

THE INDIVIDUALISATION OF WAR:
DEFINING A RESEARCH PROGRAMME

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ABSTRACT

Individual rights and responsibilities are at the centre of today's international and civil conflicts in a way that they have never been before. This process of 'individualisation', which challenges the primacy of collective units such as sovereign states or 'warring parties', has two main drivers: powerful normative developments related to human rights, which have spawned new kinds of wars and peacekeeping missions and a new class of international crimes; and dramatic technological and strategic developments that both empower individuals as military actors and that enable either the targeting or protection of particular individuals. This presentation discusses how individualisation forces us to confront the status of individuals in war in three different capacities: 1) as subject to violence but deserving of protection; 2) as liable to attack because of their responsibility for attacks on or threats to others; and 3) as agents who can be held accountable for the perpetration of crimes committed in the course of armed conflict. It also argues that while the human rights norms underpinning individualisation are normatively desirable in themselves, efforts to operationalise individualised conceptions of protection, liability, and accountability are placing enormous strain on the actors and institutions most actively engaged in armed conflict: the governments and armed forces of states; international security organisations; and humanitarian agencies.

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The rights and responsibilities of the individual are at the centre of today's armed conflicts in a way that they have never been before. This

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process of ‘individualisation’ (Blum 2014; Welsh 2018), which challenges the primacy of the sovereign state, has two main drivers: powerful normative developments related to human rights, which have spawned new kinds of wars and peacekeeping missions, and a new class of international crimes (Teitel 2011; Weiss 2012; Sikkink 2011); and dramatic technological and strategic developments that empower individuals as military actors, and that enable either the targeting or protection of particular individuals (Singer 2009; Gross 2010).

As I will suggest below, the individualisation of conflict forces us to confront the status of individuals in at least three different capacities: 1) as subject to violence but deserving of protection; 2) as liable to attack because of their responsibility for attacks on others; and 3) as agents who can be held accountable for the perpetration of crimes committed in the course of conflict. These three ‘domains’ serve as an organizing framework for the ERC-funded research project on *The Individualisation of War* (see the overview of IOW at <http://www.iow.eui.eu>), which brings together an interdisciplinary team of international lawyers, political scientists and moral philosophers to study not only how individualisation is manifest in contemporary armed conflict – in theory and in practice – but also what challenges it poses for scholars and practitioners. Our research integrates the currently segregated scholarship on individualisation in moral philosophy, international law, and international relations, recognizing that – with some notable exceptions (May 2005; Teitel 2011; Lessa and Payne 2012) – analysis of individualisation has proceeded largely in separate streams, without recognition of the important links between law, morality, and politics that constitute the day-to-day reality for policy actors.

The IOW project begins from the assumption that while the human rights norms underpinning individualisation may be normatively desirable in themselves and enjoy relatively broad support, efforts to operationalise protection, liability, and accountability are placing enormous strain on the actors and institutions most actively engaged in armed conflict: the governments and armed forces of states; international security organisations; and humanitarian agencies. More specifically, individualisation is giving rise to a set of ethical, legal and political dilemmas that are confounding contemporary policy-makers and in some cases weakening the legitimacy of national, international, and non-governmental institutions.

For example, in the realm of protection, the UN Security Council is caught between its state-centric constitution, which has traditionally demanded the even-handed treatment of parties to a conflict, and its increasing recognition of its responsibility to protect individuals – illustrated in the contrast between the relative speed with which the Council was able to act in Libya in 2011, compared with its later failure to reach a consensus

on how to respond to documented crimes against humanity in Syria. In the UN's most extensive peacekeeping mission in history, in the Democratic Republic of Congo, peacekeepers have faced agonising strategic and operational dilemmas over how to fulfil their civilian protection mandate, which requires addressing atrocities perpetrated by either state or non-state actors, while at the same time avoiding criticism that might alienate the government of former President Kabila, whose consent has been critical to their continued presence (and which was eventually withdrawn).

