

## The relevance of private actors in the transnational sphere for just peace governance

Baumgart-Ochse, Claudia; Coni-Zimmer, Melanie; Flohr, Annegret; Jakobi, Anja P.; Wolf, Klaus Dieter; Gertheiss, Svenja; Herr, Stefanie; Jacobs, Andreas; Jüngling, Konstanze

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# **The Relevance of Private Actors in the Transnational Sphere for Just Peace Governance**

PRIF Research Department III

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# THE RELEVANCE OF PRIVATE ACTORS IN THE TRANSNATIONAL SPHERE FOR JUST PEACE GOVERNANCE<sup>1</sup>

## PRIF RESEARCH DEPARTMENT III

### 1. Introduction

PRIF's research programme "Just Peace Governance" (JPG) is defined by two key questions. Firstly, to what extent are conflict situations and processes determined by differences in the understanding of justice? Secondly, how and under what conditions do what forms of governance contribute to a peaceful management or to a violent escalation of justice-related conflicts? (Daase 2011: 1). The establishment of Programme Area III ("Private Actors in the Transnational Sphere") at PRIF is based on the assumption that neither of these two key questions can be sufficiently addressed without taking into account the rise and changing roles of private actors in the transnational sphere.<sup>2</sup> These roles increasingly matter when we want to explain the rise of conflicts, the failure of negotiations, or the success of governance approaches dealing with disagreements over issues of recognition, procedural or distributive justice. The political relevance of these non-state actors becomes most obvious when they transfer "traditional" justice-related conflicts to the transnational sphere where governmental or intergovernmental approaches to coping with them adequately reach their limits.

The transnational sphere has emerged as a space in which such disagreements increasingly originate or become manifest. This development is part of the global power shift which not only affects relations among states but also those between states and international institutions and between the public and the private sphere (Mathews 1997). With regard to both, the challenges to just peace governance, as well as the governance forms by which these challenges might be successfully coped with, non-state actors have become a crucial factor. However, the relationship between private actors and just peace governance is far from clear. It is a complex one, due to the various and ambivalent role shifts such different non-state actors like criminal gangs, non-state armed groups, transnational business corporations, or civil society groups are undergoing and the very different and often new forms of interplay among themselves, with states and with intergovernmental organizations that have developed during the recent years (Wolf 2008). For example, in violent conflicts about resource exploitation, the role of private corporations need not necessarily be that of problem causers who generate a distribution of material wealth that is perceived as unjust by local communities. The Kimberley Process can serve as one of many examples of the complexity of roles business actors can play. In this multi-stakeholder governance initiative industry cooperates with civil society organizations and governments to prevent the transborder flow of rough diamonds used by non-state armed actors to finance wars in Africa. While non-state armed groups are the ultimate addressees of regulation in this case, they may appear as governance partners and co-regulators in the case of the Geneva Call initiative with regard to the ban of anti-personnel mines (Herr 2010). With regard to civil society, the Israeli-Palestinian conflict in particular highlights the causal nexus between the religious norm-entrepreneurship of civil society groups in the region itself, but also in the different Diasporas, on the one hand, and peace and violence, on the other (Gertheiss 2011).

<sup>1</sup> This paper is a collaborative effort of the members of Programme Area "Private Actors in the Transnational Sphere" at PRIF. A draft version was written by Claudia Baumgart-Ochse, Melanie Coni-Zimmer, Annegret Flohr, Anja P. Jakobi, and Klaus Dieter Wolf. Svenja Gertheiss, Stefanie Herr, Andreas Jacobs and Konstanze Jüngling made valuable contributions to the final version. We wish to thank Simone Wisotzki for her helpful comments.

<sup>2</sup> In the following, the term private actor will be used interchangeably with non-state actors (NSAs).

In one way or another, each of these types of non-state actors has contributed to the multiplication of justice perceptions, the contestation of existing and the advocacy of new justice claims, but also to new and innovative governance approaches towards solving conflicts and disagreements about the requirements of just peace. Thus, non-state actors may weaken the state as the institution that is primarily held responsible for the common good and claiming the monopoly on the legitimate use of force, but they may also compensate for the failure of governments to establish or maintain a just and peaceful political order. Taking together these different roles non-state actors can play, the ongoing power shift to private actors can obviously have negative as well as positive implications for just peace governance.

This ambivalent relationship between non-state actors in the transnational sphere and just peace governance raises an analytical puzzle for all those among the advocates of global governance who hail the appearance of private actors on the stage of world politics as the advent of saviors who have to offer urgently needed new resources for good governance. But at the same time, this ambivalence also challenges the view of those state-centrists who primarily regard the privatization of world politics as a devilish challenge that may weaken statehood as the major political achievement to secure peace in its very core, with predominantly negative consequences for the rule of law and democratic accountability.

Our research addresses this puzzle by critically investigating the explanatory value and the potential policy recommendations that could be drawn from two guiding hypotheses: the “inclusion helps” and the “inclusion hurts” hypothesis. They offer opposing answers to whether and in how far the acknowledgement (“inclusion”) of claims by non-state actors to recognition, representation and distribution facilitates or hampers (“helps”/“hurts”) the prospects for peaceful conflict resolution. These two hypotheses are directly linked with PRIF’s overarching research interests: Under what conditions can the involvement of private actors contribute to the success or failure of just peace governance? Against this background, the goal of this paper is to conceptualize our approach to studying the interrelationship between non-state actors and peace, governance and justice, respectively.

