of all maternal deaths.[36] Abortion should be considered a public health issue, rather than an issue of the rights of the fetus given its often fatal outcome. In international law, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), adopted in 1979, guarantees that the right to health includes the right to bodily autonomy, and encompasses sexual and reproductive freedom. It is also within the right to health that women are entitled to support for accessible, affordable and good quality care and services.[37] However there are still inconsistent legal approaches globally towards abortion.

Australia revisited the abortion debate with the recent publication of an editorial on 'abortion tourism' by Caroline M. de Costa and Heather Douglas.[38] They argue that there is a serious need for legislative uniformity in Australia in order for women to have equal access to abortion services. In particular they are concerned with the disproportionate effect the inconsistent laws have on women from rural areas.[39] Abortion has only been decriminalised in Victoria, Tasmania, and the Australian Capital Territory (ACT). The restrictive policies on abortion in South Australia, Queensland, the Northern Territory, and Western Australia has led to the development of 'abortion tourism' - where women are forced to travel interstate to access the services they need.[40]

In contrast to Australia's inconsistent laws on abortion, Colombia provides an example where the state has recognised that while the fetus may have constitutional value, it is not proportionate or reasonable to force a person to sacrifice her or his health in the interest of protecting a third party (the fetus).[41] By criminalising a healthcare service that is only needed by women, this

30 Markowitz, Sally(1990) "Abortion and Feminism", in Social Theory and Practice, Vol. 16, No. 1, 1

31 Kershnar, Stephen (2015) "Fetuses are Like Rapists: A Judith-Jarvis-Thomson Inspired Argument on Abortion", in Reason Papers, Vol. 37, No.1, 93

32 Kershnar, "Fetuses are Like Rapists", 93

33 Kershnar, "Fetuses are Like Rapists", 99

34 Markowitz, "Abortion and Feminism", 4-5

35 Allen, "Tribe's Judicious Feminism", 191

36 World Health Organisation, (2008) Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Morality in 2008, 6th Edition, <http://apps.who.int/iris/bitstream/10665/44529/1/9789241501118_eng.pdf> World Health Organisation: Italy, 1, accessed 30 Oct. 2015

37 Committee on the Elimination of Discrimination Against Women, (2014) Statement of the Committee on the Elimination of Discrimination Against Women on Sexual and Reproductive Health and Rights: Beyond 2014 ICPD Review, < http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR-26Feb2014.pdf>, 1-2, accessed 30 Oct. 2015

38 de Costa, Caroline M. and Heather Douglas, (2015) "Abortion Law in Australia: It's Time for National Consistency and De-criminalization", in The Medical Journal of Australia, Vol. 203, No. 9, 349-350

39 de Costa and Heather Douglas, "Abortion Law in Australia", 349-350

40 de Costa and Heather Douglas, "Abortion Law in Australia", 349-350

41 Hammell, Hilary(2011) "Is the Right to Health a Necessary Pre-condition for Gender Equality?", in New York University Review of Law & Social Change, Vol. 35, No.1, 151

violates the terms of CEDAW, which prohibits sex-based discrimination. The Colombian decision to legalise abortion countrywide was based on the recognition that forcing the continuance of an unwanted pregnancy is comparable to sexual violence.[42] In this decision, the Colombian case has shown that while fetuses may have some claim to rights, it is the rights of women that outweigh the possible rights of the fetus.

The Social Construction of Humanity and Morality: Are abortion values natural and immutable or socially constructed?

'Humanness' is an evolving concept. It wasn't until 1967 that Indigenous Australians were constitutionally recognised as equal to non-indigenous Australians in law. The concept of terra nullius, which underpinned the treatment of Indigenous Australians prior to 1967, was the idea that when the British landed, no persons were living on the continent, because the original inhabitants did not display a developed notion of ownership.[43] In a way this assessment of Indigenous Australians was an attempt to classify both what constitutes personhood and what it means to have rights to property. While Indigenous Australians shared the biological attributes of humans, they were not afforded the same rights and recognition of personhood as the white Australians. It appears the distinction between the two groups of biological humans was the political nature of the white settlers over the Indigenous Australians. This is reflective of David Luban's critical claim that 'humanness' is a matter of law; it is outside the metaphysical religious notions of personhood.[44] Luban suggests that our 'humanness' stems from our character as political animals.[45]

The conception of human nature is contested among different disciplines, where psychologists see humans as essentially similar, while sociologists and anthropologists see the vast differences in cultures and beliefs is that which constitutes our 'humanness.'[46] The group that surrounds us shapes the 'humanness' or personality of an individual.[47] A human's identity is determined by its association with a social group or community, suggesting the membership of species is not sufficient enough to determine personhood.[48] In order to safely be individuals, with our own interests and needs, a set of rules and rights have been developed to maintain a secure space for collective living. This is reflective of Immanuel Kant's unsociable sociability. Humans enter into a society, with competing interests, and in order to remedy this conflict, politics it used to organise society so that it does not breakdown.[49] Jaggar argues that to call someone a person makes both an empirical claim about their biological construction, but ascribes them a moral status, with subsequent rights and responsibilities. To be a person, it is necessary to have physical experiences, social experiences, and some kind of cultural heritage.[50]