Turning to the domain of liability, we see that Unmanned Aerial Vehicles (UAVs or 'drones') seemingly offer state leaders and national militaries a golden opportunity to target lethal force more precisely against a specific individual who poses a grave threat, thereby minimizing both collateral damage and the loss of their own personnel. Indeed, some moral philosophers have argued that there is an imperative to employ these more precise weapons (Strawser 2010). On the other hand, the use of lethal force by the executive branch, without judicial or legislative oversight, calls into question fundamental protections of a liberal-democratic society and arguably weakens some of the restraints embedded in Just War principles such as 'last resort' (Welsh 2015).

In the case of accountability, diplomatic actors face a dilemma between pursuing criminal action against individual perpetrators (as they did in Libya in 2011), which can close off options for negotiation that might bring a more rapid end to conflict and civilian suffering, or privileging conflict resolution strategies (as they did in Yemen in 2011) that deny justice to some victims of international crimes and contradict rhetorical commitments about 'ending impunity'. New legal practices associated with accountability also place humanitarian agencies in a deeply uncomfortable position, since they are closer to the crimes of war than most other institutions, and could potentially provide evidence in criminal proceedings. To give such evidence, however, could make their personnel the targets of violence or – as in the case of Darfur in 2005-2006 – *persona non grata*, thereby rendering it impossible for them to continue to protect civilians on the ground.

These seemingly discrete dilemmas are all underpinned by a tension between the newly privileged moral and legal claims of individuals (and the technological changes that often enable them), and the more traditional ones of sovereign states. Methodologically, our project adopts a critical stance with respect to the traditionally dominant, state-centric paradigms for the analysis and regulation of armed conflict in the disciplines of international relations, international law, and moral philosophy. While we recognize that individualisation has been analysed using these frameworks, such as modern Just War Theory (Walzer 2006; Coates 2007), we proceed

from a willingness to challenge that architecture by considering radical alternatives, should our analysis dictate.

At the same time, we also contend that a great deal of existing literature on individualisation is inherently progressivist. In international relations, for example, prominent scholars posit that the future will be marked by a stronger commitment to individual human rights, and that the most pressing task is to design a better strategy and stronger institutions to ensure compliance with that commitment (Sikkink 2011; Risse, Ropp and Sikkink 2013). In moral philosophy, scholars mounting a 'revisionist' challenge to modern Just War Theory (McMahan 2009; Rodin 2002; Fabre 2012) argue that while the current law of armed conflict is often incompatible with an ethics of war based on individual human rights, this disjuncture between law and morality is not sustainable – even if there are strong prudential reasons for maintaining it. In international law, scholars demonstrate how individual human rights and accountability are transforming states' conceptions of their rights and responsibilities, and the relationship between the state and the individual (Teitel 2011; Cassese 2008; Drumbl 2007).

By contrast, our project recognises that many non-Western actors do not necessarily view individualisation as an unmitigated 'good'. Indeed, the imperative to protect civilians or hold leaders accountable can conflict with other powerful norms, such as non-intervention, sovereign equality, or impartiality (Hurrell 2007; Roth 2011; Cohen 2012). Moreover, non-Western states point to the uncomfortable reality that the operationalisation of norms related to individualisation is often directed solely at developing countries – manifest in the fact that humanitarian interventions have yet to occur in developed countries (with the exception of the former Yugoslavia) and that the criminal cases pursued by the International Criminal Court have thus far all related to African countries. Finally, humanitarian agencies acknowledge that even within their own organisations there are profound disagreements over whether and how to cooperate with Western governments pursuing protection and accountability (Donini 2012).

These critiques cast doubt on linear, teleological models of normative change, and call for an approach that both accepts and analyses the potential for on-going norm contestation and norm conflict (Wiener 2009). In other words, we do not assume that efforts to institutionalise protection, liability, or accountability necessarily fix their meaning, or end the debate about either their desirability or applicability in particular cases. An appreciation of the reality of contestation not only enriches our explanation of the dilemmas associated with individualisation, but will also require us to look beyond 'technical' solutions, such as better coordination or more resources, as ways to address them.

In what follows, I elaborate on the two central tasks of the IOW research project: to conceptualise individualisation and how it challenges more traditional collective entities and values; and to identify the tensions to which it gives rise and how they are being and could be resolved.