Obviously, the assumption that the inclusion of non-state actors may “help” or “hurt” presupposes an affirmative response to the general question “Do non-state actors matter for peace?” in the first place. It is only from here that further questions about the relevance of how they are involved in governance processes, or of the types of justice-related problems in which they are involved become meaningful. In order to clarify our notion of private actors’ relevance for *peace*, in section 2 we claim that a power shift has been taking place from states to non-state actors, from the intergovernmental to the transnational sphere. Introducing the three types of non-state actors we are concerned with, we further claim that this shift fundamentally affects the pacifying “bright” side as well as the conflict-breeding “dark” side of the Westphalian political order. Section 3 offers a typology of the roles non-state actors can take in the context of *governance*. The research-guiding conjecture is that non-state actors are not only causing problems for just peace governance, but can also contribute to its effectiveness. Section 4 visits non-state actors at the justice and peace conjuncture. We demonstrate how PRIF’s JPG programme can benefit from research on private actors and transnational relations by specifying the relevance of the transnational sphere for *justice* related problems of peace governance. Here we start out from the conjecture that the rise of non-state actors and their taking up of new roles in governance leads to a multiplication of justice claims that enhances the risk of violent clashes.

## 2. The Power Shift Sideways and Westphalian Peace

PRIF's Just Peace Governance programme assumes that global transition processes are taking place which involve reconfigurations of power and interests and which are expected to result in conflicts relating to various dimensions of justice (Daase 2011: 10-11). These power shifts do not only take place between states or groups of states. States increasingly share their power with non-governmental organizations, business actors, and international organizations. Our point of departure is the power shift "sideways", i.e. from the state to private actors (see also Hall and Biersteker 2002, Rittberger et al. 1999). With regard to the interrelationship between private actors and the transnational sphere on the one hand, and peace, on the other, we start from the conjecture that ***(C1) there is a power shift from the state to non-state actors which affects the peace-building achievements generally attributed to the Westphalian order.*** If we seek to explore the implications of the rise of the transnational sphere for securing just peace the first challenge that comes to mind is the *threat* it poses for the existing global political order. The emergence of the modern state system is generally dated back to the Peace of Westphalia in 1648 (Cavanaugh 2009, Philpott 2001). With this peace treaty, a system of sovereign states was established and power centralized in the hands of states. Obviously, the rise of non-state actors would have consequences for debating the functioning of this system as a peace system. To shed some more light on the potential direction of these consequences we will first elaborate on our understanding of this "power shift sideways". To whom is power shifting? Are there any limits to the asserted power of the transnational sphere?

### *The Power Shift "Sideways": Relevant Non-state Actors in the Transnational Sphere*

Transnational relations comprise interactions "across state boundaries when at least one actor is not an agent of a government or an intergovernmental organization" (Nye and Keohane 1971: 332). In our research we are interested in peace-relevant interactions in the transnational sphere that may take place between private actors and state actors (states and international organizations) and between private actors only. In an often quoted distinction Czempiel (1991) anticipated a power shift sideways by the rise of what he metaphorically labelled "Gesellschaftswelt" and "Wirtschaftswelt". These two "worlds" have become constitutive of the transnational sphere, highlighting the growing importance of civil society and business corporations as non-state actors that are organized and operate across borders.

Broadly speaking, *civil society* refers to the "domain of associational life situated above the individual and below the state" (Wapner 1997: 65). Although originally developed within the context of the nation state, the concept has long been transferred to the sphere beyond the state (Walzer 1995, Kaldor 2003) where transnational social movements and non-governmental organizations have become increasingly active as norm-entrepreneurs and successful as promoters of human rights (Risse et al. 1999, Finnemore and Sikkink 1998, Tarrow 2001, Brühl and Rittberger 2002). The availability of new telecommunication media allows them to communicate, organize their activities and spread information – at least to some extent - under the radar of state control. While civil society organizations claim to promote a perceived common good, the primary aim of *business actors* is to generate profits. Related to processes of economic globalization the number of transnational corporations has almost doubled between 1995 and 2005, their transnational activities measured by the sum of foreign direct investments have also sharply increased (Coni-Zimmer 2011, Held et al. 1999). The turnover of the biggest transnational corporations by far exceeds the gross domestic product of most states. Financial transactions take place in virtual spaces and can effectively evade the jurisdiction of territorial states. Not only the sheer number of transnationally active NGOs and business actors has risen, it has been convincingly argued that they have become increasingly important and influential actors in global politics (Cusimano et al. 2000, Risse 2002, Avant et al. 2010).

With their particular challenge to the state's monopoly on the use of force, *illicit actors*, such as criminal organizations and non-state armed groups, have to be added as a third type of non-state actors in the transnational sphere to whom power has been shifting. Crime and non-state violence (e.g. civil wars and terrorism) have always challenged state sovereignty. They have become even more important security concerns since the rise of "new" or "small" wars (Kaldor 2007, Daase 1999), increasingly after the end of the Cold War (Jakobi and Wolf 2011) and in areas of declining statehood.