A woman is human because her relationships, as well as her political status, inform her identity as an individual who has rights and responsibilities. With regard to the issue of abortion, women's rights evidently outweigh the possible or future rights of the fetus. It is illegitimate to value the potential person's rights, over the actual real woman with real needs, desires, and rights. This treatment of women's rights to self-determination and decision making also reflects broader gender inequality, derivative of religious doctrine and embedded in political and social institutions. Abortion should no longer be a debate on the fetus' rights, it is about the individual woman, and more broadly women's public health and equality. This lens needs to be adopted in all future law making around this issue.

42 Hammell, "Is the Right to Health a Necessary Precondition for Gender Equality?", 151

43 Brennan, Frank (2015) No Small Change: The Road to Recognition for indigenous Australia, University of Queensland Press: Queensland, Australia, 39

44 Luban, David (2004) "A Theory of Crimes Against Humanity", in Yale Journal of International Law, Vol. 29, No. 1, 109-110

45 Luban, "A Theory of Crimes Against Humanity", 110

46 Sumner, Abortion and Moral Theory, 170

47 Sumner, Abortion and Moral Theory, 170

48 Sumner, Abortion and Moral Theory, 170

49 Schneewind, J. B. (2009) "Good Out of Evil: Kant and the Idea of Unsocial Sociability", in Oksenberg Rorty, Amélie and James Schmidt (eds), Kant's Idea for a Universal History with a Cosmopolitan Aim: A Critical Guide, Cambridge University Press: Cambridge, 94-95; Luban, "A Theory of Crimes Against Humanity", 112-113

50 Jaggar, Alison (1974) "On Sexual Equality", in Ethics, Vol. 84, No. 4, 279-283

Reducing Indonesia's Transboundary Haze Pollution:

A New Policy Approach

Article by ***Jack Greig***

Jack, 25, is an educator in Victoria and a graduate of the Crawford School of Public Policy at the ANU.

Transboundary Haze Pollution (THP) presents a serious ongoing environmental and economic problem of international consequence. In 2006 the United Nations Framework Convention on Climate Change (UNFCCC) reported that haze episodes between 1997 and 2002 contributed approximately 40 per cent of the world's total CO2 emissions at over 400 million tonnes.[1] The Asian Development Bank estimated that the 1997-1998 episode cost Indonesia up to US$9.4 billion, while Singapore incurred damages of approximately US$263 million, predominantly in lost tourism receipts.[2] The noxious chemicals found in THP are also hazardous to human health, resulting in dramatic spikes in hospitalisations during these episodes.

THP is caused by slow-burning fires on exposed peat lands lit by landholders clearing forest growth for cultivation. The Center for International Forestry Research (CIFOR) reports that exposed peat lands require only a few days of dry weather to risk extreme fire danger.[3] The highly flammable decomposed material compounds that constitute peat are extremely difficult to extinguish once lit.

Unfortunately, since the 1997-1998 haze catastrophe the problem of THP only seems to be getting worse. In June 2013 the Pollutant Standards Index (PSI) hit an all-time high in Singapore at 371, making it the worst haze episode recorded in history.[4] The Government of Indonesia demonstrated its desire to combat THP with the ratification of the ASEAN Agreement on Transboundary Haze Pollution (ASEAN Haze Treaty) in September 2014.[5] Yet Indonesia alone does not have the capacity to fix this problem. While no action can occur without the consent and cooperation of Indonesia, evidently the Government of Singapore must also change its policy responses to reduce the damage caused by THP for its own safety and security, as well as the wider wellbeing of the region and global climate.

Fair-weather neighbours? The problem with Singapore's initial policy responses to THP

In response to dangerously toxic levels of THP in June 2013, and acting on public outcry, the Singaporean parliament passed the Transboundary Haze Pollution Act (2014) (Haze Act) to criminalise persons thought to be guilty of causing THP episodes that reach Singapore. Chong and Chen suggest Singapore's legislation targets commercial entities negligent in their 'social and environmental responsibilities' by making them susceptible to both civil and criminal liability.[6]

The problem with this approach is that it almost exclusively targets Multi-national Corporations (MNCs) operating on large-scale plantations. Data collected by CIFOR using a NASA LANDSAT 8 satellite shows that only 21 per cent of THP originated from fires on large-scale plantations operated by MNCs. The much greater 79 per cent of instances stemmed from fires on land owned or leased by small holders.[7] This important observation highlights that Singapore's Haze Act will be difficult to enforce.