1. CONCEPTUALISING INDIVIDUALISATION

1.1. A Working Definition

In its most general form, individualisation is a process in which individuals, rather than collectives, increase in salience. To arrive at a more specific definition for the purposes of research on armed conflict, there are two distinctions that are central to analysis and normative assessment.

The distinction between an **agent** (actor) and a **subject** (acted upon).

a. Individualisation is the process in which the agency of individuals, rather than of collective actors, increases in importance in the causes and conduct of war.

b. Individualisation is the process in which the effects on individual, rather than collective, subjects increase in importance in the causes and conduct of war.

The distinction between the role that individuals play in *explanations* and *normative assessments* of the phenomenon of war.

c. Individualisation is the process in which individual agents and subjects play an increasingly important role in our explanations of the causes and conduct of wars.

d. Individualisation is the process in which individual agents and subjects play an increasingly important role in our normative assessment of the causes and conduct of war (where normative assessment entails assessing reasons for action including ethical, legal and strategic reasons for action).

By integrating these two aspects, we arrive at a working definition of individualisation *as a process in which individuals (both as agents and as subjects) increase in importance compared with collective entities for the purposes of explaining and normatively assessing the causes and conduct of war*. Based on both deductive reasoning and inductive inquiry, we further posit that individualisation in the context of war forces us to confront the status of individuals in at least three different domains: 1) as subject to violence but deserving of protection (given their individual right to life); 2) as liable to attack because of their responsibility for attacks on or threats posed to others; and 3) as agents who can be held accountable for the perpetration of crimes committed in the course of conflict.

1.1.1. Protection

The first major aspect of individualisation is the move to make the individual – and his or her rights – one of the central reasons or causes for engaging in armed conflict (what is referred to in Just War literature as *jus ad bellum*). Whereas conflicts in previous centuries were primarily about the gain of territory or resources, defence of the state against attack, or – in exceptional cases – the rescue of minority groups in neighbouring states, many contemporary conflicts have as one of their central and explicit purposes the protection of individuals' security. The NATO-led action in Libya in 2011 is the culmination of this trend, but the practice stretches back to the significant shifts in Security Council practice at the end of Cold War, which enabled the UN to broaden its definition of what constitutes a threat to international peace and security, and to the development and endorsement by UN member states in 2005 of the principle of the 'responsibility to protect' (RtoP). The development, evolution and contestation of RtoP is thus a key facet of this stream of research (and will be elaborated upon further in section 2 below).

In addition to justifying the use of force, the protection of individual civilians has transformed the practice of peacekeeping. Beginning with the conflict in Sierra Leone in 1999, the UN Security Council now routinely includes civilian protection in peacekeeping mandates, calling on UN contingents to respond to and prevent extreme violations of human rights. Thus, while during the Cold War era peacekeepers practiced a more passive kind of impartiality, in which they were beholden to the wishes of the parties to a conflict, contemporary peacekeepers are expected and mandated to be robust and assertive, by penalising infractions against the peace process or broader international norms and principles (Paddon Rhoads 2016). This practice, while portrayed as consistent with long-standing UN operational principles, implicates peacekeepers in activities beyond their traditional ones of monitoring ceasefires or keeping warring factions apart. The "blue helmets of today", argues IOW team member Emily Paddon Rhoads, have effectively become police officers, as they "are now expected to search for, and then side with, the victims" (Paddon Rhoads 2016: 66, 1). Such activities have stretched the notion of impartiality almost to the breaking point, and sparked debates about the proper ends and means of protection. This question becomes even more relevant when we consider the vocal objections that have been raised by many developing countries about the assertive version of impartiality and its potential to undermine state sovereignty.

1.1.2. Liability

The second key dimension of individualisation is the move to both establish and act upon individual liability in the conduct of armed conflict (what is commonly referred to as *jus in bello* rules). Modern Just War Theory and the contemporary law of armed conflict assert that principles of liability and immunity derive from a person's status or membership in a particular group: combatants or non-combatants (Walzer 2006). But a powerful new stream within moral philosophy – Just War Revisionism – has challenged this status-based approach to the ethics war using the framework of individual human rights (McMahan 2009; Rodin 2002; Fabre 2012). If all persons have rights, and if important rights such as the right to life can only be lost or forfeited on the basis of some responsible action of the right bearer him or herself, then it seems to follow that liability can only be established by examining the particular circumstances of individual actors within a conflict.

