International Human Rights Institutions and Conflict Resolution

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1. The (Un)reconstructed History of UN Human Rights Promotion in/and Conflict Resolution

If there is one international organization tasked with the simultaneous protection of human rights and of 'peace and security' it is the United Nations.[i] Indeed, of the four fundamental purposes written into the new international organization's charter by its San Francisco drafters in 1945, two concern these objectives.[ii] Yet, even then, their textual neighbourhood did not imply self-evident fraternity. 'Peace and security' has, at that stage, clear precedence, expressed not only in its prominent position in Article 1(1) of the Charter, but also in the ontological continuity it establishes with its predecessor, the *League of Nations Covenant*, and its various founding texts, from the *Atlantic Charter* to the *Declaration on the United Nations* and on to the Dumbarton Oaks documents, of the UN.[iii] It articulates the main pre-1945 motivation to call for its foundation, notably to rally together all those (nation-states) willing to resist the new type of all-out aggression experienced during the War, and , to that end, establish a system of collective security that would render it impossible. Yet, while, in this respect, it far surpassed the League of Nation's vision of international organization, its inspiration at the founding moment was, arguably, more pragmatic than is often portrayed. For the immediate post-War climate was one of disenchantment with the (Anglo-American) liberal internationalism of the inter-War period and a concomitant scepticism of the positivist idealism that had inspired international law (and lawyers) since its disciplinary emergence in the late nineteenth century.[iv] The Charter's commitment to 'peace and security' has, thus, a realist spin to it that is reinforced by the state-centric and deeply sovereigntist architecture proposed for their realization. This was meant to be, primarily, about containing the aggressive *power* of states -most notably of the then remaining big three (later four) powers-, and only secondarily about creating a legal structure for that purpose.[v] By contrast, Article 1(3)'s injunction to 'promote and encourage respect for human rights and fundamental freedoms' is about people, individuals and groups, who are here seemingly elevated to some form of recognition on the highest international level. What is more, the terms of that elevation are diffuse, for while 'fundamental freedoms' might have been understood in light of both domestic (constitutional) Bills of Rights and of Roosevelt's seminal Four Freedom's speech of 1941, 'human rights' was a virtually undefined concept -in international law (and international relations) at any rate- at that time.[vi] Just how undefined it was, is evidenced by the ongoing debate in human rights circles today about how it got into the Charter in the first place and in what relation it stands to both to the earlier rights tradition and the later international human rights regime.[vii] There are, essentially, two ways to approach this question and it is important to briefly outline them here in order to better grasp just how complex the UN's dual human rights and security -and therefore conflict resolution- mandate is.[viii] The traditional and dominant line of thought is, of course, liberal internationalist and charts a more or less linear progress from earlier articulations of natural and constitutional rights to international human rights and the accompanying legal regimes. In this narrative, the history of the moral idea of natural rights as it emerged in medieval Europe and found its mature expression in 18th century social contractarianism, the history of rights as legal -and legally enforceable- claim as of the American Bill of Rights and through to the present-day international human rights regime, and the history of the social and political movements availing themselves of rights language to promote a particular cause, such as anti-slavery, women's suffrage, or minority protection, are all deeply entangled and mutually dependent. In fact, all three histories are oriented towards the same single *telos*, namely the attainment of human dignity which, therefore, provides the *Leitmotif* of a singular human rights (hi)story.

One important corollary of this entangled reading is, of course, the reciprocal emphasis both of the predominance of (international) law as the privileged framework for the promotion of human rights and of the moral alignment of that very international law with the pursuit of human dignity through, amongst others, human rights. Here, human rights are, in essence, part and parcel of a liberal internationalist legal project that arose in the self-consciously progressive spirit of late nineteenth century positivism.[ix] As such, they are inherently legal concepts premised on an objectivist view of international legality which posits the ontological precedence of law over (state) sovereignty and, consequently, focusses on individuals and groups, rather than on states and their presumed interests.[x] They are, thus, part of an anti-realist reading of international relations in which 1945 and 1948 are but further steps in the ever expanding legalization of international politics.[xi] Other milestones deemed to neatly fit into this unfolding human rights story are, of course, the Nuremberg trials, the decolonization (and later anti-apartheid) struggle, the reaction against authoritarian regimes (especially in Latin America), the rise of human rights NGOs, the emergence of international criminal law, and all the way up to the contemporary mainstreaming of human rights into development and security.[xii] This development was accompanied by a continuous expansion of international legal instruments and institutions, from the two 'master' Covenants and the other portfolio items of what has been construed as the 'international bill of rights' to the evolution of the regional human rights protection regimes and the most recent 'turn to policy'.[xiii] Unsurprisingly, the UN occupies a central place in this narrative, being the forum in which the 'rise of rights' was primarily played out; as Samuel Moyn puts it, albeit critically, "the formation of the United Nations must occupy the focus since through the 1970s 'human rights' were a project of its machinery only, along with regionalist initiatives, and had no independent meaning."[xiv]