The World Resources Institute suggests that there are significant discrepancies between Indonesian Government drawn maps and those held by landholders. The confusion caused by a lack of clearly defined boundaries makes it considerably more difficult for Singaporean regulators to mount conclusive evidence on which entities may be liable for causing THP.[8]

Another of Singapore's major policy responses has been furthering regional cooperation through the ASEAN Haze Treaty. Indonesia's ratification of the Treaty gives its relevance a boost but it still remains a blunt device. A key element of the Treaty was provision for a regional 'Haze Fund'. ASEAN members have so far voluntarily contributed approximately half a million dollars toward the Fund; a measly sum compared to the economic damages caused by THP. Furthermore, the Treaty lacks serious obligation and implementation, typical of the 'ASEAN Way'.[9] The ASEAN Haze Treaty will likely remain a forum for regional-level dialogue and little more.

A new policy approach to reduce the haze

Singapore's initial policy responses to THP possess significant shortcomings. THP is essentially a local problem. If small holders are presented with incentives to change their practices, along with more efficient alternatives, it is likely that THP will be reduced. Progress therefore requires the implementation of targeted policy made up of pricing and non-pricing mechanisms. In line

1 International Forest Fire News (2000), 'The 1997-98 Air Pollution Episode in Southeast Asia Generated by Vegetation Fires in Indonesia', International Forest Fire News (IFFN), accessed at <http://www.fire.uni-freiburg.de/iffn/country/id/id_32.htm>.

2 Asian Development Bank (2001), Fire, Smoke, and Haze: The ASEAN Response Strategy, Manila: Association of Southeast Asian Nations/Asian Development Bank, accessed at: <https://openaccess.adb.org/bitstream/handle/11540/307/fsh.pdf?sequence=1>.

3 Van der Welde, B (2014), 'Haze returns to Singapore – and we can expect more of it, new study warns', Forests News, Bogor: Center for International Forestry Research, accessed at <http://blog.cifor.org/24238/haze-returns-to-singapore-and-we-can-expect-more-of-it-new-study-warns#>

4 Lee, P. O (2013), 'No end in sight to haze dilemma', ISEAS Perspective, Vol. 39, 23 June, accessed at <http://www.iseas.edu.sg/documents/publication/iseas_perspective_2013_39_no_end_in_sight_to_haze_dilemma.pdf>

5 Chong, Z. Y and J Chen (2014), 'Corporate responsibility moving up Asian governments agenda – Singapore's Transboundary Haze Pollution Bill', CSR ASIA Weekly, accessed at <http://csr-asia.com/csr-asia-weekly-news-detail.php?id=12364>

6 Chong, Z. Y and J Chen, above n 5.

7 Gaveau, D and M. A. Salim (2013), 'Research: Nearly a quarter of June fires in Indonesia occurred in industrial plantations', Forests News, Bogor: Center for International Forestry Research, accessed at <http://blog.cifor.org/18218/research-nearly-a-quarter-of-june-fires-in-indonesia-occurredin-%20industrial-%20plantations?utm_source=Fire+research+landing+page&utm_medium=bellow+story&utm_campaign=F%20ire+research+Package#>

8 World Resources Institute (2014), Indonesia Forest Fires Resource, accessed at <http://www.wri.org/topic/indonesia-forest-fires>.

9 Tan, A (2005), 'The ASEAN Agreement on Transboundary Haze Pollution: Prospects for Compliance and Effectiveness in Post-Suharto Indonesia', Environmental Law Journal, Vol. 13, 647-722.

with the recommendations of CIFOR, a pool of financial and human resources must back these mechanisms, which can be derived from international donors.[10]

Indonesia does not have the capacity alone to dedicate the required amount of financial resources to tackle the problem. While affected countries in the region are best placed to negotiate policy proposals and steer implementation, the most practicable source for extensive funding is at the global level.[11] Taking into account the scale of CO2 emissions contributed to the global total of greenhouse gas emissions, the international community has a vested interest in mitigating peat-fires. As the most directly affected countries within the region, it makes sense that Singapore and Indonesia adopt the joint role of principle sponsors of a renewed 'THP Fund'.

Sandler suggests that challenges with significant localised influences are the easiest to confront because actors are generally able to make a measurable difference and receive a net benefit for cooperating.[12] For instance, by investing in the measurable reduction of Indonesian peat-fires, rich country donors will be taking action to meet their agreed global carbon reduction targets. At home they may also be able to 'sell' the policy as a strategy to offset their own contribution to global emissions.

One of the major uses of the Fund would be to finance non-pricing mechanisms that incentivise small landholders to adopt more sustainable land clearing and cultivation practices. Firstly, money would be apportioned to reputable organisations conducting research and development into new technologies that enable such practices. As CIFOR suggests, there currently exists little incentive for landholders to change their practices because 'burning methods cost approximately US$180 per hectare whereas non-burning methods cost as much as US$800 per hectare'.[13] Consequently, research would leverage knowledge on the causes of peat fires and equip landholders with more efficient and environmentally friendly alternatives.

Secondly, to reduce costs the Fund would make available a certification scheme to which land holders can apply, making them eligible to receive grants for 'verifiable activities with measurable benefits'.[14] These public-private partnerships would make capital accessible to small-landholders investing in sustainable technologies without unnecessarily impeding profitable agribusiness. Making available funding for local stakeholders pursuant to certification will also support the transparency of the industry by helping the Indonesian Government to have greater visibility over the landholders (including property boundaries) that apply for grants, acting as a type of self-disclosure mechanism.