Three implications of this reasoning are studied in the IOW project. First, human rights premises raise the question of which combatants are liable to be targeted in armed conflict – thereby challenging the traditional Just War position of the 'moral equality of combatants'. According to the 'revisionists', rights-bearing individuals can only become liable to lethal violence when they are responsible for inflicting grave unjust harm on others. This conclusion suggests that 'just combatants' (those fighting a morally or legally justified war) are not liable to be intentionally targeted; individual soldiers are only liable if they are fighting in a war that is illegal or unjust (McMahan 2009). Moreover, a position in favour of asymmetrical rights and responsibilities has dramatic implications for how the practice of military establishments would need to be configured, as exemplified by the Rules of Engagement (ROE) of UK forces in Afghanistan, which permitted engaging the enemy only if it is posing an imminent threat to others.

Individualisation also has implications for the status of civilians in war, who have long enjoyed protected status under the legal and moral principle of distinction. But a number of theorists have argued that some non-combatants can be liable to intentional attack if they are responsible for sufficiently grave unjust threats against others (McMahan 2009; Gross 2010; Fabre 2012). At the same time, technological advances have enabled states to operationalise individual liability (particularly as part of counter-terrorism) through the use of remotely controlled UAVs. These weapons allow states to kill particular individuals (so-called high value targets) who are part of the political leadership, or broader support network, rather than unidentified members of the class of enemy combatants. Yet, the current processes for defining legitimate targets are morally and legally controver-

sial – in terms of their secretive nature, which limits accountability; their reliance on potentially flawed intelligence; and their criteria, which draw on questionable methods of defining combatants and civilians. Moreover, while UAVs promise to limit civilian deaths, they have continued to inflict significant ‘collateral damage’ in the short term, and have been shown to have a negative long-term impact on local communities. Finally, given that drones seem to mediate the agency of soldiers in acts of killing, they allow for a high level of disassociation with the violence that they unleash, potentially eliminating one of the traditional restraints on the conduct of war (Singer 2009).

The third implication of revisionist insights relates to how, if at all, the tenets of individual liability can be compatible with current or modestly amended interpretations of international humanitarian law (Lazar 2010). While some critics maintain that the circumstances of war are so unique, and so devastating, that war must be regulated by its own form of morality and law (Shue 2008), we are already seeing how human rights principles are challenging the very nature and scope of the law of armed conflict. The latter is no longer purely a body of reciprocal legal rules agreed to by sovereign states to limit their conduct during war, in order to minimize the suffering of innocents. Instead, those who become embroiled in armed conflict are still seen to possess their core human rights, regardless of what the warring parties believe they need to do out of ‘military necessity’ (Verdirame 2008). As a result, the militaries of warring parties have become accountable for how they treat individuals in the context of war, instigating a series of path-breaking legal challenges by individuals against the actions of military establishments.¹

1.1.3. Accountability

Attempts to give effect to the norms and laws regulating armed conflict have traditionally focused on the imposition of obligations on states and state-like actors. Over the course of the last century, however, specific obligations have been imposed directly on individuals (as either leaders or soldiers), breaches of which give rise to accountability for criminal acts undertaken in the course of war. This third key aspect of individualisation culminated in the 1998 Rome Statute creating the International Criminal Court (ICC). While the rise of the imperative of accountability, and its institutionalisation both internationally and domestically, have been exten-

¹ A key example is the 2007 Al-Jedda case in the United Kingdom, where a dual Iraqi-British national successfully protested against his detention by British forces in Iraq on human rights grounds.

sively analysed in both legal and political science literature (Sikkink 2011; Cassese 2008; Drumbl 2007), the IOW project integrates the political and the legal, by examining two particular challenges that this aspect of individualisation poses for existing mechanisms for preventing, managing, and resolving conflicts, and for existing principles of international law.