**Table 1: Types of Non-State Actors as Reflected in Research at PRIF**

	<i>Business</i>	<i>Civil Society</i>	<i>„Uncivil“ Society</i>
Actors	Transnational Corporations	NGOs	Criminal Gangs and Non-state Armed Groups
Core Project	Governance of Natural Resources	Religious Organizations in the United Nations	Global Crime Governance

*The Power Shift “Sideways”: Implications for Peace?*

A common narrative holds that the Peace of Westphalia ended decades of religious wars which had erupted in Europe over doctrinal differences between Protestants, Catholics, and Calvinists in the wake of the Reformation. The Peace of Westphalia recognized the imperative to divorce the powers of the state from the duty to uphold any particular faith (Skinner 1978: 352, Held 1995: 33). It gave the first impulse for the gradual process of functional differentiation between the state and religion (Casanova 1994, Eisenstadt 2000) and seemed to have successfully expelled religion as a source of violent strife from the interactions between states. It did so by acknowledging the sovereign authority of the European princes over their territory. The outcome of this specific historic event thus was a system in which sovereign territorial states became the dominant actors while others subsequently played only marginal roles.<sup>3</sup>

This narrative has been questioned by several authors who claim that this “simple, arresting, and elegant image” (Krasner 1995: 115) is nothing more but an invented template which is used to denote state sovereignty in contemporary International Relations theory but does not capture the historic complexities of the 17th century. Rather, the principles of autonomy and territoriality, which characterize the sovereign state, were in fact a product of 19th and 20th century political and legal thought (Oslander 2001) and have been violated and compromised time and again in international history (Krasner 1995). Which of these different readings of history is more accurate is difficult to decide. In any case, the notion of the modern sovereign state still serves as a powerful reference point for contemporary theorizing about peace-building.<sup>4</sup>

But does this also imply that the prospects for just peace would be threatened by a power shift from the state system to the transnational sphere which would inevitably weaken the Westphalian order?

<sup>3</sup> International lawyers therefore see the Peace of Westphalia as marking the advent of traditional international law which basically reflected state practice (Koh 1997: 2607). Originating in Europe in the 17th century, the Westphalian idea of sovereignty eventually became a global principle in the era of colonial independence in the second half of the 20th century, the “terminus of the long campaign of the state to capture the territory of the globe” (Philpott 2001: 153).

<sup>4</sup> The state's assumed capability to bring peace – as it did with regard to religious violence in the European wars of religion – has re-emerged in the controversial debate on state-building as the prime tool for peace-building (Call and Wyeth 2008, Richmond and Franks 2009).

The answer to this question is much more complex because its state-centeredness makes this order itself highly ambivalent as a peace project. Historical evidence provides more than enough support for the “dark side” of the modern state: its capability for war and repression. The European states were the first to increasingly monitor, control, and monopolize the means of violence, thereby creating a contrast between the violence of the state's sphere and the relative non-violence of civilian life (Tilly 1992: 69). While the civilian population as well as local or regional power-holders were gradually denied access to coercive means, the state expanded its own armed forces. The military became a powerful instrument in the hand of the state which was employed to subdue internal rivals as well as to secure external borders. The revenues of state sovereignty which rulers enjoyed led them to expand the territory under their control – which, in turn, resulted in war, if neighbours followed the same logic (Tilly 1992: 70-71). Although the evolution of international law, international humanitarian law, and universal human rights has sought to tame the belligerence and repressive coercion of states, they remain highly ambivalent actors in international politics which dispose of the capability to exert violence both internally and externally.

Thus, the emergence of the Westphalian system and its constitutive elements, the modern states, has yielded positive and negative effects with regard to peace and security. If a fundamental power shift from the state to private actors is taking place in contemporary global politics, the question arises what this new shift means for the possibility of a peaceful international order. Again, we can observe both negative and positive repercussions: On the one hand, the declining power of the state has resulted in an increase of non-state violence and a decline of the state monopoly on the use of force. In recent decades, the number of inter-state wars has decreased while civil wars have been on the rise, with sub-state violent actors challenging the authority of the state in many regions of the world. The debates on fragile and failed states point to the dangers that follow from the collapse of the monopoly of force in a given territory, leaving a power vacuum which may be exploited by criminal gangs and violent non-state groups.

On the other hand, transnational private actors, such as civil society organizations, business actors, criminal gangs or non-state armed groups, are themselves highly ambivalent with regard to inducing or threatening peace. Infused with diverging, culture-bound conceptions of what is just and good, they contribute to the normative pluralisation of global politics. In this way they add to the multiplication of potentially controversial and divisive normative claims. Such claims may lead to violence and even to wars if actors want to realize them at any cost. But private transnational actors also have a strong record of bringing a concern for peace, human rights, and the common good into international relations. The emergence of the universally accepted human rights regime is not least a result of the persistent activism of civil society organizations which have invested time, energy, and resources into the promotion of human rights across the world (Risse et al. 1999). Networks of non-governmental organizations have successfully campaigned against various types of weapons, such as anti-personnel landmines, which violate international humanitarian law (Cameron 2002). Others have fought for the establishment of the International Criminal Court, seeking to do justice to the victims of crimes against humanity (Deitelhoff 2009). There are many more examples of transnational non-state actors which have sought to contribute to a more peaceful global order in various ways.

In sum, the recent power shift from states to non-state actors can have both positive and negative implications for peace and security because of the ambivalent nature of the state's monopoly on the use of force. The newly emerging forms of governance therefore yield the question under which conditions the inclusion of private actors enhances the capability of the neo-Westphalian system to make and sustain peace; and under which conditions this inclusion endangers peace.