Lastly, the Fund would apportion financial resources to assist the Indonesian central and provincial governments to institute and enforce pricing mechanisms. A pricing mechanism is needed to ensure that the private economic benefits of land clearing do not exceed the negative externalities in the form of social and environmental costs.[15] Singapore should persuade Indonesia to reinvest revenue gained from pricing mechanisms into non-government regulatory bodies that monitor and administer certification standards and enable further research and development.

Constraints

The obvious constraint to realising the policy recommendations above is the necessity for Indonesian cooperation. Considering the strong influence of logging lobby groups in Indonesia this could potentially be difficult. Illegal activity, including corrupt practices, has been the main reason why certain environmental regulations have been ignored. Furthermore, the reformasi induced process of decentralisation has paradoxically increased the difficulty of securing buy-in on policy solutions by multiplying the number of stakeholders and increasing the level of bureaucracy. To successfully implement the above policy recommendations persuasive diplomacy will be required by Singapore as well as increasing regional and global scrutiny as a consequence of inaction.[16]

Conclusion

THP continues to be a serious environmental challenge of global significance. Indonesian peat-fires resulting from unsustainable burning practices are known to be the cause of the majority of THP. As one of the most seriously affected countries in the region, Singapore must step up and take the lead in empowering Indonesia to control the problem. Contrary to Singapore's initial policy responses it should, in cooperation with Indonesia, lead an international financing initiative to fund both pricing and non-pricing mechanisms that incentivise, and build the capacity of, local actors in Indonesian THP 'hotspots'. Despite constraints, Singapore and Indonesia must act to reduce the damage caused by THP for its own safety and security, as well as the wider wellbeing of the region and global climate.

10 Tacconi, L, Jotzo, F and Q Grafton (2008), 'Local causes, regional co-operation and global financing for environmental problems: the case of Southeast Asian Haze pollution', International Environmental Agreements: Politics, Law and Economics, Vol. 8, No. 1.

11 Tacconi, L (2003), 'Fires in Indonesia: Causes, Costs and Policy Implications', Working paper no. 38, Bogor: Center for International Forestry Research, accessed at <http://www.cifor.cgiar.org/fire/pdf/>.

12 Sandler, T (1997), Global Challenges: An Approach to Environmental, Political, and Economic Problems, Cambridge University Press: Cambridge.

13 Tacconi, L, Jotzo, F and Q Grafton, above n 10.

14 Quah, E (2002), 'Transboundary pollution in Southeast Asia: The Indonesian Fires', World Development, Issue no. 30, pp 429-441.

15 Tacconi, L, above n 11.

16 Lee Kuan Yew School of Public Policy (2014), 'Transboundary Haze: How Might The Singapore Government Minimise Its Occurrence', Working paper 1, accessed at <http://lkyspp.nus.edu.sg/wp-content/uploads/2014/01/Transboundary-Haze.pdf>.

The Challenges Posed to Principled Aid by International and Australian Counter-Terrorism Legislation

Article by ***Caleb Althorpe***

Caleb Althorpe is a recent graduate of the Bachelor of International Studies Program and is currently undertaking Honours in Politics and International Studies, both at the University of Adelaide.

The principles of impartiality and neutrality are key foundations in the delivery of humanitarian assistance. However a tension is arising between international and Australian counter-terrorism legislation and the delivery of principled humanitarian assistance. This article explores the legal mandate of impartial and neutral aid, and the structure of counter-terrorism legislation both internationally and in Australia, highlighting the tensions that arise. A number of subsequent recommendations are made in an attempt to resolve the tension.

The Place of Impartiality and Neutrality in International Humanitarian Law

Impartiality and neutrality are two of the seven Fundamental Principles of the International Red Cross and Red Crescent Movement (Red Cross), proclaimed in their current form at the 20th International Conference of the Red Cross in Vienna in 1965.[1] The Red Cross defines impartial action as action that 'makes no discrimination as to nationality, race, religious beliefs, class, or political opinions, [endeavouring] only to relieve suffering, giving priority to the most urgent cases of distress.'[2] The Red Cross undertakes action that allows it to be neutral and 'enjoy the confidence of all,' and does 'not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.'[3] All action that the Red Cross undertakes aims to follow the seven Fundamental Principles[4] and therefore the delivery of its humanitarian aid is solely on the basis of need, and has a neutral impact on those with authority.

