

International law as reported in the media: roundtable event summary October 2009

Key Observations

- International law is a highly politicised subject, with conflicting parties utilising its language to tarnish their opponents. The media plays a crucial role in disseminating claims and counter-claims in the Middle East, Sri Lanka and elsewhere
- International legal concepts such as 'occupation' and 'disproportionate' are highly contested but not always reported as such; there is less consensus within the legal community than journalists often communicate
- The liberal view of international law dominates public perceptions despite the fact that international law often legitimises war; the media perpetuates rather than challenges the liberal view
- A shift towards opinion and commentary in media reporting may result in more subjective coverage of international law issues
- Journalists unqualified in law may not have sufficient subject knowledge to adjudicate between the conflicting opinions they solicit from legal experts, directly impacting the level of understanding by the public
- Pronouncements in the media about the legal conduct of parties to conflicts can feed in directly to events on the ground. This indicates the seriousness of how journalists deal with international law issues in their reporting

The roundtable participants

Daniel Johnson, Editor, Standpoint (Chair)

Elizabeth Samson, Visiting Fellow, Hudson Institute (Guest speaker)

Anthony Borden, Executive Director, Institute for War and Peace Reporting

Nick Donovan, Head of Campaigns, Policy and Research, Aegis Trust

Dr Suzanne Franks, Director of Research, Centre for Journalism, University of Kent

Jonathan Marcus, Diplomatic Correspondent, BBC World Service

Prof Robert McCorquodale, Director, British Institute of International and Comparative Law

Douglas Murray, Director, Centre for Social Cohesion

Prof Jean Seaton, Professor of Media History, Westminster University

Prof Jon Silverman, Professor of Media and Criminal Justice, University of Bedfordshire

Dr Ralph Wilde, Reader in Laws and Vice Dean for Research at UCL

Introduction

This summary presents a collection of findings based on a roundtable discussion featuring journalists and legal experts in August 2009. The discussion focused on how journalists deal with the complexities of international law in their reporting, and what implications these complexities have for the producers and consumers of news. The objective is to stimulate public discussion about how journalists are, and, should be, reporting this issue.

As one of the participants pointed out, 'international law has become now a much more current concern in international affairs', having previously been merely the province of experts. The publicity and media reporting of the recent Goldstone report into Israel's and Hamas' conduct in Gaza is a prime example of how international law has been elevated in the public consciousness, particularly in the context of the world's armed conflicts.

Terms like 'war crimes', 'genocide' and 'crimes against humanity' have entered the public lexicon and are regularly deployed in the political and ideological battles waged between warring governments, non-state actors and their supporters in the hope that their enemies will be tarnished in the eyes of the world.

But with many terms and concepts in international law heavily contested, how are journalists handling the reporting of these issues to news audiences? This event summary addresses this and other relevant questions pertaining to this increasingly important subject.

About our events

Just Journalism hosts research events designed to stimulate discussion on issues related to journalistic accountability and Middle East reporting. These events bring together informed voices to address pressing issues facing journalists and their audiences. The findings from these discussions are communicated directly to journalists, as well as the general public and other interested groups. In this way we aim to lead an open dialogue about some of the most important questions in today's rapidly changing media landscape.

1. Role of journalists in communication of international law

1.1 A specialist subject in the hands of non specialists

BBC Diplomatic Correspondent **Jonathan Marcus** brought into focus a key concept which in many ways provides a framework for the whole discussion about the role of journalism in the public perception of international law: 'I think one of the great problems here is in the change in the context in which this is all discussed. Think back to a time when international law was the province of diplomats and government lawyers... International law has become now a much more current concern in international affairs'. This is a crucial point, as it emphasises the extent to which international law has permeated general discourse when previously, it had been a concern only for specialists in the field. Making reference to the BBC's Panorama programme, 'Gaza: Out of the ruins' ¹ broadcast in February 2009 after the conflict between Israel and Hamas, Professor of Media and Criminal Justice at the University of Bedfordshire **Jon Silverman** commented:

'[T]he journalist as advocate has always worried me, you know. A journalist who is an international lawyer...and understands all these nuances is entitled to do a programme saying, 'look, this, this and this constitutes a war crime.' I don't think that Jeremy Bowen, even despite his great knowledge of the Middle East, is in a position [to]. He's in a position of a reporter to say, 'this happened, this happened and this happened.' Someone else can take an opinion on whether it is a war crime'.