### 3. The Ambivalent Roles of Non-State Actors for Governance

As a result of the transformation process described in the previous section, the rise of non-state actors may be perceived as a threat to an interstate peace system resting on the pillars of Westphalia, but it can also be seen as the chance for opening-up new resources with regard to governance tasks that could not be effectively fulfilled within the limits of a system that exclusively relies on a functioning state. State failure, the rise of non-state actors, and the emergence of new forms of regulatory interplay between public and private actors (Wolf 2008) go often hand in hand. They occur when the state is either unwilling or incapable to fulfill certain governance functions, or deliberately delegates functions to non-state actors, but also when non-state actors take over political functions without being explicitly authorized. With regard to the OECD world, the resulting “transformation(s) of the state” (Leibfried and Zürn 2005) have been described as a role shift from being no longer primarily a power monopolist but a manager of interdependencies and an enabler of public goods (Genschel and Zangl 2007). While no longer being “the natural problem solving unit” (Mathews 1997: 65-66; see also Strange 1996, Cutler et al. 1999, Hall and Biersteker 2002) and sole provider of public goods itself, the state still has the ultimate responsibility for their provision to its citizens. In the domestic context as well as in the international realm the “new” state thus still holds the competence to enable, regulate or dismiss private actors’ contributions to governance (Wolf 2012).

Even governance efforts that aim at the provision of the public good “peace” can no longer be perceived from a state-centric perspective alone, but have to take into account non-state actors as threats, partners, or instruments (e.g. Cerny 2000, Nye 2010, Deitelhoff and Wolf 2010). Non-state actors are not only threatening the “bright” side of statehood that is associated with the effective provision of peace, but they can also compensate for its “dark” side, state failure, including the lack of human security. For further analyzing this double-edged role, we start from the conjecture that ***(C2) non-state actors are not only causing problems related to peace governance, but can also contribute to its effectiveness.***

As mentioned before, the power shift from state to non-state actors is not only visible in an increased importance of non-state actors. The roles of non-state actors also have changed significantly. To conceptualize this change, four different roles can be distinguished: first, non-state actors can cause the problems that call for governance efforts to secure peace; second they can be the direct or indirect addressees of regulation; third, as advocates, they can lobby for certain regulations; and fourth, as co-regulators, they can become governance partners.

As ***cause of problems*** non-state actors can threaten peace by directly engaging in violence, contributing to social unrest and other forms of conflict. Typically, non-state actors as problem causers challenge state powers or societal consent; they are the ones that render regulations ineffective or make regulations necessary in the first place. As such, they are responsible for a large number of “behind-the-border problems” (Zürn et al. 2006: 16). These problems often concern core functions of statehood: Civil wars have become more common than inter-state violence, leading to the escalation of violence within states (e.g. Kaldor 2007, Kalyvas 2006). Non-state armed groups oppose the state monopoly of power. Organized criminal groups have equipment that can supersede any law enforcement capabilities (e.g. Andreas and Price 2001, Jakobi and Wolf 2011). The causes of conflicts among these groups and between them and states are often related to justice in one or more of its three dimensions. They may raise issues of inequality, representation, or recognition (see section 4) between groups (e.g. Cederman et al. 2011, Herr 2010).



Not all challenges posed by non-state actors have their origin in the use of violence. The globalization debate has frequently pointed at environmental exploitation and degradation due to business activities. The power of transnational corporations can effectively undermine international norms, national laws, and social concerns, bypassing democratic decision-making and contributing to a “race to the bottom” with regard to labour, social and environmental protection. Deregulation and privatization of former government services (new public management in developed countries) and the building-up of private service sectors related to functions of the state (for example private education in developing countries) have led to a further diminishing of strong state institutions. Public private partnerships have been established to mediate between these concerns (e.g. Dingwerth 2007, Beisheim and Dingwerth 2008).

Violence, organized crime and commercial interests may be the usual suspects, but they are by far not the only non-state origins of problems that put states under pressure: civil society engagement can also lead to important challenges. The growing importance of religious actors is a particular case in point. Religious actors can cause problems (or be seen as causing problems) when they question laicism in state governance, or when they publicly promote religious belief in an environment that considers this as a private matter (see Baumgart-Ochse 2010). Different cultural or religious contexts may “clash” (Huntington 1996) and escalate. For instance civil society can mobilize for violent conflict, as has happened in the case of ethnic or religious conflicts (e.g. Fearon and Laitin 2003). In the most extreme case, terrorists legitimize violence as fight against religious and cultural domination.

Often, but not only because they may be regarded as problem causers, non-state actors can be the *addressees* of regulatory efforts by the state(s) at the domestic or, increasingly, at the international level. Regulation may be legally binding or voluntary. Regulation can for instance consist in the criminalization of certain activities (UNODC 2004). But regulation may also obligate private actors to implement certain policies. For example, banks can be required to monitor financial transfers, weapon’s manufacturers to mark guns, or other companies to monitor the sale of chemicals required for bombs or drugs (e.g. Jakobi 2011). Business activities can be regulated with regard to the protection of labour rights, or to environmentally or socially responsible behaviour, including the creation of employment opportunities in host countries (e.g. Coni-Zimmer 2011, Deitelhoff and Wolf 2010).

While state policies address business corporations primarily with regard to the material consequences of their activities, civil society actors are often addressed with regard to ideational consequences: For instance, non-democratic countries try to prevent human rights activism. Other countries establish laws that make religious alternatives difficult.

In a third role, non-state actors can be *advocates* lobbying for preferred governance patterns and policies. In this role non-state actors have been visible in research for most of the time, starting with the acknowledgement of their influence on negotiations and analyzing the methods of drawing attention to their specific lobbying task (e.g. Prakash and Gugerty 2010). The concerns that are raised by non-state lobbyists may range from private interests to the common good, often with blurring boundaries. Business actors may advocate a free market or tax laws that are favorable to them, religious actors may lobby for religious freedom or for more influence on state affairs. Groups from civil society may raise governmental concern about the activities of other non-state actors (such as corporations) and thus establish a triangular governance configuration (see Jakobi and Wolf 2011).