The first set of challenges arises from the ICC's status as a permanent court, with universal jurisdiction, that can activate investigations independent of the consent states – including in situations of on-going armed conflict. Consequently, recent years have witnessed the increased use of the threat of prosecution as a 'tool' of coercive diplomacy, in civil conflicts or situations in which mass atrocity crimes have been committed or are imminent. While these powers of the ICC enhance the prospects for accountability, there are significant issues with using criminal justice as a 'tool' of international diplomacy, including: the possibility that these strategies complicate and potentially destabilize existing mechanisms for resolving conflicts peacefully and challenge the United Nations' traditional approach to treating conflict parties even-handedly; and the increased role for domestic, as opposed to international, courts in the prosecution of international crimes or in making decisions on questions of war and peace. As a result of this latter development, domestic courts are being called upon to assess the legitimacy of acts of foreign governments, which has a direct impact on the international relations of the state within which that court is located.

The second group of issues arising from the quest for accountability relate to the so-called Kampala amendments to the Statute of the ICC to provide for jurisdiction over the crime of aggression, which came into force in 2017 (European Journal of International Law 2018). While the criminalisation of aggression seeks individual accountability, it may also require establishing state responsibility for the initiation of unlawful wars, thereby raising questions about whether the ICC can operate in the same way when it exercises jurisdiction over aggression as it does with regard to other international crimes. Moreover, the jurisdiction granted to the ICC is seen by some to undermine the historically central role of the Security Council as the body identified in the UN Charter with the power to determine whether aggression has occurred. Finally, although the criminalisation of aggression may appear to be a further step in the individualisation of armed conflict, the definition of aggression agreed to at Kampala could inhibit attempts to use force for humanitarian or civilian protection purposes, as such uses of force may be construed as being in violation of the new prohibition. This suggests that there may be some incompatibility between the fulfilments of the three broad strands of individualisation that we examine in this project.

1.2. *Understanding Individualisation as a Process*

If individualisation is conceived as a process, the logic underpinning it is one of ‘from-to’: in other words, there are collectives that are becoming less central as individuals become more prominent. In the context of war, we can conceive of at least four kinds of collectives that are under challenge. Nonetheless, as the examples below illustrate, this process is not necessarily complete or linear; there remains strong evidence for the continued influence of forms of collective authority, agency and subjectivity both in theory and in practice.

1.2.1. Sovereign States

In each of the domains of individualisation identified above, activities that were once directed at or concerned with the behaviour of sovereign states are experiencing an increased role for individuals (as either agents or subjects). In international justice, for example, we are witnessing a shift from what Sikkink calls the “state accountability model” (Sikkink 2011), in which the state as a whole was held accountable for human rights violations or the commission of crimes and was expected to remedy the situation (frequently through reparations), toward an “individual accountability model”, in which particular individuals (though often in certain roles) are held criminally responsible. In the state-centric model, the actual individuals committing, ordering, or planning international criminal acts are beyond reach (as entailed by the principle of head of state immunity). In the individual-centric model, the possibility of directly establishing criminal responsibility for individuals without the mediation of the domestic judiciary poses a challenge to the sovereign authority of the state.

Yet, at the same time, we need to limit the extent of this claim by acknowledging the continued importance of state cooperation in the architecture of international criminal justice. While international criminal law (seeks to determine the criminal responsibility of an *individual* offender, it is underpinned and enabled by a state-centric system: it is states which ratify the relevant treaties establishing this body of law; it is states that must enforce international criminal law, by apprehending indicted individuals and collecting evidence; and, it is states that have privileged access to the international institutions (like the Security Council) that are crucial for operationalising accountability.

1.2.2. Combatants and Non-combatants

Within the realm of international humanitarian law (IHL), there has been a growing emphasis on the individual in addition to the collective

actors – combatants and non-combatants – that have traditionally been identified in treaties and conventions. While IHL was one of the first areas of public international law to limit states' scope of action so as to grant protection to individuals, this was framed not in terms of *individual* rights, but rather in terms of prohibitions on what parties to armed conflict were entitled to do, or of their obligations towards particular groups of people (for example, the wounded and sick, or the civilian population in occupied territories).