Principled Aid and the International Committee of the Red Cross

The principles of impartiality and neutrality that underpin the International Committee of the Red Cross's (ICRC) aid delivery arise out of International Humanitarian Law (IHL), specifically the Geneva Conventions. For decades, IHL has been the framework that has defined the roles of humanitarian actors in armed conflict, and has created a number of well-developed norms.[5] There is a legal mandate for the ICRC to deliver impartial and neutral humanitarian assistance in situations of international armed conflict,[6] as well as non-international armed conflict.[7] Furthermore, the ICRC has a broader mandate through the Statutes of the Red Cross and Red Crescent Movements in other situations of violence, and indeed at all times.[8]

Principled Aid and Humanitarian Organisations

The mandate to deliver humanitarian assistance under the principles of impartiality and neutrality is not unique to the ICRC but is part of a larger global framework. Major humanitarian organisations almost universally have the principles of impartiality and neutrality as core tenets of their work.[9] While protections provided in the Geneva Conventions and their Additional protocols refer predominantly to states, non-state actors and the ICRC are also liable under this legal framework. By providing the circumstances under which humanitarian assistance must be allowed by either a state or a NSA, the provisions give legitimacy to humanitarian assistance that is of the same character and which is being provided by a humanitarian organisation that is abiding by the same conditions.[10]

International Counter-Terrorism Legislation

Legal Immunity

Before analysing the relevant international counter-terrorism legislation, it is important to note that delegates and officials of the ICRC and the UN have

1 International Committee of the Red Cross (1979) The Fundamental Principles of the Red Cross: Commentary, https://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm Accessed 16 August 2015. The 20th International Conference of the Red Cross bound together the National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies. The seven Fundamental Principles are: Humanity, Impartiality, Neutrality, Independence, Volunteer Service, Unity, and Universality.

2 International Committee of the Red Cross, above n 1.

3 International Committee of the Red Cross, above n 1.

4 International Committee of the Red Cross (1986 [amended 2006]) Statutes of the International Red Cross and Red Crescent Movement, Art. 3: §1.

5 Harvard University Program on Humanitarian Policy and Conflict Research (HPCR) (2011) "Humanitarian Action Under Scrutiny: Criminalizing Humanitarian Engagement" in HPCR Working Paper (February 2011), 4.

6 Geneva Conventions of August 12 1949, 75 UNTS 287 (entered into force 21 October 1950), Geneva Convention IV, Art. 27 & 15; See also: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978), Art. 7(2).

7 Geneva Conventions of August 12 1949, above n 6, Common Article 3 to the Geneva Conventions.

8 International Committee of the Red Cross, Statutes of the International Red Cross and Red Crescent Movement, Art. 5: §2(d) & §3.

9 One instance of an NGO not having neutrality as a core principle is Médecins Sans Frontières, which views neutrality as occasionally impeding justice. See: Plattner, Denise (1996) "ICRC Neutrality and Neutrality in Humanitarian Assistance" in International Review of the Red Cross, Vol. 36, No. 311, p. 161.

10 Mackintosh, Kate (2000) "The Principles of Humanitarian Action in International Humanitarian Law" in Overseas Development Institute: Humanitarian Policy Group Report 5, p. 4.

certain legal immunities.[11] In the Australian context, an Australian Red Cross staff member can either be on an official contract with the ICRC or the International Federation of Red Cross and Red Crescent Societies (IFRC), a body which is made up of all the national Red Cross/Crescent societies, or work alongside the ICRC or IFRC while still technically being Australian Red Cross staff.[12] It is only when an Australian Red Cross staff member is under contract with the ICRC that they would be considered an ICRC 'delegate' and enjoy legal immunities.

Thus, while the ICRC and the UN do not need to be legally concerned about contravening counter-terrorism legislation, this is a pressing concern for the IFRC, National Societies and NGOs, as by partnering with either the ICRC or the UN in their mandate to deliver impartial and neutral aid, humanitarian workers may be criminally liable under certain counter-terrorism laws.

United Nations Security Council Counter-Terrorism Resolutions

The United Nations Security Council (UNSC) has adopted two resolutions which aim to punish groups and individuals engaging in terrorist acts, UNSC Resolution 1267[13] and UNSC Resolution 1373.[14] Due to the UNSC acting under authority of Chapter VII of the UN Charter, member states have an obligation to accept them and carry out their provisions, including enacting domestic legislation if necessary.[15] Therefore, these two resolutions are hugely influential and have significant normative power within the global counter-terrorism framework.

United Nations Security Council Resolution 1267

Resolution 1267 is a counter-terrorism sanctions regime concerned with the financing of terrorism, and specifically calls for member states to freeze funds and financial resources to ensure that they are not made available to a terrorist group.[16] Initially the resolution was concerned only with the Taliban, but after 9/11 the resolution was then expanded to also incorporate al-Qaeda.[17] The 1267 Committee places individuals associated with al-Qaeda and the Taliban on designated lists. This Committee ensures that UN member states are imposing sanctions, such as travel bans, arms embargoes and asset freezes on any listed individuals or groups, as well as preventing entry of any listed person through their territories.[18] Each member-state is obligated to have sanctions regimes against the individuals and entities proscribed by UNSC Resolution 1267 as a baseline, and it is up to the discretion of the state as to whether they create more substantial designated lists. While UNSC Resolution 1267 does allow for exemptions to the sanctions on a case-by-case basis,[19] there is no automatic exemption for the provision of humanitarian aid.