In International Relations, non-state actors have been conceptualized as advocates mainly with regard to actors from civil society. Their number is abundant, and they differ widely in scope, focus and organization (Finnemore and Sikkink 1998, Keck and Sikkink 1998). Groups have

lobbied for stricter regulations of weapons, for instance related to the manufacturing and sale of landmines to state and non-state actors (Herr 2010, Wisotzki 2009). Others formed coalitions to combat crimes against humanity, human rights violations or criminal activities, often leading to international norms (e.g. Nadelmann 1990, Finnemore and Sikkink 1998). Diasporas lobby in host and home states for support of their ethnic or kin groups (e.g. Shain and Barth 2003). Corporations, notwithstanding their long tradition of lobbying for business-favorable regulations worldwide (Sell 1999), are also gaining increasing attention as norm entrepreneurs in the debate about corporate social responsibility (CSR), where first movers lobby for collective self-regulation on the basis of certain environmental or human rights standards, or transfer such standards from home to host states (Deitelhoff and Wolf 2012, Flohr et al. 2010).

The power shift from state to non-state actors and the role shifts of both public and private actors have gone along with what may be called a responsibility shift: the rising significance of non-state actors as co-regulators. Co-regulation refers to non-state actors supporting or even – in the form of private self-regulation - replacing regulation by the state or by intergovernmental institutions (e.g. Schuppert 2009, Flohr et al. 2010). This is most common in business sectors, where voluntary self-regulatory standards or public private partnerships evolved as important regulatory tools. Co-regulation can even take place in core areas of state responsibility. It has been shown that during the last two decades business actors increasingly take over political roles, including peace-related activities: Corporations contribute to governance in zones of violent conflict, for example by combating corruption, conducting community development programmes, or introducing standards for dealing with public and private security forces (Haufler 2001, Deitelhoff and Wolf 2010). Non-state armed groups adhere to international regulations preventing the use of landmines or the use of child soldiers (Herr 2010).

In general, co-regulation is a necessity in zones of conflict, or where statehood is limited or never fully developed (Risse 2011). But as stated before, even within the OECD, the state has redefined its main governing functions, turning into a manager of the interplay of the regulatory activities of different types of actors rather than being the prime regulator itself (Wolf 2008, Beisheim et al. 2011, Genschel and Zangl 2008). It is typical of the neo-Westphalian era that this trend is further reinforced by activities of international organizations that start managing – or orchestrating – not only state but also non-state actors (Abbott et al. 2010). International public private partnerships, the involvement of non-state actors in global standard setting and enforcement, as well as international oversight of private standards mark these trends (e.g. Wolf 2012, Börzel and Risse 2005, Paun 2011, Dingwerth 2008). The regulatory interplay of state and non-state actors thus becomes more complex not only within but also beyond the state.

Table 2 categorizes the different roles that non-state actors can play for just peace governance, including some of the examples mentioned. The spectrum ranges from more passive to more active roles. The distinctions are analytical in the sense that they offer a certain perspective on actors and their behaviour. A concrete empirical actor or behaviour may be categorized in more than one category. For instance, banks can be co-regulators and addressees of regulation at the same time with regard to money laundering. Yet, in any of the roles distinguished here, non-state actors have become more important over time, due to the relative increase of wealth, expertise, public attention and other resources accumulated by them.

**Table 2: Roles of Non-State Actors in the Context of Governance**

<i>Type</i>	<i>Cause of Problems</i>	<i>Addressees</i>	<i>Advocacy</i>	<i>Co-Regulators</i>
Business actors	Companies violate human rights	Companies regulated by international law	Companies lobby for deregulation	Companies participate in global standard-setting
Civil society groups	Diasporas aggravate conflicts in home states	Religious communities expected to comply with international norms	NGOs promote human rights standards	Diasporas form exile governments
Non-state armed groups/criminal gangs	Criminal gangs weaken state's monopoly of force	Human smugglers criminalized by international law	Non-state armed groups lobby for self-determination	Non-state armed groups commit themselves to humanitarian law

Just peace governance is affected by the ambivalent roles non-state actors can play in two different ways: On the one hand, non-state actors can be a challenge to peace governance or contribute to its effectiveness in a comparative perspective across the types “civil society”, “business” and “uncivil society”. Some types of non-state actors may more likely than others be the ones that cause problems, lobby for a regulation of these activities, or emerge as co-regulators in a given field. On the other hand, however, within each single type of non-state actors we can already observe the same ambivalence: For instance, non-state armed groups regularly challenge the state, yet in some cases they also participate in implementing regulations to provide public goods, protect civilians and the like. Corporations can cause problems in production countries, yet the same companies also deliver social services and establish labour protection that can go beyond the legal requirements. In our research we are interested in the conditions under which non-state actors play certain roles rather than others in order to explain the rise of conflicts or the success of peace-oriented governance approaches. The last section of this paper addresses the relevance of justice as an underlying substance matter, more precisely the role of issues of recognition, procedural or distributive justice.

#### **4. Non-State Actors and Justice**

PRIF's new research programme departs from the presumption that justice plays a central role in causing and prolonging, but also in transforming or ending violent conflicts. Justice, it is alleged, is a strong motivational force for intentional actors, perceived injustices may lead them to resort to extreme behaviour and struggles for justice may lead to violent conflict. Hence, there is no simple confluence of justice and non-violence or justice and peace (Brock 2010, Müller 2011). Because of its strong impact on human behaviour and its inherently contested nature (Zartman 2007: 18), justice plays an ambivalent role, and PRIF's research is focused on this ambivalence (Daase 2011: 5).