Over the past 10-15 years, however, the interplay between international human rights law and international humanitarian law has resulted in greater attention paid to individuals, particularly on the combatant side (through, for example, the legal recognition given to an individual soldier or detainee's rights). Individualisation of this kind is also clear within the ethics of war, through challenges to Walzer's 'moral symmetry' argument, but also through the attempts to unpack the civilian 'category' into further sub-types, some of which (controversially) may be more liable to attack. More generally, Revisionist Just War theorists challenge the idea that collectives in war can be proper units of moral responsibility in any basic sense; as a moral matter, a person's liability to attack must be derived from her own choices and actions, and not merely from the group to which she belongs (Barry and Christie 2018).

1.2.3. Conflict Parties

In international armed conflicts, the relevant collective entities have traditionally been sovereign states or 'warring parties'. After 1949, in light of the growing phenomenon of civil war (or non-international armed conflict), IHL expanded its imposition of obligations (and rights) to include organized armed groups.² More recently, the definition of who bears rights and responsibilities in armed conflict has evolved further, and arguably become more individualized. This is demonstrated by the practices of the Security Council, in Resolution 2178, which identify the individual 'foreign fighter', rather than the 'organized armed group', as the key subject of policy and legal regulation. The provisions of resolution 2178, which include a definition of the 'foreign terrorist fighter', blurs the definitions of terrorism and armed conflict (giving rise to ambiguities concerning the status of

² It is important to note, however, that the treaty rules applicable to organized armed groups are more limited than those applying to states engaged in international armed conflict, and that the precise nature and scope of such organized armed groups' obligations, and their interplay with those of states, are not completely settled as matters of law (particularly with respect to responsibilities for meeting the needs of civilians under the effective control of such groups).

legal regimes) and also arguably undermines the equality of parties within an armed conflict.

Within international criminal justice, the move to hold individuals accountable for core international crimes has also shifted the focus of political and legal discourse away from conflict parties, towards the acts of particular individuals. For example, during the Security Council debate in May 2014 which discussed the referral of the situation in Syria to the ICC, then US permanent representative Samantha Power stated that “the representative of Syria and perhaps of Russia may suggest that the draft resolution voted on today was biased, and I agree. It was biased in the direction of establishing facts and tilted in the direction of a peace that comes from holding accountable individuals, not entire groups, such as the Alawites, Sunnis, or Kurds”.

1.2.4. State Consent

In addition to these collective *entities*, we can identify core collective *values* that underpin the traditional regulation and assessment of the causes and conduct of war, and which are being significantly affected by individualisation. A prominent example is the consent of states, which can be conceptualised as a kind of ‘proxy’ for sovereignty and self-determination and which serves as a crucial source of positive law. State consent has long operated as an important principle in the practice and regulation of armed conflict. For example, it has been a precondition for the deployment of UN peacekeeping operations. Similarly, consent is a bedrock principle in the legal framework regulating humanitarian relief operations (in which humanitarian actors can only ‘offer’ assistance and require the prior consent of the state).

As a result of individualisation, however, the value of state consent is arguably being eroded, or in some cases counter-balanced, by imperatives to protect individual human rights. In the realm of peacekeeping, for example, the United Nations has claimed since the 2000 Brahimi Report that its operations will no longer be constrained by the injunction to ensure the continued consent of all parties in situations of imminent threat to vulnerable civilians (Paddon Rhoads 2016). With respect to humanitarian relief, attempts by lawyers to interpret what amounts to the “arbitrary withholding of consent” by states to offers to provide humanitarian assistance have drawn on international human rights law (Akanke and Gillard 2016). More controversially, some legal scholars have argued that in response to such an arbitrary withholding of consent, international agencies would be entitled to engage in ‘unauthorized’ and cross-border deliveries of humanitarian relief (Akhavan *et al.* 2014).

2. THE TENSIONS AT THE HEART OF INDIVIDUALISATION

The challenges that individualisation poses to collective entities and values also helps to illuminate some of the concrete and practical trade-offs facing policy-makers that I profiled in the Introduction. Indeed, these dilemmas are frequently animated by deeper clashes of norms or objectives. Based on our initial research, we posit that there are at least four different kinds of tensions emerging from individualisation.