United Nations Security Council Resolution 1373

Resolution 1373 is concerned with the prevention of terrorism, and criminalises all forms of 'services' and 'support' to persons or entities involved with terrorist acts. The influential nature of the UNSC resolutions has led to some domestic legislation being broadly worded and interpreted to include humanitarian activity that involves contact with entities or individuals associated with terrorism.[20] Australian counter-terrorism legislation is an example of this issue. No UN list is associated with Resolution 1373, and it is up to each member state's discretion to decide what organisations and individuals to whom Resolution 1373 applies.

Therefore, Resolution 1373 is far broader in scope and can be used by a state to justify action against what it perceives as falling within the parameters of the resolution. Furthermore, no exemption for humanitarian actions and assistance is located within UNSC Resolution 1373. This is concerning, as due to the influential nature of the UNSC resolutions this exclusion of a humanitarian exemption has led to states omitting humanitarian exemptions in their own domestic legislations, which is where the conduct of humanitarian organisations is ultimately liable.

The Impact of Australian Counter-Terrorism Legislation in Impartial Aid

Australian Counter-Terrorism Environment

In the aftermath of 9/11 and in response to UNSC Resolution 1373, Australia passed new counter-

11 Rona, Gabor (2004) "The ICRC's Status: In a Class of its Own," International Committee of the Red Cross, https://www.icrc.org/eng/resources/documents/misc/5w9fjy.htm Accessed 11 October 2015.
United Nations General Assembly (1946) Convention on the Privileges and Immunities of the United Nations, Article V §18(a) & Article VI §22(b).

12 Australian Red Cross staff member, Interviewed on 4 November 2015.

13 United Nations Security Council, S/RES/1267, 15 October 1999.

14 United Nations Security Council, S/RES/1373, 28 September 2001.

15 United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Art. 25 & 103.

16 United Nations Security Council, above n 15, §4(b).

17 United Nations Security Council, S/RES/1390, 28 January 2002, §2.

18 Modirzadeh, Naz K. et al (2011) "Humanitarian Engagement Under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape" in International Review of the Red Cross, Vol. 93, No.883, p.637.

19 United Nations Security Council, above n 15, §4(b).

20 International Committee of the Red Cross (2011) "International Humanitarian Law and the Challenges of Contemporary Armed Conflict" in 31st International Conference of the Red Cross Red Crescent, pp.51-52.

terrorism legislation in 2002, which brought together the few varied and disparate laws relating to terrorism already in existence.[21] As of 2015, there were 64 pieces of counter-terrorism legislation in Australia.[22] A new and entrenched reality is emerging, one where protection and security from terrorism is at the forefront of the public and legal space, where counter-terrorism laws are not short-term responses to security threats, but are temporal and generalised laws.

Providing Training to a Terrorist Organisation

The first criminal activity that is of relevance to humanitarian organisations is providing training to a terrorist organisation. According to the Australian Criminal Code, a person commits an offence if they 'intentionally provide training' to a terrorist organisation.[23] The fault element of this offence is 'recklessness',[24] and the penalty is 25 years imprisonment.[25] A terrorist organisation is either one that has been listed already by the government,[26] or a group that as a result of a criminal trial is found to be terrorist organisation.[27] Crucially, the training does not need to benefit or contribute to the carrying out or planning of a terrorist act. Along with this, the term 'training' is not defined and therefore it is unclear as to what could be considered 'training'. While the criminalisation of military training and related activities is understandable, many other types of training provided through legitimate humanitarian action could fall foul of this legislation. This raises issues in regard to the delivery of humanitarian aid under the principle of impartiality. Humanitarian organisations often provide medical training as well as IHL dissemination as part of their humanitarian assistance. Yet according to this legislation, this training could be interpreted to make humanitarian workers criminally liable under Australian law.

The lack of clarity as to what could constitute 'training' under Australian counter-terrorism legislation was considered by the Supreme Court of Victoria when it found a Sydney doctor who provided medical training to medical students in Sri Lanka in the wake of the 2004 Tsunami guilty of providing training to a terrorist organisation, as the students (unbeknown to him) were members of the Liberation Tigers of Tamil Eelam (LTTE).[28]

Clearly, Australian counter-terrorism legislation relating to training a terrorist organisation can be in direct contravention to providing impartial aid, as aid can include such action as medical training and health and hygiene training to communities.

Providing Funds to a Terrorist Organisation

Under the Criminal Code (Cth), it is also an offence to make funds available to a terrorist organisation.[29] This is relevant to humanitarian organisations as in some scenarios it may be necessary to pay for access into an area controlled by a listed organisation, as a means to provide impartial aid.[30] This is a legitimate action if it is the only way to provide impartial aid to a population that is in dire need, and a consequentialist calculation justifies paying a few hundred dollars to a terrorist organisation in order to potentially save lives. An important point to consider is whether providing any form of aid is effectively providing funds to a terrorist organisation, or 'fungibility theory.' This explores the idea that providing a community under the control of a terrorist organisation with aid, thereby allowing the terrorist organisation to save the money it may have needed to buy food, supplies and so on, is effectively handing money over to the organisation. Humanitarian organisations are concerned about this issue, and whether the money a designated terrorist organisation saves due to aid can be used for other means.[31] At present, there is no legal precedent in Australian law that treats money and humanitarian aid as fungible.