To build a bridge between Political Theory's normative research on global justice, on the one hand, and International Relations, on the other hand, and in order to turn justice into a fruitful concept for empirical research, PRIF focuses on the notion of *justice claims*: Actors' behaviour is, generally, assumed to be driven by their perceptions of the world. Rather than – seemingly – objective instances of justice or injustice, actors' justice perceptions motivate their behaviour. Hence, the

links and ambivalences of justice and peace, operate on justice claims. Our research departs from the *conjecture (C 3) that the rise of non-state actors and their taking up of new roles in governance leads to a multiplication of justice claims that enhances the risk of violent clashes*. Analytically, such justice claims may be understood as relating to one or more of three dimensions of justice: material distribution, rooted, primarily, in the economic order; recognition entrenched in the social status order (both first order issues of justice); and political representation that manifests in the political order (second order issues of justice) (Fraser 2005).<sup>5</sup> Justice claims relating to any of these dimensions and expectations to correct for injustices have long been addressed to the state and its institutions only. And as the state continues to be a central actor, provider and denier of justice, PRIF's other Programme Areas continue to focus on the role of states in the justice and peace conjuncture. Conflicts over justice, however, do not only arise between states, nor are states the sole providers of solutions to these conflicts. Non-state actors are involved in the conjuncture between justice and peace at various levels.

Against this background, our research departs from the observation of justice claims that are increasingly articulated by or directly addressed to non-state actors. A primary result of the rise of non-state actors in the transnational sphere, therefore, is a *multiplication of justice claims* as potential causes of new conflicts. An exclusively state-centric focus may either overlook these conflicts altogether, or turn out as being incapable of identifying their root causes and possible paths to solution. In order to fully understand the peace and justice conjuncture against this background, the role of non-state actors in justice-related conflicts is put centre stage.

#### *Global Justice and Political Theory*

In Political Theory, debates about global justice depart from the philosophical axiom that duties of justice are particularly strong moral duties owed by humans to one another under certain specified circumstances. More precisely, duties of justice impose stronger requirements on actors than duties of ethics or humanitarianism (Hahn 2009). Accordingly, Political Theory's research on global justice is driven by a number of questions concerning the applicability of justice duties in the global arena. It is debated in particular, on what basis duties of justice arise between actors: Do duties of justice arise solely against a background of institutional relations between actors, e.g. because they live together within the same state and under the same laws? Or is justice already owed by anyone in a position to help other, less advantaged groups or individuals (Nozick 1974, Arneson 1999)?

Applied to the realm of global justice, the debates in International Political Theory are similarly devoted to establishing the conditions under which duties of justice arise between states and societies in the global arena. This is an important issue in the communitarianism-cosmopolitanism debate.<sup>6</sup> The communitarian perspective alleges that strong moral obligations, such as duties of justice, can arise only within dense institutional contexts establishing close social relations, such as nation states that tax their citizens and redistribute between them (Nagel 2005, Miller 2007). Cosmopolitan scholars such as Benhabib, Beitz or Rawls claim that standards of justice and morality transcend national and state boundaries (Morrisse 2000: 239). Others argue that moral justice obligations either exist simply because conditions of extreme poverty morally compel those who live in better circumstances to help others (Singer 2007), or that they result from social connectedness within global economies and globalized supply chains (Young 2006). Responsibility for justice may result either from fault and *liability* (negative duties to abstain from doing harm) or from the simple *ability* to help (positive duties to help where possible). In both arguments,

<sup>5</sup> The differentiation of justice as distribution, recognition and representation is an analytical one. Empirically these dimensions often appear amalgamated.

<sup>6</sup> This debate over the "domains of justice" in International Political Theory is also reflected in the self-perceptions of non-state actors. For instance, transnational human rights organizations necessarily feature a cosmopolitan understanding of justice.

however, responsibility also exists in the global context (Hahn 2009: 36-37). In addition to these questions surrounding the origins of justice duties, political theorizing also focuses on the ‘what’ of justice. It is debated, in particular, whether justice requires a more or less egalitarian distribution or solely a minimal endowment for all actors, i.e. a basic needs or human rights approach (Hahn 2009).

Our own research takes the questions raised in International Political Theory about global justice as a starting point and applies them empirically to the roles played by non-state actors. Non-state actors pose challenges as well as answers to many of the questions posited in the global justice debate. And they do so in ways that potentially collide and thereby nurture conflicts over requirements of justice. As concerns the proper origin and frame of justice duties, for example, NGOs and other transnational movements often are motivated by a strong conviction that justice is owed not only within nation-states – which is why they advocate for issues such as international debt relief, corporate human rights responsibilities across borders or a global Tobin tax. Furthermore, non-state actors suggest varying answers to questions about the ‘what’ of justice: Corporate actors, for example, may well subscribe to a basic-needs or human-rights approach, and the concept of CSR may well be read as a corporate endorsement to this approach. They are, however, unlikely to ever support a justice approach aimed to achieve truly egalitarian distribution. Furthermore, while certain non-state actors are likely to prefer and advocate for a liability model of responsibility for justice in the global sphere, others may be strongly opposed to this because it would weaken their claims to a fair share in distribution or recognition on the basis of solely positive duties of justice.