The contrasting and deliberately revisionist narrative, by contrast, represented *inter alia* by Moyn's 'The Last Utopia – Human Rights in History',[xv] is realist in tone and rejects what it sees as the dominant Whig history of human rights. In its view, not only is the idea that the international community more or less endorsed human rights as of the end of World-War II historically implausible, but so is the contention that human rights were one of the driving forces of international legal discourse as of that period. To Moyn, the very term human rights only slipped into the Charter as a gesture to a liberal (Anglo-American) public and was never intended to qualify the predominantly realist outlook on the incipient post-War world. While shock over the Holocaust and a brief social-democratic consensus enabled the drafting of the *Universal Declaration of Human Rights* in 1948, this did not mark, according to Moyn, the beginning of the universalization of those rights previously linked to national citizenship and, therefore, to state sovereignty, but was, rather, a toothless diversion that ultimately only reaffirmed the precedence of the latter over an internationalism oriented towards human dignity. Nor did, by this account, even most liberal international lawyers initially buy the idea of human rights as legal norms binding sovereign states - influential minority voices arguing just that, such as Hersh Lauterbach's, notwithstanding.[xvi] The early Cold War quarrels over the drafting of the Covenants and the consequent tardiness of their adoption (1966) and entry into force (1976) is taken as further evidence of the lack of commitment by the international community to take rights seriously. Even the decolonization process as of the 1960s, a veritable game-changer for UN membership and politics, has, to Moyn, only an epiphenomenal relationship with human rights, as it was, in essence, motivated by a quest for political emancipation -from colonial domination and/or from capitalism- couched only superficially in the language of human rights.[xvii] According to Moyn, it is only in the late 1970s, with the rise to global prominence of human rights advocacy organizations such as Amnesty International, US President Jimmy Carter's reference to human rights as a guiding principle of American foreign policy and, generally, a more cosmopolitan and humanistic cultural climate after 1968 that human rights enter onto the international scene to emerge into a dominant discourse in the

1990s.[xviii] And it is, first and foremost, American international lawyers, such as Louis Henkin, who, retrospectively, create an anachronistic progress narrative of human rights that underwrites a broader liberal internationalist legal project in which the UN figures prominently.[xix]

Notwithstanding the many questions both lines of thought raise and the considerable discussion this has generated in the (human rights) specialist literature, what is relevant to the theme here at hand, notably the question of how the UN has approached its dual mandate of promoting both human rights and security as seen through the lenses of its conflict resolution practice, are the two very different visions either school presents on the relationship of these two mandates with one another. For the universalists (aka liberal internationalists), human rights and peace are corollaries of a wider vision of a world governed by a (liberal) rule of law in which the UN is a pivotal actor. To proactively resolve conflict is, thus, as much in its genetic code as is the promotion of human rights and, indeed, the two activities are mutually dependent. States are the key actors in this scheme, but their actorness is demarcated by the multilateral legal framework within which they exist. More importantly, they are themselves ultimately only vehicles for the fulfilment of human dignity -defined, again, in a Western liberal way- and their key attribute, sovereignty, is contingent upon that function – if a state fails, the multilateral machinery, directly or through delegated agents (aka other states), absorbs some or all of its sovereignty. This, then, is the vision of human security and the responsibility to protect (RtP), that is, one in which individuals and groups are the ultimate subjects of international relations and the focal points of multilateral activity. [xx]

To the revisionists, in turn, human rights have been little more than window-dressing in an essentially security-oriented UN dominated by states and, especially, the permanent members of the Security Council. They only really gained any salience when states themselves, or, rather, their societies turned towards them as of the 1970s, and their effective force remains at the whim of states (and their societies). International law is functionally subordinate to state interest and, therefore, fragmented into distinct legal regimes which have no or little bearing on one another.[xxi] Hence, the by now intricate international human rights regime is not tied to the law of armed conflict and only indirectly to international humanitarian and international criminal law. Human rights considerations only enter into the latter frameworks instrumentally, that is, at best as interpretation tools for factual situations, at worst as mere rhetorical chips to bolster security-related arguments. The UN is here essentially the handmaiden-administrator of a fragmented multilateral environment in which it does not control the level at which different regimes, such as human rights or security, are dealt with in any given situation, nor the extent to which they are synergized.