Thus, there is also a tension between the criminalisation of providing funds to a terrorist organisation and the delivery of impartial aid, as certain actions by humanitarian organisations that may be used as a means to provide aid for populations in need could be in contravention of Australian law.

Australian Citizenship Amendment Bill 2015 and the Cessation of Citizenship

In June of 2015, the Australian Government introduced the first reading of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 to the House of Representatives. This bill both broadened the scope of humanitarian action that was potentially criminal under counter-terrorism legislation, as well as significantly increased the punishment for violating existing laws. The bill proposed to cease an individual's

21 Wynn-Pope, Phoebe et al. (2015) "Legislating Against Humanitarian Principles: A case study on the humanitarian implications of Australian counterterrorism legislation" in International Review of the Red Cross, p.10.

22 Lynch, Andrew et al. (2015) Inside Australia's Anti-Terrorism Laws and Trials. NewSouth Publishing: Sydney, p.3.

23 Criminal Code Act 1995 (Cth), ('Criminal Code'), §102.5.

24 An individual is "reckless" if they are aware that there is some risk that an organisation is a terrorist organisation and they still provide training. See Criminal Code, above n 23, §5.4.

25 Criminal Code, above n 23, §102.5.

26 Criminal Code, above n 23, §102.2(2).

27 Mackintosh, Kate & Patrick Duplat (2013) Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action, p.23.

28 Wynn-Pope et al., above n 21, p.17.

29 Criminal Code, above n 23, §102.6.

30 Wynn-Pope et al., above n 21, pp.11-12.

31 Wynn-Pope et al., above n 21, pp.24-25.

Australian citizenship if they were convicted of either providing training or funds to a terrorist organisation, and the person was also a national or a citizen of a country other than Australia.[32] This was concerning for humanitarian organisations and workers in the field because, as we have seen, there are legitimate humanitarian actions that can potentially fall foul of the counter-terrorism laws that the bill referred to.

The most concerning aspect for humanitarian organisations was that in the bill, a dual citizen, or national of another country, ceased to be an Australian citizen if they were 'in the service of a terrorist organisation'.[33] 'In the service of' was defined to include such actions as providing medical support, as well as providing money or goods, and services.[34] Thus in the first reading of the bill, an individual (who was a dual citizen, or national of another country) who had responded to need and had given medical assistance in an impartial manner, and it turned out that assistance was towards a listed organisation, could lose their Australian citizenship.

This incorporation of 'medical support' raised a number of concerns with stakeholders,[35] and in the final version of the bill that passed both houses and became law in December 2015, the provision of neutral and independent humanitarian assistance was explicitly defined as not being 'in the service of'.[36] However, a dual citizen or national of another country can still lose their Australian citizenship for being found guilty of providing either training or funds to a terrorist organisation.[37]

The Impact of Australian Counter-Terrorism Legislation on Neutral Aid

Inconsistent Designation of Terrorist Organisations

The designated lists created by states, in order to prevent terrorism and implement UNSC Resolution 1267 and UNSC Resolution 1373, are different in each individual state. This is a result of the differing specific and regional threats faced by states which require different designated lists in order to fulfil their national security concerns.[38] Thus, the designated lists of individuals and entities associated with terrorism are created at the discretion of the governments of each state, making the decision a political one, subject to the varying considerations and definitions of what constitutes a 'terrorist' or a 'terrorist organisation.'[39] This politicised nature of states' designated lists is putting pressure on the ability of humanitarian organisations to act neutrally.

Nineteen of the twenty terrorist organisations on Australia's designated list have an Islamic ideology.[40] While this could be coincidental, a concern to neutrality does present itself upon further analysis. Non-Islamic groups such as the Revolutionary Armed Forces of Colombia, the Shining Path of Peru, and the Revolutionary People's Liberation Party-Front of Turkey are not listed, despite engaging in acts that warrant their listing as terrorist organisations under Australian law.[41] Groups that engage in similar acts and have an Islamic ideology are listed, such as Boko Haram. These laws are reflecting a politicised position and concept, and the restriction of humanitarian aid from specific designated groups is not consistent with humanitarian aid being neutral.

Conditions in Contractual Obligations with Donors

Alongside Australia's counter-terrorism legislation, stricter contractual obligations within the funding arrangements between the Australian government and humanitarian organisations are another issue of concern for the delivery of neutral aid. The most concerning aspect of these contracts is the requirement of aid organisations to conduct security checks on organisations and individuals to which the aid will be delivered, to ensure that they do not provide any sort of resources or support to individuals or organisations

32 Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 (Cth) (First Reading) ('Australian Citizenship Amendment'), §5(3)(c).