Silverman's point seems to be two-fold: first, he is addressing an obvious issue concerning impartiality, which is discussed in greater depth in Section 2: 'Politicisation of international law', which examines the ideological battles being fought over international law; second, he is highlighting the reality that reporters not qualified in law might not be best placed to convey to audiences opinions about highly complex legal concepts. This, in turn, relates to **Jonathan Marcus'** observation that at one time, reporters would not have involved themselves in any legal discussion; they would have merely stuck to reporting what happened. The implications of journalists playing such an active role in bringing international law to news audiences could be far reaching, given the complexity and contestability of the subject.

1.2 Specificity and use of legal terminology by journalists

A key element of the discussion centred on how journalists might address the challenges of reporting international law. Two areas of focus were the level of specificity in journalists' references to international law and their use of legal terminology. In her opening address, guest speaker and Visiting Fellow at the Hudson Institute **Elizabeth Samson** cited a Swedish study² in which a sample of news articles concerning the 2003 war in Iraq was analysed with a view to determining how specific journalists were when referring to international law; for example, whether they mentioned particular statutes and conventions. According to **Samson**, the study suggested that: 'the journalists felt that it was important enough to mention with some level of specificity the areas of international law. But they also understood that the public doesn't understand legalese - legal language - they didn't want to get too technical'.

Samson invited responses from the other participants on this issue, asking whether they thought it would be helpful to the public if journalists were very specific in their references to international law. Professor of Media History and official BBC historian **Jean Seaton** thought not, asserting, 'I don't think that is the kind of accuracy that helps... I don't think being very precise about the law to audiences that don't understand what they're talking about will get you anywhere.' Instead, she proposed using layman's terms which capture the spirit of the law: 'you need

to produce an article which has really good, real life - not 'term of art' - real life phrases that embody the meanings of the different nuances in the law, that people could then understand.' Head of Campaigns at the Aegis Trust **Nick Donovan** proposed a similar approach to that of **Jean Seaton**: 'Perhaps the answer is not to go for greater complexity, but to use terms which carry the gist of the intention behind a certain act.'

Not everyone agreed with this approach. **Jon Silverman** suggested that journalists 'often underestimate the public to mask our own unwillingness'. He rejected **Seaton's** assumption that the public might not cope with specific references to international law and claimed that public understanding of international law was a question of familiarity. He cited the frequency of references to the Human Rights Act in the UK media: 'The number of times the media carry stories about Article 10 rights - freedom of expression - or Article 3 rights and the right to life. These are becoming much much more familiar now'.

On the issue of journalists using legal terminology, like 'disproportionate' and 'genocide' to describe situations, **Elizabeth Samson** referred to some research she recently carried out at the request of the Begin Sadat Center for Strategic Studies to determine the legal status of Gaza in light of Israel's military and civil withdrawal in 2005. On the issue of whether journalists should take a view on whether Israel continues to be in occupation of the territory, **Jonathan Marcus** argued: 'fair journalism would be trying to look at the reality of Gaza. Whether or not Gaza is occupied, that's a legal debate as you've discussed it. I'm interested in what is the reality on the ground and why, and who is responsible for the reality?'

However, **Jon Silverman** argued that 'it's not quite a theoretical issue' because if Gaza is indeed occupied, Israel 'would have some obligations under international law, to the population in Gaza' thus making the legal label relevant to the news audience. The suggestion here is that journalists cannot escape the implications of international law, with potentially negative consequences both when engaging directly with it as non-experts, and when avoiding direct engagement.

2. Politicisation of international law

2.1 International law as political leverage

The politicisation of international law, that is, the manner in which international legal concepts can be utilised in the battle for hearts and minds by various protagonists on the international stage, underpinned the roundtable discussion. Parties to all twenty-first century conflicts accuse their opponents of breaches of international humanitarian law, war crimes and even genocide, on a regular basis. Other actors to raise the spectre of war crimes might be governments, non-state parties to conflicts, national or religious minorities, NGOs, campaigners and even journalists. What they have in common is the desire to invoke international legal terms and concepts to strengthen their argument in the eyes of their target audiences.