In sum, liberal internationalism and realism are two distinct epistemes in which the relationship of human rights and peace(-building) (aka conflict resolution) is defined in fundamentally different terms. This is why the assertion that the two fields have traditionally not overlapped and that their relationship remains underexplored is, while true, less trivial than it may appear.[xxii] Certainly within a UN context, the nexus, or lack thereof, between human rights and conflict resolution cannot simply be attributed to some happenstance functional differentiation, but has to be reconstructed in light of the epistemic divide charted above. To that end, the UN's engagement for human rights before and after conflict has to be briefly recapitulated in the following two sections.

2. From the Margins to the Centre: the turn to rights in 'peace and security'

The history of UN's role in human rights protection and in conflict resolution was for most of its first forty-five years one of mutual estrangement. The human rights machinery developed out of the Charter mandate and on the basis of the *Universal Declaration*, was long in the coming. Cold War politics took over human rights in the UN soon after the San Francisco conference and meant that it took the then Commission on Human Rights (CHR) and then the rapidly decolonizing General Assembly until 1966 to draft and adopt what turned out to be two separate general human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights which form the anchor of today's network of human rights treaties known as the 'international bill of rights'.[xxiii] Apart from treaty-drafting, the CHR initially took a very restrictive view of its mandate, interpreting it as merely implying the task to promote, but not to proactively protect, the human rights of the inhabitants of the UN member states, claiming that it had 'no power to act', that is, no authority to conduct human rights monitoring, such as by reviewing petitions or conducting fact-finding activities.[xxiv] As so many things in the UN's history, this only changed by accident and through the pressure of the recently decolonized new member states in the UN as of the 1960s.[xxv] Hence, in 1967 the Economic and Social Council notoriously passed the game-changing resolution 1235 which allowed the CHR to 'examine information relevant to gross violations of human rights' in 'all countries', a to today's eyes innocuous enough stipulation that, however, paved the way for a much expanded human rights role for the UN through the so called 'special procedures;' these dramatically amplified the UN's human rights radar equipment by introducing non-political experts and a robust fact-finding mandate.[xxvi] Importantly, while these momentous institutional developments were not motivated by situations of classical inter-state conflict, they did arise from certain types of intra-state conflict; hence, the initial country and thematic mandates dealt with apartheid and racism, disappearances and displacement, summary executions, and torture.[xxvii] They also challenged the second branch of CHR human rights oversight, namely its complaints procedure based on and generally referred by ECOSOC resolution 1503 (1970), which, while representing in itself an advance from the CHR's early refusal to take official cognizance of petitions, was marred by the strict confidentiality which states insisted on building into it.[xxviii] Nonetheless, from the little information that has leaked out over the years from this procedure, it is clear that its early preoccupations thematically coincided with those of the special procedures, that is, they dealt primarily with unsettled or transitional internal situations that would produce persistent human rights violations on a larger scale.[xxix] These (so called) Charter-based mechanisms were paralleled by the gradual establishment of treaty-based expert bodies such as the Human Rights Committee (HRC) that could, under certain circumstances, exercise a quasi-judicial jurisdiction over individual human rights complaints, and the earliest cases of which, as of 1979, similarly hailing from conflictual places such as the (then) military dictatorships in Latin America.[xxx] From the beginning, these two branches of explicit UN human rights activities were aided by the UN Secretariat, though initially in an institutionally diffuse and politically subordinate way. It is only with the end of the Cold War, which marks the perhaps most crucial watershed in the international 'rise of rights', that the UN's human rights role graduates to major agency status in form of the Office of the High Commissioner for Human Rights (OHCHR).[xxxi] Itself a product of the Second World Conference of Human Rights in Vienna in 1993, it represents a significant step towards what would become a radical reinterpretation of the UN's mandate towards human rights in and with the subsequent 'mainstreaming' agenda. The latter, in turn, is deeply entangled with a transformation in the nexus between human rights and conflict-related activities by the UN. As was seen, up to this point, the UN's human rights infrastructure had evolved separately and subordinately from its 'peace and security' engagement, though, significantly, it had dealt, from the beginning, with situations that would later be identified as structural causes of violence and (potential) conflict. As such, human rights (monitoring) can

be said to have always functioned as a conflict detection radar within the UN, even if this capacity was not fully understood and even less deliberately utilized until much later.