33 Australian Citizenship Amendment (First Reading), above n 32, §4(1)(b)(ii).

34 Australian Citizenship Amendment (First Reading), above n 32, Explanatory Memorandum §56.

35 For a full account of the community's concerns see: Parliamentary Joint Committee on Intelligence and Security (2015) Advisory Report on the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015, §4.98.

36 Citizenship Amendment (Allegiance to Australia) Bill 2015 (Cth) (As Passed) ('Australian Citizenship Amendment'), §4(4)(c).

37 Australian Citizenship Amendment (As Passed), above n 36, §5(1)(a)(iii).

38 Burniske, Jessica et al (2014) "Counter-Terroris Laws and Regulations: What aid agencies need to know" in Humanitarian Practice Network Paper, Vol.79, p.4.

39 An example of the discrepancy in designated lists is that the US list has 58 designated terrorist organisations, while Australia's list has 20 designated organisations. For the US list of designated terrorist organisations, see: U.S. Department of State (Bureau of Counterterrorism) (2015) Foreign Terrorist Organisations, http://www.state.gov/j/ct/rls/other/des/123085.htm Accessed 15 September 2015; For the Australian list of designated terrorist organisations, see: Australian Government (Australian National Security) (2015) Listed Terrorist Organisations, http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx Accessed 15 September 2015.

40 Australian Government (Australian National Security), above n 39. The Kurdistan Workers' Party (PKK), is the sole organisation listed without an Islamic ideology, yet would have a demographic that is predominantly Muslim.

41 The requirements for a group to be designated as 'terrorist' are outlined in: Criminal Code, above n 23, §100.1.

associated with terrorism.[42] This is because the effect of these contractual obligations and their required security checks has been that humanitarian organisations are viewed as closely associating with and as partners with DFAT,[43] and not as neutral organisations.

Neutrality is imperative for the security of a humanitarian worker on the ground as trust is imperative to gain access to populations in need and to provide impartial aid.[44] Unfortunately, the way that Australian counter-terrorism legislation is currently constructed is reinforcing and perpetuating this reduction of perceived neutrality.

The Resultant Effects on Funding

The fundamental tension between the delivery of principled aid and counter-terrorism legislation, and the legal ambiguity that enshrouds the humanitarian sector, has led to a tangible decrease in funding towards humanitarian organisations. This significantly detracts from the ability of humanitarian organisations to deliver principled aid, as the ripple-on effect of the reduction of funding from states due to their concerns of legal liability is that humanitarian organisations focus their attention in areas where they are not required to interact with NSAs.[45]

The 2011 Somali famine is one example where there was a reduction of funding for humanitarian aid due to its tension with counter-terrorism legislation. As a result of UNSC sanctions against al-Shabaab,[46] US$50 million of humanitarian aid going into Somalia was suspended by the US,[47] and US organisations were hesitant to provide funding in an environment where there was the possibility of prosecution under counter-terrorism legislation.[48]

Chilling Effect

The tension between counter-terrorism legislation and the delivery of principled aid has not only led to a decrease in funding from donors, but has led to a 'chilling effect,' where humanitarian organisations cut back their own activities, opting out of scenarios with NSAs which they fear may make them criminally liable against certain counter-terrorism legislation.[49] This opting out of certain scenarios by humanitarian organisations, due to the legal ambiguity of whether they could be criminally liable, detracts from the principle of impartiality.

Conclusion

International and Australian counter-terrorism legislation is significantly restricting the ability of humanitarian organisations to provide aid impartially, as well as detracting from the perceived neutrality of humanitarian organisations. Australian counter-terrorism laws currently criminalise actions that humanitarian organisations have a legal mandate to carry out as a means to deliver impartial and neutral humanitarian assistance.

42 Australian Government: Department of Foreign Affairs and Trade (2015) Australian NGO Cooperation Manual (ANCP), p.22.

43 Wynn-Pope et al., above n 21, p22.

44 Wynn-Pope et al., above n 21, p.23.

45 HPCR, above n 5, p.34.

46 United Nations Security Council, S/RES/1844, 20 November 2008.

47 Bradbury, Mark (2010) "State-Building, Counterterrorism, and Licensing Humanitarianism in Somalia" in Feinstein International Center Briefing Paper (September 2010), p.12.

48 Menkhaus, Ken (2012) "No Access: Critical Bottlenecks in the 2011 Somali Famine," in Global Food Security, Vol. 1, No. 1, p.29.

49 This issue has been raised by a number of commentators and organisations, see:
Modirzadeh et al, above n 18, p.644; Metcalfe-Hough, Victoria et al (2015) "UK Humanitarian Aid in the Age of Counter-Terrorism: Perceptions and Realities" in HPG Working Paper (March 2015), p.5.
International Committee of the Red Cross (2015) International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, p.51; United Nations Special Rapporteur on Protecting Human Rights While Countering Terrorism (2010) Press Conference by Special Rapporteur on Protecting Human Rights While Countering Terrorism, http://www.un.org/press/en/2010/101026_Scheinin.doc.htm Accessed 10 October 2015.

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