#### *The Rise of Non-State Actors and its Implications for Justice*

These examples show that conflicts over justice do not only arise between states, nor are states the sole providers of solutions to these conflicts. Non-state actors are involved in the conjuncture between justice and peace at various levels and in more active or more passive roles similar to those attributed to them in the context of global governance (see Table 2 above). Firstly, they may be the *sources of injustices*, in particular in situations that relate to first order questions of justice over material distribution and recognition. Indeed, while states are generally expected to correct for injustice, its origins often lie within the private realm. States are, however, merely capable to provide for secondary redistribution, primary distribution is not created by states (Höffe 2001: 86). Secondly, non-state actors may perceive themselves as *victims of injustices*, and it may be their struggle for justice that fuels violence.

These first two scenarios involving non-state actors have always existed. But they have, on the one hand, not always been recognized as problems of justice. When justice is seen as arising only in political or institutionalized relations, not solely among private actors, the latter may owe each other respect or charity but no duties of justice (Hahn 2009: 14-16). On the other hand, the scenarios have not always been recognized as relevant for conflict, at least within IR research, where private actors and their impacts often fell outside of the analytical lens.

The relevance of non-state actors as sources and victims of injustice changes under conditions of globalization, waning state capacity and in the context of an ongoing power shift from the international to the transnational sphere. Where non-state actors cause injustice in a global context, states can no longer be expected to correct for these. And where non-state actors perceive themselves or others as victims of injustice, they employ their increasing powers to seek remedy, including the resort to violent means. The rise of non-state actors, therefore, transforms old problems of justice into more conflictual ones which are unlikely to be adequately catered for by state actors.

A third function performed by non-state actors, one that has been subject to relatively extensive scholarly work, is that of *advocates* who struggle for justice on behalf of other, marginalized actors or not yet recognized norms (Finnemore and Sikkink 1998, Keck and Sikkink 1998). For this purpose, they either become involved in existing justice-related conflicts, or they reframe existing conflicts as being justice-related. In other words, they *justicize* conflicts and engage as justice entrepreneurs (Daase 2011) by acting, either, as new advocates of old justice claims, by articulating wholly new justice claims or by redirecting old justice claims towards previously unaddressed actors.

Against this background, finally, non-state actors also have become direct *targets of justice claims* voiced by other actors, in particular in recent years under conditions of globalization. Those who feel subjected to injustice no longer regard states as the exclusive guarantors of justice but address their claims at those whom they identify as most responsible for the injustices they perceive or to those they assume as most able to correct for these. With the emergence of various new forms of governance in the global arena, such global public policy networks, public-private partnerships, global standard-setting schemes, etc., this new function of non-state actors as direct targets of justice claims becomes increasingly institutionalized.

Accordingly, both, non-state actors as justice-entrepreneurs and targets of justice claims, point toward a different level of justice as they relate to second order claims of political representation (Fraser 2005). They therefore constitute empirical manifestations of Fraser's call for a reframing of the "who" of justice that she considers the necessary consequence of globalization's impact on social justice relations.

All four justice-related functions of non-state actors as sources, victims, justice-entrepreneurs and targets of justice-claims, will often occur simultaneously. Theoretically, different functions can, at any point in time, be spread across different types of non-state actors or can be incurred by only one type simultaneously. For example, where one type of non-state actors, e.g. local communities, identify other non-state actors, e.g. transnational corporations, as the sources of injustices that victimize them, the communities may target their justice-claims towards the corporations. Non-state violent actors, such as rebel groups may simultaneously be victims of misrecognition, sources of (violent) injustices, justice entrepreneurs and targets of justice-claims.

#### *Non-state Actors and Justice as Distribution*

It does not come as a surprise that non-state actors are involved in and are responsible for instances of injustice in form of material maldistribution. The role of corporations in capitalist markets comes to mind intuitively. Fraser herself usually refers to the proletariat as a primary example of unjust distribution (Fraser 1995, 2005). While the basic connection between private economic actors and justice as distribution remains comparable, many of the problems involved rise to new scales in the context of globalization. For example, one of the issues often discussed in Political Theory's current debate on global justice, relates to questions of justice in the context of natural resource exploitation where non-state as well as state actors from the global south are victims of exploitative institutions and maldistribution in favour of the global north (Pogge 1998, Wenar 2008). But in addition their relatively old involvement in these exploitation schemes as sources and profiteers of entrenched injustices, non-state actors also seek to perform new functions in the distribution dimension: The globalization of knowledge networks and social movements has contributed to the emergence of new conflicts and new arenas for struggle over just distribution: anti-globalization movements, global environmentalists, or human and labour rights supporters directly confront corporate practices as well as the global institutions that, in their view, sustain unjust market relations, such as the World Trade Organization, the World Bank, the G8 or the International Monetary Fund. At the same time, the global CSR movement, and within it NGOs and corporations alike, are seeking new ways of a more just distribution

through mechanisms such as (fair trade) product certification or global regulatory schemes, including framework agreements between international trade unions and multinational corporations. Whether and in how far these globalizing and privatizing struggles for just distribution help to hinder or transform violent conflicts or whether they politicize and radicalize economic relations is an issue for closer inquiry.

#### *Non-state Actors and Justice as Recognition*

While economic actors remain central to questions over justice as distribution, looking to justice as recognition brings a different set of actors to the forefront who are undergoing similar processes of transnationalization: Identity-based associations, whether of religious or secular nature, may be driven or even constituted by their struggle for recognition by others, including other non-state as well as state actors. Movements of indigenous peoples, the landless as well as peasants, all increasingly mobilize and organize themselves in transnational, often global associations and demand recognition (as well as redistribution). Non-state armed groups demand recognition as legitimate representatives of their constituency and might be unwilling to enter negotiations if recognition is denied to them. The potentially conflictual character of these movements and struggles materializes where their claims for recognition clash with those of other groups or are used to justify their denial. Ethnic and religious groups may play particularly important roles as they are capable of conferring, but also of denying recognition to others and thereby, potentially, fuelling conflict at various levels. Moreover, transnational NGOs and other non-local actors may play ambiguous roles where they *justicize* conflicts of any, less fundamental, kind as conflicts over recognition – that are inherently prone to entrenchment. Light and shadow of non-state justice-entrepreneurship materializes at this point.