As for the 'peace and security' side and its relation with human rights, the story is equally disparate. The Security Council, the UN's prime overseer of 'peace and security', notoriously stayed away from explicitly referring to human rights either as a cause for or solution to conflict, though both the 1966 trade sanctions against (then) apartheid Southern Rhodesia and the 1977 arms embargo against apartheid South Africa are generally cited as early instances of the Security Council's recognition of at least a causal linkage between human rights violations and conflict.[xxxii] That recognition became explicit only as of the early 1990s, and was, again, initially driven by events, notably the Iraqi invasion of Kuwait in 1991, the civil war-cum-humanitarian-catastrophe in Somalia in 1992, and the military takeover in Haiti in 1994. In all three situations, the Security Council cited human rights violations as an explicit cause for a threat to peace and security that impelled enforcement action under Chapter VII.[xxxiii] However, if these resolutions marked the Security Council's (however cautious) 'turn to rights' as causes for conflict, the same period also saw its recognition of a role for human rights in their solution, notably in form of what has become known as the 'human rights component' of peace operations. Pre-dating the establishment of OHCHR, which today coordinates these mission components with the Secretariat's Department for Peacekeeping Operations (DPKO) and the Department for Political Affairs (DPA), the first explicit human rights mandates in peace operations occurred with ONUSAL in El Salvador in 1991, a mission in which, significantly, the protection of human rights and security were inherently linked, in UNTAC (Cambodia) in 1992, in MICIVIH (Haiti) in 1993, and in MINUGUA (Guatemala) in 1994.[xxxiv]

Yet, the next big, if only consequential, post-Cold War development was the formal adoption of the human rights mainstreaming agenda with then Secretary-General Kofi Annan's 1997 report *Renewing the United Nations: A Programme for Reform* which mandated that human rights had to be part of 'everything the UN does'.[xxxv] This represented nothing short of a re-branding of the UN at a moment when, just like in the aftermath of World War II, the world was mesmerized by recent conflict and humanitarian calamity, in this case the dual fallout over Rwanda and Bosnia, which provided an underlying impetus for this operational turn to human rights. It was to play out primarily in two of the UN's mandates, namely development and 'peace and security'. In the former, mainstreaming was concretized through the 'rights-based approach to development' in which rights figure as benchmarks for both development and development policy, and which has become the dominant mantra in contemporary development discourse.[xxxvi] In 'peace and security', several distinct but interconnected processes have brought rights into the heart of security. On an operation level, it meant the further expansion of human rights components in peace operations,[xxxvii] as well as a much more human-rights centric mission design, a process further brought along first by the notorious *Report of the Panel on United Nations Peace Operations* (the 'Brahimi Report') of 2000 and the Secretary-General's report *Strengthening of the United Nations: An Agenda for Further Change* of 2002.[xxxviii] In their wake Afghanistan's UNAMA (2002), Iraq's UNAMI, Liberia's UNAMIL, and Cote d'Ivoire's UNOCI were designed as new generation missions in which human rights promotion was integrated as key conflict resolution tools.[xxxix]

Although these experiences are too disparate to allow for a unified lessons learned exercise about what role, after all, human rights can play in conflict resolution, it is important to note that the status of human rights in all of them has been much transformed. They are no longer merely secondary mission objectives, or desirable collaterals, but they, essentially, function as an episteme through which situations of conflict are interpreted and according to which conflict resolution measures are designed. To be sure, this is the aspiration of the mainstreaming agenda

on paper, and its reality is more complex. Certainly in such highly volatile operations as Kosovo (UNMIK) or Darfur (UNAMID), the real existing UN has struggled with the balancing the promotion of human rights with the maintenance of security and has, arguably, come out more on the side of security rather than human rights.[xl] This shows not so much a lack of commitment on the ground as a lack of understanding about the precise part human rights can play in conflict resolution. It is a mainstreaming predicament conflict resolution shares with development, where the rights-based approach is at once omnipresent and yet still somewhat ephemerous in relation to impact, a point that will be further explored in the concluding section.[xli]

3. Towards Humanitarianism: From human rights in conflict to conflict as a human rights situation

The turn to human rights within the UN can also be seen as a symptom of a more general turn away from states and towards individuals -and individualized collectivities- as the primary constituency of international relations, and a concomitant shift towards an instrumental conception of sovereignty.[xlii] The precise causes for this shift, as well as the question of whether this was only a prime example of UN -and UN scholar- (self-)illusionism or whether it did, in fact, reflect the beginning of a radically transformed role of (nation-)statehood in international relations are multi-facetted and subject to ongoing debate. It certainly has to do with a changed global political economy in which statehood remains central but subservient to the functionality of global (financial) markets, though the story of statehood since the 2000s, and notably since the 9/11 attacks, is puzzlingly incoherent.[xliii] What is relevant here is that the very terms of conflict resolution changed in light of the turn to individuals and the prominence human rights discourse has in framing their interests. This is evidenced in two further conceptual developments, notably the appearance of 'human security' in humanitarian affairs, and the emergence of the doctrine of the responsibility to protect (RtP).[xliv]