2.1. *Normative and Practical Tensions*

The first set of tensions arises at the *normative* level when it seems impossible to fully realise two important values. A prominent example is the tension between maintaining impartiality in peacekeeping operations and punishing one side of a conflict for infringement of human rights. Another is the tension within traditional Just War Theory that arises when a war is considered unjust from an *ad bellum* perspective, but is conducted justly from an *in bello* perspective. In this case the war would be considered unjust in totality, even if the individual acts of soldiers that together constitute the war are considered just.

A second set of tensions exists at a *practical* level. And here, there are two possibilities. First, tensions can arise from the practical attempt to achieve or operationalise values due to intrinsic and unavoidable facts about the world. For example, there is an often-noted tension between the achievement of peace (between conflict parties) and justice (for victims of crimes of war), given the nature of conflict and its resolution. But there are also tensions that arise from the practical attempt to achieve or operationalise values due to more contingent facts about the world: for example, the difficulty of achieving humanitarian objectives with armed forces and strategic doctrines that are tailored to large scale counter-force operations.

And finally, there are tensions that arise between different manifestations and domains of individualisation. One example, suggested earlier, is the dilemma facing humanitarian actors who may be requested to provide assistance to mechanisms established to bring accountability for violations of international criminal law, while at the same time ensuring continued access to individual civilians in need.

2.2. *Strategies of Resolution*

How (if at all) can the tensions arising from individualisation be resolved? What strategies are the actors engaged in armed conflict currently adopting? Theoretically, we conceive of a spectrum of approaches, ranging

from, at one end, a principled and general attempt to integrate two sets of important values, to more ad hoc strategies that respond with a particular, context-specific solution to tensions that emanate from individualisation. In between these two extremes would sit various forms of norm reconciliation and institutional adaptation, which enable actors to reduce the frequency and severity of norm conflicts (if not completely eliminate them).

The first approach entails the reconceptualisation of a normative terrain, such that one value or norm is consistently prioritized over another. An example from the civilian protection stream is the notion of “sovereignty as responsibility”: the doctrine which claims that state sovereignty, while a bedrock norm of international society, is no longer understood as undisputed control over territory but rather as comprising a set of conditional rights, dependent upon a state’s respect for a minimum standard of human rights for its citizens (Welsh 2014). Under this reconceptualisation of sovereignty, while states are seen as the primary agents responsible for protecting their populations, outside actors can take on a remedial responsibility for protection without compromising sovereignty or the norm of non-intervention. Sovereignty and human rights thus become integrated, and are assumed to be directed at the same (ultimate) objective. This effort at reconceptualisation has been at the heart of the development of an implementation framework for the principle of ‘the responsibility to protect’.

A second approach along the spectrum, reconciliation, seeks not a general solution – prioritizing one norm over another – but rather the creation of context-specific relationships between competing norms and values. An illustration is the legal practice of “interpretive complementarity” or what project team member Dapo Akande calls “coordinated interpretation”, which is applied to situations where there are two legal regimes considered relevant and appropriate, with neither necessarily subordinate to the other (Murray *et al.* 2016). Both regimes thus apply, non-exclusively, to the same set of circumstances, often with one normative framework supplementing the other. Nehal Bhuta has explained how this approach plays out in the case of armed conflict, where both international humanitarian law and international human rights law are said to have jurisdiction. Through interpretive complementarity “IHR rules and principles are used to inform and ‘humanize’ IHL rules; or IHL rules are used to give content to IHR rules in certain exceptional states. In either case, one body of law supplements the other although the direction of this ‘supplementation’ is not fixed” (Bhuta 2008: 252).