Corporate actors, while on a first hunch less relevant to the recognition dimension, may indeed have powerful instruments to redress misrecognition, for example via their employment policies. At the same time, however, corporations may be drawn into entrenched conflicts over recognition without being able to address the origins of misrecognition.

#### *Non-State Actors and Justice as Representation*

As has been observed by Nancy Fraser, a primary result of globalization is the decentring of the *frame* for justice (Fraser 2005: 4-5). As the nation state loses control over many aspects of societal welfare and the capacity to address injustices under these circumstances, the very frame of political representation and the “who” (in contrast to the “what”) of justice is being challenged: Continuing to situate justice claims within the nation state and to expect remedies solely from its institutions seems a wholesale misfit to the justice problems of today. Relegating justice claims solely to social relations at the level of the nation state or, at a maximum, to intergovernmental relations, disempowers and silences many victims of serious global injustices whose claims cannot even be heard, let alone redressed within these frames. At the same time, few to no institutions exist outside of this frame within the global arena, so that political justice which applies only in institutionalized settings is not even applicable according to certain theorists. Justice claims made in the non-institutionalized global arena, therefore, need to rely on moral conceptions of justice, and on many occasions, non-state actors, as advocates, norm- and justice-entrepreneurs, have proven to be powerful supporters of this notion of justice as they regularly voice justice claims that seem to have no validity in a world ordered by principles of territoriality and sovereignty.

Many of the new forms of governance that have spurred extensive research in IR in recent years may also be read as projects of reframing political representation on a global scale: transnational policy networks and multi-stakeholder governance schemes take decision-making on particular issues out of the nation-state but also out of the intergovernmental frame. They enable new configurations of actors to make direct claims upon one another and thereby create new constituencies. In other words, they “contest and revise the authoritative division of political

space” (Fraser 2005: 11). Moreover, within these new institutions, non-state actors acquire functions beyond mere advocacy: they become institutionalized as addressees and potential providers of justice. At first sight and from a theoretical perspective, one may get very excited about these projects as they seem to embody a wholly new image of the world’s political constituencies and one that even Fraser herself found hard to imagine. Nevertheless, and on closer examination, many of the new institutions may well have created new constituencies, giving *voice* to previously marginalized actors that were excluded and silenced by the nation-state frame. But this *voice* has rarely translated into actual *vote*: While non-state actors are now better capable of making claims, this does not necessarily imply access to political decision-making processes.<sup>7</sup> A central research question will therefore relate to whether and to what extent reframing of political spaces can and should be left to non-state actors.

## 5. Conclusions: Implications for Research on Just Peace Governance

Starting out from the aim to clarify our approach to studying the two guiding hypotheses (“inclusion helps/hurts”), we have disaggregated the Just Peace Governance programme into its components. Our conceptualization of how the rise of non-state actors relates to each of the three analytical contexts allows us to arrive at a clearer understanding of the relevance of the transnational sphere for peace, governance and justice. Each of the above-mentioned types of non-state actors can play increasingly relevant roles, as burdens and as facilitators, for just peace governance. Most importantly, while non-state actors have always been part of the causes as well as part of the victims of injustice, their rise and increasing engagement as advocates and addressees of justice claims in the global arena has led to a multiplication of justice-related conflicts whenever these claims compete with each other or clash violently with those of other actors. International Political Theory as well as global governance research on legitimacy, inclusion and participation share the general claim that today’s transnational problems require the involvement of non-state actors in political processes in order to achieve gains in legitimacy and effectiveness. But it is far from clear whether inclusion of non-state actors also results in positive impacts for justice or peace. To the contrary, it may be alleged that the multiplication of justice claims fostered by the rise of non-state actors, increases the likelihood for justice-related conflicts of all the five types distinguished in the JPG programme: those arising from drawing conflictive conclusions from the application of the same principle of justice; conflicts over diverging principles of justice; conflicts in which justice claims compete with other values; conflicts between justice- and self-interest based claims; and conflicts over recognition (Daase 2011: 8-9). The mere rise in number of actors that seek to influence global political processes through their justice claims will increase the number of potentially conflicting applications, principles, values, preferences and claims for recognition.

In-depth and comparative empirical studies will have to generate the necessary insights that will improve systematic knowledge about whether and under what circumstances the power shift, role shift and responsibility shift from the state to non-state actors may either be welcomed as a compensation for states’ lacking capacities to provide the conditions for just peace, or whether it will contribute to a deplorable further weakening of the only actor capable of achieving peace-enduring justice, the state. Our research results may also enrich the governance literature by showing that conflicts over justice cannot be ignored when striving for effective governance. However, it is beyond the scope of this paper to specify the key hypotheses and to operationalize the conceptual considerations presented here. Again, empirical research will have to prove how fruitful they can be.

<sup>7</sup> For the importance of the access to power for materializing justice claims see Forst (2007).



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### Contact

Prof. Dr. Klaus Dieter Wolf  
(Head of PRIF Research Department III)  
wolf@hsfk.de  
Tel: +49 69 959 104-65

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Peace Research Institute Frankfurt  
Baseler Straße 27-31  
60329 Frankfurt am Main, Germany

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