The concept of human security emerged as early as 1992, when then Secretary-General Boutros Boutros Ghali would, for the first time, explicitly refer to the need for an "integrated approach to *human security*" (emphasis added) in his Agenda for Peace report.[xlv] This inaugurated a new agenda according to which the UN would attempt to recast itself as a people-cantered organization aiming to protect and advance human, rather than nation state, well-being. The next logical step was, thus, to celebrate the marriage of these new approaches to humanitarianism and development, which occurred in the 1994 Human Development Report.[xlvi] It defined human security as not concerned with weapons, but with human life and dignity. It, thus, purported to re-orient the focus of security away from states' geopolitical and towards individuals' daily concerns. In this vein, it identified four broad characteristics of the new concept, notably the universality of the security concern, the interdependence of all the components of human security, the preference for preventive over reactive strategies, and the essential people-centeredness of the concept. In addition, the Report mentions seven substantive dimensions that make up human security, namely personal security, environmental security, political security, community, health security, and food security. In so doing, it also espoused both of the definitions that would later be considered to constitute opposite approaches to human security, notably security as 'freedom from fear' and security as 'freedom from want'. At the time, UNDP´s espousal of human security was closely linked to its immediate objectives for the imminent World Conference on Social Development in Copenhagen in 1995 and the expected discussion of the 'peace dividend' there.[xlvii] Hence, initially, the concept served as a way to 'infiltrate' the security agenda with developmental and humanitarian concerns in the context of a general debate on the social and economic benefits of a reduced risk, and, thus,

reduced cost of war. Yet, while the 1994 Report incorporates both mentioned 'freedoms', UNDP revealed its own reading of human security as not merely a humanitarization of security, but, indeed, as a full-scale re-orientation of the latter in its 1998 Human Development Report, which sought to conceptually react to the Asian crisis and the non-military insecurities it generated.[xlviii]

The 1994 Report inserted human security into the international policy agenda where it has, since then, taken a firm hold. Yet, despite the concept's adoption by a considerable number of international state and non-state actors, its original birth condition, namely its Janus-facedness between a relatively narrow humanitarian and a much broader developmentalist focus has marked its conceptual evolution ever since. Not surprisingly, the two faces became institutionalized around the Millennium Summit in 2000 and, in particular, the explicit mention of 'freedom from fear' and 'freedom from want' as the central challenges of the new millennium in the Secretary-General's preparatory report for the summit, *We The Peoples*.[xlix] On the humanitarian side, it were primarily the governments of Canada and Norway which, as of the mid-1990s, explicitly took to adopting human security, understood as concerned with protecting individuals from violent conflict and its consequences, as principles guiding their foreign policy.[l] The first major concretization of this approach was the joint state and non-state initiative to create an international treaty banning landmines, which resulted in the 1997 adoption of the Ottawa Treaty by initially 122 states.[li] Similar energies were subsequently invested in the creation of the International Criminal Court (ICC) in 1998/2002, and related human security issues premised on the 'freedom from fear' vision, on issues such as child soldiers, small arms control, organized crime networks, or the HIV/AIDS pandemic.[lii]

In addition, the government of Canada also instigated the creation of the *International Commission on Intervention and State Security* (ICISS), the mandate of which was to reflect on the legality, legitimacy, and desirability of humanitarian intervention – an issue that had gained prominence during the Yugoslav and Rwandan crises, that had been openly discussed during the Kosovo intervention, and that had, thus, been identified as being at the heart of human security. The Commission produced its report, *The Responsibility to Protect*, in 2001, which has, since, become the referent manifesto of this side of human security.[liii] On the other side, yet another state, Japan, has been at the forefront of promoting the wide, development-based 'freedom from want' agenda, which it has, however, understood to incorporate the 'freedom from fear' approach. It deliberately adopts a holistic concept of security in which violent conflict is but one focal point among others, such as poverty, health, or knowledge and skills. In 2001 and as a direct response to *We the Peoples*, it sponsored the creation of the high-level Commission on Human Security (CHS) chaired by former UN High Commissioner for Refugees Sadako Ogata and Nobel-laureate and co-inventor of the human security concept Amartya Sen. Its report, *Human Security Now*, has come out in 2003, and, like *The Responsibility to Protect*, has functioned as this side's paradigm statement.[liv]

The core of human security and the object of RtP are, of course, the 'pervasive threats' to individuals' physical safety, their social and economic well-being, their personal dignity, and, importantly, their human rights.[lv] As such it shifts state agency away from traditional state security as concerned with the preservation of sovereignty, and towards a comprehensive state responsibility for human security. What is alluded to in the *Responsibility to Protect* is carried yet further in the 2004 report by the UN's High-level Panel on Threats, Challenges and Change *Our Shared Responsibility*, notably a radically instrumentalist view of the state in which state sovereignty is seen as but a mere institutional setting within which individual security is concretized. According to this view, state parties to the UN Charter agree to nothing less than to condition their sovereignty upon the provision of human security at home and abroad. They

voluntarily agree to this since, as 'civilized' and, thus, presumably liberal democratic states, they recognize not merely that, in an interdependent world, it is to their advantage to 'play by the rules', but they actually behold that modern sovereignty is both instrumentally linked to the individuals inhabiting a state's territory and is exercised (only) through participation in international policy-making.[lvi] Human security is here meant to denote this new concept of sovereignty-as-responsibility, which essentially pits 'responsible' states against those that are not. State-led humanitarian intervention ought, thus, not to be seen as an exception to the rule of sovereign equality, but as a necessary corollary of 'successful' states 'taking human security seriously'.