BBC Diplomatic Correspondent **Jonathan Marcus** elaborated on this issue, describing ‘a very strong body of liberal opinion that believes that international law advocated by academic interpreters, campaigning groups... [is]... a lever for influencing reality, influencing the actions of governments’. He continued: ‘what we actually then find ourselves in the middle of here is a polemical debate... about what legal terms mean and how you categorize the bad guy... What the polemicists want to do is to brand one side or another as illegal, because that is a very powerful term in the public discourse’. Reader in Laws and Vice Dean for Research at UCL **Ralph Wilde** agreed with this analysis, contending that branding Israel’s conduct in Gaza as a war crime is ‘a political act intended to place it in an exceptional category.’

Editor of Standpoint and chair **Daniel Johnson** drew attention to how the introduction of the term ‘genocide’ to the Sri Lanka conflict altered the media’s narrative dramatically: ‘the moment that the question of genocide was introduced into that story by journalists, the whole story changed. I mean up to that point, it had essentially been a narrative of a government crushing a terrorist threat to its own civility. From then on it became a story of possible genocide against its own population... it was very interesting to see just in news terms how the story then completely changed almost overnight.’

2.2 Contestability of international law and its representation

Crucial to this point is how reporters and producers present the contestability of international legal concepts. Whilst accusations of war crimes are grave and can carry a great deal of political weight, the interpretation of this and other legal concepts is actively debated, and in some cases, heavily contested. **Elizabeth Samson** offered two salient examples in her introduction, both pertaining to events in the Middle East.

The first highlights the wide reporting of French President Nicholas Sarkozy’s statement³ in December 2008, in which he described Israel’s actions in Gaza as a ‘disproportionate use of force’. **Samson** emphasised that the term ‘disproportionate’ has a specific legal definition, as well as an everyday meaning. She argued that if Sarkozy’s words were taken in their legal sense, they would represent an incorrect interpretation of the term. **Samson** emphasised that whether or not a military course of action is proportionate is determined before and not after the action takes place: ‘it’s not a retroactive test. You can’t look at something afterwards and say, ‘Well look, lots of civilians died so it must have been disproportionate’. That’s wrong. The proportionality test applies before you go in, it doesn’t apply afterwards.’

Addressing the practical concerns of journalists when handling this sort of issue, **Samson** advocated an approach of ‘writ[ing] some kind of context’ by explaining the legal concept at play – proportionality here – in order to give

audiences the tools to analyse the statement being made. It is noteworthy, that although the term 'disproportionate' was widely used by journalists in reporting the Gaza conflict, its legal definition was rarely, if ever, included.

The second example given by **Elizabeth Samson** addressed the legal status of Gaza. Despite Israel's disengagement in 2005, 'the international community, spearheaded by the United Nations and supported by NGOs' claims that Israel continues to be in occupation of Gaza. In her work for the Begin Sadat Center for Strategic Studies, **Samson** looked to the media for evidence of how Gaza's legal status was being reported internationally: 'looking at the articles, there was repeated mention of the term 'effective control'. Israel is still occupying Gaza because Israel is exercising effective control over the territory.' However, **Samson** contended that Israel fails the legal test for 'effective control' over Gaza. Again, the disputed nature of international law not being raised with the news audience, may mislead them in their understanding of the legitimacy of a state's actions.

Ralph Wilde expressed doubts about the extent to which journalists themselves are responsible for dealing with contentious areas of international law: 'the journalist has to make the decision on who is right, and so the dilemma for the journalist is, as a non-lawyer, how do they make a choice between these competing views from experts?' There seemed to be genuine uncertainty among the participants about how journalists should handle their lack of legal expertise, as well as the ambiguous and disputed nature of international law. Offering the example of the 2003 Iraq invasion, **Wilde** described the process by which journalists trying to get to the bottom of its legality - or otherwise - approached the Foreign Office and then non-government affiliated legal professors and got totally different answers. Highlighting the journalist's dilemma, he asked: 'What do you say? Do you say it's lawful, or unlawful or just people disagree?'

