

Rights and Freedoms Research Cluster – Conference Report

On 4 April 2022, the Rights and Freedoms Research Cluster in the Department of Law and Criminology at Royal Holloway, University of London, hosted a half-day conference to debate two topics which were debated in two panels. The first panel addressed international legal perspectives on the Afghanistan situation. The second focused on the contemporary issues in business and human rights. Below you can find a summary of what was debated during the conference.

First Panel - International Legal Perspectives on the Afghanistan Situation

The panel was moderated by [Darius Nasimi](#) with the following speakers: [Professor Jill Marshall](#), [Dr Alex Gilder](#), [Dr Mohammad Sabuj](#), [Dr Aldo Zammit Borda](#) and [Dr Nooralhag Nasimi](#).

Professor Marshall began by explaining some of the work she and RHUL have been doing with the Afghanistan and Central Asian Association founded by Dr Nasimi. Professor Marshall explained how women in Afghanistan are being protected or not by and through International Human Rights Law that purports to protect women's rights. Despite these, women's rights in Afghanistan have been constantly violated with many institutions working to protect women in Afghanistan being banned since the Taliban reclaimed power in August 2021. In terms of what can be done to repair this situation, Professor Marshall highlighted some aspects of international human rights law that could be used to help women in Afghanistan. Feminist perspectives and methods were mentioned as a way forward to include women's experiences to infuse any international legal perspectives. Such approaches connect to recent UN Security Council Resolutions on survivor-centered approaches to women's rights.

Dr Alex Gilder discussed the prospect of a peacekeeping mission in Afghanistan. He started by asserting that he is not hopeful in relation to the process of peacekeeping in Afghanistan. He explained that the United Nations charter does not regulate peacekeeping and the topic has developed organically. For peacekeeping missions, the United Nations uses Chapters 6 and 7 of its Charter, regardless of the fact that such instruments do not address peacekeeping. The goal of peacekeeping is to monitor a ceasefire and it can assist with humanitarian aid to protect civilians and local communities. For peacekeeping to work, it is necessary for the host state to liaise and accept the peacekeeping mission. An example of how this does not work is the case of South Sudan. The United Nations peacekeeping mission should not act against the armed forces of the host state. In the case of Afghanistan, there is a need for the United Nations to be involved, but what will the mission need to achieve? Would this mission support the Taliban government? What relationship would the United Nations have with the Taliban? How would it have consent from the Taliban to investigate them? The United Nations has not address these questions yet and it appears that they are not interested in such mission. Moreover, it is hard to envisage a United Nations peacekeeping mission when the Taliban is in power.

Dr Mohammad Sabuj's paper focused on politics and international Islamic law in Afghanistan. He addressed the historical events in Afghanistan from 1929 until today. Dr Sabuj emphasised how Afghanistan was a peaceful country until 1978 when the Soviet Union invaded the

country. He highlighted that Pakistan has been intervening in Afghan politics which is not helpful in terms of the country's stability. He addressed the rise of Al-Qaeda and the Taliban and, in sequence, Dr Sabuj talked about the changes in International Law and Politics after 9/11, especially the legality of pre-emptive, anticipatory and preventive self-defence. The result was that the liberal intervention in Afghanistan sought to promote military intervention to overturn dictators and protect civilians. It also implemented the statebuilding project in Afghanistan which it was not successful due to the imposition of western principles in Afghanistan and the fact that its neighbours, such as Pakistan, was not really helping Afghanistan, but actually trying to cause havoc in Afghanistan to promote their political interests. In the end, Dr Sabuj demonstrated the incompatibility between Islam and liberal ideas to conclude that the Taliban will have to rethink Islamic principles and adapt to contemporary world views to promote the progress of the Afghan people.