This new security paradigm comes, of course, with a changed conception of conflict resolution, for the latter must be far more comprehensive than the mere negotiation of peace agreements, it must, at least on paper, address the root causes of conflicts directly and without relying on the intermediation of the state agents traditionally endowed with authority over people and territory. This is, then, in the first place, an epistemological, and only in the second place a logistical challenge, for the UN, as the (self-styled) agent of the international community, must have its own language, abstracted from the language of inter-state politics, to cognize the situation on the ground. And the one language that has availed itself to that purpose has been human rights, which have, thus, far transcended their role as simply one of several aspects of human security and become the dominant idiom by which to describe conflict and its resolution.[lvii]

4. Justice versus Security: Human Rights (Dilemmas) in Conflict-Resolution

The UN's direct conflict resolution engagement has been complemented and, some would argue, surpassed by its work both in conflict prevention and in post-conflict transition through its massive investment in different aspects of rule of law promotion – with human rights, needless to say, playing a prominent role. On the conflict prevention side, this has played out by the UN's absorption, again in the 1990s, of a more general paradigm shift in the importance allocated to law in (global) governance. Again, this is a multi-faceted phenomenon driven partly by post-Cold War constitutionalism, and partly by the re-emergence of law and (legal) norms as key components of development. As is well documented in an immense body of literature on the state- and constitution-(re)building experiments that took place during this period, the emphasis of rule of law promotion foucussed on institutional design in and through new constitutions and an evolving body of constitutional jurisprudence.[lviii] The aim was to manage transition so as to lead to the fastest possible attainment of liberal democracy and a market economy, not so coincidentally the same objectives as those of mainstream development discourse. Indeed, during this period, transition came to be merged semantically with development, the only difference being that the former implied a much shorter time horizon and, cocomitantly, a much more condensed development process. Economically, the Washington consensus set the script for transitional reform, not just in substance but also in pace. And legal liberalism saw a second coming when mostly Western constitutional designers set up a massive legal transplantation industry, this time focusing on out-of-the-box models of (liberal) constitutionalism.[lix]

So the idea, adopted and mainstreamed by the UN, was that 'good' institutional frameworks geared in large measure to the protection of human rights would promote the mantra of 'good governance', which, in turn, would radically reduce the causes for violent conflict. Its focus on such overarching principles as transparency, accountability, participation, inclusiveness, responsiveness, and, of course, the rule of law, was meant to provide at once an ideal type for

the new developmental state and a regulatory corset for its policy making. Good governance is also seen by the multilateral financial institutions as a key instrument for rule of law promotion that is itself neither legally formalised nor politically positioned. Yet, while the rise of good governance marks the shift away from macroeconomic structuralism to institutional design, it merely transcribes the neoliberal development paradigm into a different notation by helping to immunize the state against (re-)distributional politics.[lx] Once again, traditional state sovereignty, and its derivative, state responsibility for its international obligations, such as the protection of human rights, is here transformed into a mere functional agency programmed by global legal standards, of which human rights are primary components and the UN the main (self-styled) clearing hourse.[lxi]

Closely connected to rule of law promotion as a conflict prevention tool, and as saturated with human rights, is, of course, the UN's parallel sponsorship of post-conflict transitional justice, which it has, arguably, pursued with the same industriousness. There is what might be termed a 'meta' aspect to it, which denotes the UN's role in the judicialization of international criminal law, notably through the Security Council's setting up of the two special tribunals on Rwanda (ICTR) (1994) and the former Yugoslavia (ICTY) (1994) and its subsequent support for transitional justice mechanisms, as is also reflected in the UN's general backing for national truth commissions and mixed tribunals within its peace and reconstruction activities.[lxii] Although international criminal law and international humanitarian law are legally distinct from human rights (law) -and enjoy a considerable institutional advantage over the latter for being less encumbered by state-centrism[lxiii]-, it is human rights, much more so than the more limited *ius in bello* and international crimes that provide the language -and, thus, the epistemic horizon- in which post conflict situations are articulated. That said, and as already hinted earlier, in the more muddled practice of peace operations, that language sometimes serves more to cover up than to substitue more traditional approaches to security. This is partcularly apparent where the UN temporarily assumes substitute state powers, such as in Timor Leste and Kosovo. In the latter, for instance, the continuing need for peace and its corollary order-inducing executive government, meant, in UNMIK's case, that close attention to the rule of law and human rights standards was seen as an impediment rather than a complement. In particular, the mission struggled with referring its good governance, rule of law and human rights promotion efforts to itself rather than to the state institutions it was helping to reconstruct.[lxiv] Yet, even here, the UN's aparent shortcomings could best be pinpointed by resorting to the language of human rights.