Director of the British Institute of International and Comparative Law **Robert McCorquodale** concluded that the best approach for reporters would be to be aware of the views held by those contributing to news reports and bring them to the attention of their audiences. He cited **Elizabeth Samson's** own view on proportionality with regard to Nicolas Sarkozy's comments as itself an example of just one of a number of conclusions on proportionality a legal expert could reach.

2.3 Emotional engagement and the 'dark side' of international law

Another important facet to the question of how journalists mediate between international law issues and news audiences is the emotional engagement many parties have with terms like 'genocide' and 'war crimes'. Where civilian losses are great in number in conflict situations, victim populations may seek to have these losses recognised as genocide or a war crime, in order to bring international opprobrium on those responsible. **Nick Donovan** described the 'emotive power' of the term 'genocide' and contrasted this with the apparently less emotive 'crimes against humanity': 'The same number of people could be killed, but just because one has an emotive power and has a particular legal context, one is fought over and contested. That's why the Bosnians [Serbs] are desperate to cease having [their actions] defined as genocide.'

Executive Director of the Institute for War and Peace Reporting **Anthony Borden** also discussed Bosnia, noting that for Muslim communities there, 'if it is not genocide then our suffering was not recognised'. He also noted that 'every time there's a major crisis, there's a rush of human rights groups to define it as [genocide]'. Director of the Centre for Social Cohesion **Douglas Murray** also concurred that there is a 'race' to use these terms. Clearly, certain parties to conflicts may have a vested interest in labelling actions as genocide, and the media may act as a conduit for those accusations.

Furthermore, **Ralph Wilde** described a prevailing 'liberal view' of international law which focuses on determining, for instance, whether Gaza is occupied or not occupied, or whether the 2003 invasion of Iraq was legal or illegal. 'But actually, the kind of dark secret of international law is that even when things are lawful, there's still a lot of horrific things that are possible. And really the story that was never told, say, about the legality of the Iraq war is, what difference would it have made?'

Wilde argued that international law does as much to legitimise as it does to limit conflict, including 'things which many liberals will be horrified about'. He also said 'one has to educate those who wish to use international law to serve political purposes, to make them more aware of just how complicated and ambiguous and sometimes two-sided it can be'.

There was disagreement over the extent to which it makes a difference whether a course of action is within or outside international law. **Jon Silverman** argued that it made a significant difference because there are practical obligations which can arise out of the determination that a breach of international law has taken place. For instance, regarding the status of Gaza: 'Israel has a vested interest in saying that Israel is not in effective control, not occupying Gaza, because if it was, it would have some obligations under international law, to the population in Gaza.' **Anthony Borden** agreed, noting that governments shy away from defining something as genocide precisely because of the practical implications of that recognition.

Conclusions

Whilst a broad set of views were represented at the cross-disciplinary roundtable, Just Journalism has extracted some key observations with the aim that these will be further debated by journalists, the public and all interested parties:

- The politicisation of international law by parties to conflicts and their supporters is inadequately addressed by journalists. Allegations of disproportionality against Israel or genocide against Sri Lanka and other states can be politically motivated and inaccurate.
- Many principles of international law are heavily contested but are often not presented to news audiences as such. News audiences need to be informed about the various interpretations of these terms in order to be aware of differing claims.
- The liberal view of international law as a protector against human rights violations prevails in the public consciousness and is perpetuated in the media. In fact, international law often legitimises conflict as well as limiting it.
- Most journalists reporting accusations of breaches of international law are themselves not lawyers, making it difficult to adjudicate between competing legal claims or to appropriately position them.
- Journalists must strike a balance between providing detail on the complex legal concepts they refer to, and ensuring their reports remain accessible to their audiences. There is a lack of consensus on the right way to strike this balance at present and this needs further discussion.

¹ Panorama: 'Gaza: Out of the Ruins,' broadcast on BBC One, 9 February 2009.

² Rigmor Argren, 'Reporting about Iraq: International Law in the Media during Armed Conflict,' Essex Human Rights Review, Volume 2 No.1, March 2005.

³ Statement from the Presidential Élysée Palace, 27 December 2008.

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