The next approach to resolving the tensions arising from individualisation is institutional adaptation. Here, IOW project team members have paid particular attention to how the United Nations navigates its political role and inter-state ‘constitution’, alongside its declarative commitments

to promoting human rights – particularly in the realm of peacekeeping. How are UN-authorized peacekeeping forces to execute their mandate to protect civilians against any actor that violates their rights, while at the same time supporting the government – the primary bearer of the responsibility to provide long-term protection and the agent whose strategic consent remains essential to their presence? The UN's attempts to address this dilemma have been both substantive and ad hoc. At the doctrinal level, it has insisted on a distinction between “strategic consent” and “tactical consent”. The former is obtained from the main parties to a conflict (including the host state) and is a fundamental requirement for the deployment and on-going presence of a peacekeeping mission. Consent at the tactical level, by contrast, is often secured from non-state armed groups or factions on the margins of a political process, and according to UN doctrine is no longer formally necessary. This means the use of force by peacekeepers can be justified against any armed group (including the state's army or security forces) that pose an imminent threat of violence to civilians (UN 2008: 34). At the institutional level, the UN has responded to the potential for complicity with armed actors engaged in violence against civilians with initiatives such as the Human Rights Due Diligence Policy, which stipulates that the UN cannot provide support to non-UN armed actors “where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law” (United Nations 2013). And finally, peacekeeping missions have made ad hoc decisions to withhold certain forms of support to governments deemed to be failing in their responsibility to protect their population – either through specific provisions in the mandate or through internal directives from the Secretary General or Under-Secretary General for Peacekeeping.

The furthest end of the spectrum is marked by the *lack* of any systematic strategy to addressing tensions or value conflicts and the adoption of a more ad hoc approach. Where norms or objectives are seen as incompatible, there are at least three options for response: paralysis – i.e., no action; sequencing (whereby one value is pursued first and then the other); or principled inconsistency, through a case-by-case assessment of which value or objective to privilege in any given situation. While it would be tempting to see the second and third options as forms of expediency, they can be underpinned by an actor's genuine commitment to both values and reluctance to abandon either as part of its identity. An example is the set of approaches to resolving the dilemmas that arise from the pursuit of accountability for perpetrators of international crimes in the midst of an armed conflict. IOW team members have found that the predominant way of resolving this tension seems to be that of reconciliation, either through incorporat-

ing individualised responsibility in otherwise more collective goals of accountability (for example, truth commissions that are aimed at establishing broader historical truths, while requiring individual testimonies); sequencing (deliberate sequencing that provides for a time-table for accountability in peace negotiations or non-deliberate sequencing in which individual accountability is pursued out of political necessity long time after peace has been established); or principled selectivity (general or conditional amnesty granted to lower-ranking combatants and accountability pursued against military or political leaders).

CONCLUSION

As this article's overview of individualisation reveals, the trajectory of individualisation remains uncertain. The IOW project conceives of individualisation as a powerful challenge to collective entities and values that have been central to the study and practice of armed conflict. But while individuals are becoming more prominent, as agents and subjects, we do not and cannot assume a linear process. Individualisation has been and will continue to be contested, leaving the possibility that there may be moves backwards as well as forwards.

In some cases contestation denies the very legitimacy of viewing human rights norms as central to the context of armed conflict, or of unpacking status-based collectives such as combatants and non-combatants. This objection plays out most forcefully in debates among moral philosophers. In other cases, actors are raising concerns not about the importance of individual entities and values, but rather about how individualisation has thus far been institutionalised. This can be seen in efforts by those African states that are critical of the ICC, to set up a regional African criminal court. And finally, some of the contestation against trends in individualisation are 'applicatory' in nature: they question not whether individualisation is itself normatively desirable, but whether and how individual values should apply to a particular case of (or within) an armed conflict. Team member Jennifer Welsh has assessed this form of contestation with respect to the 'responsibility to protect' in the wake of the crises in Libya and Syria. Both cases, she suggests, have illustrated the difficulty of arriving at a single collective view on a situation of atrocity crimes, and determining whether and how military force should be used to 'save civilians' (Welsh 2019).

More generally, commentators from the scholarly and policy worlds are pointing to a series of trends that are undermining some of the human rights advances that help to fuel individualisation. While the most vis-

ible manifestation can be found in the new foreign policy approach of the Trump administration in the United States, more profound power shifts geopolitically have given increased influence to countries that open challenge human rights norms. All of these forces, it has been suggested, are challenging post-Westphalian visions of the shared management of international peace and security, and “giving way to an era of resurgent sovereignty” (Strangio 2017).

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