5. From Ontology to Epistemology: Rights as Benchmarks of Conflict (Resolution)

In the end, what is to be made of the UN's dual mandate, that is, of the ways in which it has related human rights and conflict resolution? If anything, any tentative answer must prove both the universalist account and its revisionist critique to be undercomplex and, hence, as missing the point. Neither is it possible to show that the progress narrative which the UN and its commentators have, in part, constructed about the 'rise of rights' -as much as about the 'rise of the individual'- is borne out by 'the facts', or, put differently, that the normative proposition of law-governed and human rights-oriented international relations has a pendant in the facticity of contemporary inter-state conduct; nor is the opposite in evidence, namely that human rights are still largely just window-dressing for hard-edged (aka 'real') state-interest. Instead, what the UN experience clearly shows is what Philip Alston has aptly termed the 'intrinsic polycentricity of the human rights enterprise'.[lxv] One might add that while it is, indeed, polycentric, it is -and in a UN context has been at least since 1945- present as a language game –broadly defined and

delimited as the list of individual and collective entitlements listed in the 'international bill of rights' which provide a precise and differentiated catalogue of human conditions- that has offered itself in a diversity of contexts as a (more or less) independent way to describe factual situations, express identity claims, and resist real or perceived oppression. It is, arguably, in this light that the role of human rights in conflict resolution must be assessed.

There are, of course, many issues with human rights in this context, which may be divided into conceptual, institutional, and fundamental challenges. On the conceptual front, three have long been identified by scholars and practitioners of conflict (resolution), namely the inherently adversarial character of human rights and their clear-cut victim/perpetrator dualism,[lxvi] the situational oversimplification which human rights accounts represent in terms of complex social, political, economic and cultural realities on the ground,[lxvii] and, of course, the state-centrism, which, for all the transformations of statehood, continues to inhere in human rights discourse – after all, rights require clearly defined addressees as much as duty bearers legally worthy of the name.[lxviii] A fourth conceptual challenge lies in the Eurocentric baggage of human rights; though they can be and are being used globally, they do carry with them the vestiges of Western liberal ancestry and, thus, a degree of cultural particularity; this makes them both subject to misconception and rejection, but also to politicization and bandwagoning by local parties to a conflict.[lxix] While serious, these conceptual challenges have been addressed in a diversity of ways in both fields and can hardly be considered to amount to insurmountable obstacles to the dialogue aspired to in this volume. Perhaps more serious, then, are the institutional challenges which consist of the technocratic impulse that goes along with the expanded role of human rights. Its principal expressions are the trend to (hyper)judicialization both internationally and domestically -and to the detriment of political articulations and sensitivities- as well as the 'turn to metrics' in human rights, a trend that comes out of the good governance agenda and that invests in ever more fine-tuned measurement techniques for empirical human rights conditions with a view to rendering them increasingly comparable.[lxx] While both developments can be characterised as progress in terms of the legalization of international relations, they also render human rights (language) less flexible, more institutionally petrified, and functionally linked to the good governance agenda – all aspects which may impede their salience in conflict resolution scenarios. The by far most fundamental challenge comes, however, from the growing trend towards an ever more comprehensive concern for security over and above concerns for human dignity; it is linked, of course, to the aftermath of 9/11, to the 'war on terror' as much as to the manifold insurgencies that, in response to it, have been carried deep into the heart of the mature democracies of the West. It has, off late, been exacerbated the 'refugee crisis,' which, of course, has been largely caused, of course, by several manifest failures in conflict resolution. It has been changing the domestic political landscape in many states, and, thus, these same states' attitude towards multilateralism, the rule of law, and human rights.

However, for the time being, human rights hold the balance not for being coincidental with state interest nor for being comprehensively complied with, but as benchmarks through which conflict situations can be described and, therefore, understood in scenarios in which other language games may not be available. This is certainly their primary role within the UN and this is where their relation with conflict resolution is, indeed, synergetic.

[i] Especially international lawyers, when referring to the 'international' or sometimes 'universal', as opposed to 'regional' or 'domestic', human rights protection systems, almost always mean the various mechanisms within the UN system and the United Nations *stricto sensu*; for the purposes of this contribution, only the latter and those auxiliary organizations,

such as the Office of the High Commissioner for Human Rights, directly charged with human rights, shall be considered.

[ii] Charter of the Unitd Nations, 24 October 1945, arts. 1(1) and 1(3).