Dr Aldo Zammit-Borda discussed the United States sanctions and the historical narratives emerging from the International Criminal Court in relation to Afghanistan. Dr Borda addressed the role of the United States in Afghanistan and how history has been written through the International Criminal Court. A procedure in the International Criminal Court commenced in 2017 to investigate crimes committed in Afghanistan since 2003. Initially, the International Criminal Court rejected the continuation of the procedure because it was not in the interest of justice. This was successfully appealed with a decision to start the investigation. Because United States behaviour in Afghanistan would be one of the subjects of this investigation, the United States announced economic and travel restrictions on International Criminal Court prosecutors. In 2021, these sanctions were lifted but the United States still objected to the investigation. Dr Borda explained that the way courts write history should follow the idea of responsible history, which is based on truthfulness, needing accuracy and sincerity. For Afghanistan, the prosecutor should not let external pressures influence their work when prosecuting because history produced by the criminal cases might not reflect accuracy and sincerity in such cases.

Lastly, Dr Nasimi talked about his life experience as an Afghan refugee in the 1990s. He explained that Afghans do not have much representation around the world and he explained how he started the Afghanistan and Central Asian Association, firstly in South London then in West London. The Afghanistan and Central Asian Association helps people coming here from Afghanistan. He is currently aiming to set up an Afghan Diaspora Council in London to debate how they can help with the future of Afghanistan. He wants more universities to be established in Afghanistan. He told us that Afghanistan is a key country in Asia and it is important for peace to be reached so the country can prosper.

Second Panel - Evaluating Contemporary Issues in Business and Human Rights

The panel was moderated by [Dr Aislinn O'Connell](#) with the following speakers: [Dr Irene Antonopoulos](#), [Dr Sufyan El Droubi](#) and [Mr Paul Kinninmont](#).

Paul Kinninmont started by debating the topic of reparations for human rights violations made by a subsidiary when the parent company is located in England. He started talking about a problem related to international organisations located in England and Wales and using their place of business in England and Wales to protect themselves. Legally, corporate personality

shields companies in the UK from unlawful conduct abroad by subsidiaries. Mr Kinninmont stated that tort law enables claims to be brought against a parent company in the United Kingdom. First the practical issues were debated, such as disclosure. How can you get documents from remote places? Also, if the corporation decides to restructure their assets, there is not much that can be done. Another obstacle is establishing jurisdiction. It has to be established that England is the forum for the dispute and that is when the question of *forum non convenis* arises. To be successful, the claimant will have to establish if the parent company has a duty of care towards third parties interacting with the subsidiary. Mr Kinninmont reviewed the case law in England regarding tortious liability of parent companies in relation to their subsidiaries and then addressed international developments regarding business and human rights. He concluded that the international instruments follow a similar approach to the question of tort in English Law.

Dr Irene Antonopoulos talked about the relationship between human rights and the environment and how this relates to business and human rights. Such relationships are not straightforward. Human rights seek to protect humans: what about protection of the environment *per se*? The European Court of Human Rights has started to address some of the issues of human rights and environment protection by first stating that Member States to the European Convention on Human Rights have to take action in relation to climate change because they relate to human rights concerns. The problem faced by the European Convention on Human Rights is that it applies to Member States and not companies that are violating environmental law which impact on human rights. Dr Antonopoulos said that, in Europe, this is a concern because the European Court of Human Rights might not be the best forum to deal with environmental problems. This might be a deviation from the original goal of such Court.

Dr Sufyan el-Droubi talked about the intersection between international law and human rights. Dr Droubi stated that the business and human rights movement can contribute a lot to the problems faced in society but the approach needs to be adapted. He asserted that International Law is part of the problem because it overprotects corporations and underprotects the victims of human rights violations. The current investor-state dispute settlement system and the World Trade Organisation tend to have mechanisms to protect corporations. The disparity between compensation in investor-state dispute settlement system awards and redress for environmental violations is quite high. There are several mechanisms employed in the World Trade Organisation to stop countries from giving subsidies to renewable energies, for instance. Dr Droubi concluded by saying that business and human rights should find new routes, away from international law, to provide paths that are better suited to protect human rights.