[iii] Moyn, *Last Utopia*, 46

[iv] Martti Koskenniemi, *Gentle Civilizer of Nations: The Rise and Fall of International Law* 1870-1969 (Cambridge: Cambridge University Press, 2004).

[v] Classically stated, of course, in Hans Morgenthau's (and K.W. Thompson's) *Politics among nations: The struggle for power and peace*. (New York: McGraw-Hill,1993) and reiterated in his,"Human Rights and Foreign Policy," *Distinguished Council of Religion and International Affairs Lecture on Morality and Foreign Policy* (New York, 1979); also reviewed in Moyn, *Last Utopia*, 188. See also Edward H. Carr, The Twenty Years Crisis 1919-1939: An Introduction to the Study of IR (London: Macmillan, 1939).

[vi] See Franklin D. Roosevelt, *Four Freedom's Speech*, 6 January 1941, http://www.cfr.org/human-rights/roosevelts-four-freedoms-speech/p26053#; and Moyn, *Last Utopia*, 49

[vii] To Moyn it is, unsurprisingly, Roosevelt himself who, more or less by happenstance, insterted human rights into the Dumbarton Oaks documents; see Moyn, *Last Utopia*, 47; against this the much more nuanced account in Phillip Alston, 'Does the Past Matter? On the Origins of Human Rights' 126 Harv. L. Rev. (2013): 2043-2081, 2062.

[viii] The Charter bestows, of course, a quadruple mandate on the UN, but for the purposes of this contribution, only the human rights/peace nexus shall be considered.

[ix] See, *inter alia*, Thomas Skoueris, *The Notion of Progress in International Law* (The Hague: TMC Asser Press, 2009); and John G. Ikenberry, "Liberal Internationalism 3.0: America and the Dilemmas of Liberal World Order," *Perspectives on Politics* 7.1 (2009): 71-87.

[x] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2006).

[xi] Kenneth W. Abbott, Robert O. Keohane, Andrew Moraviksik, Anne-Marie Slaughther and Duncan Snidal, "The Concept of Legalization," *International Organization*, vol. 54 (2000):401-419.

[xii] Alston, "Does the Past Matter," 2062.

[xiii] In terms of international legal institutions with an explicit human rights mandate, there are currently three international tribunals (of which two, the European Court of Human Rights and the Inter-American Court of Human Rights are operational, and one, the African Court of Justice, is still nascent) and approximately twenty quasi-judicial monitoring or dispute-settlement bodies; this number is significantly higher if bodies specialized in international humanitarian and international criminal law, which nearly always also review serious human rights violations, are included; see *Project on International Courts and Tribunals*, http://www.pict-pcti.org/publications/synoptic_chart/synop_c4.pdf; see also Julie Mertus, 2nd. ed., *The United Nations and Human Rights: A Guide for a New Era* (New York: Routledge, 2005).

[xiv] Moyn, Last Utopia, 45.

[xv] While being a (legal) historian, Moyn's reading strongly alludes to what would, in an international relations context, to be a realist perspective; see Alston, "Does the Past Matter," 2077; and John Mearsheimer, "The False Promise of International Institutions," *International Security* no. 19 (1994/95): 5-49.

[xvi] See Hersh Lauterpacht, *International Law and Human Rights* (Westport: Praeger, 1950).

[xvii] Moyn, *Last Utopia*, 84.

[xviii] Ibid., 120.

[xix] See, for instance, his seminal *The Age of Rights* (New York: Columbia University Press, 1990).

[xx] See Anne-Marie Slaughter, "Security, Solidarity, and Sovereignty: the grand themes of UN reform," *American Journal of International Law*, no. 99 (2005): 619-631; as well as Thomas G. Weiss , *Humanitarian Intervention* (Cambridge: Polity, 2007).
[xxi] See Eric A. Posner, *The Perils of Global Legalism* (Chicago: University of Chicago Press, 2009).
[xxii] See Michelle Parlevliet, "Human rights and conflict transformation: towards a more integrated approach," in *Advancing conflict transformation: the Berghof Handbook II* , ed. B. Austin, M. Fischer and H.J. Giessmann (Opladen/Farmington Hills: Barbara Budrich, 2011); see also Claudia Fuentes and Paula Drumond's "Introduction" in this volume.
[xxiii] See Office of the High Commissioner for Human Rights, *Fact Sheet No. 2: The International Bill of Human Rights*, http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf; and Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (Oxford: Oxford University Press, 2011), as well as Mark Mazower, "The End of Civilization and the Rise of Human Rights: The Mid-Twentieth-Century Disjuncture," in Stefan-Ludwig Hoffmann, *Human Rights in the Twentieth Century* (Cambridge: Cambridge University Press 2010): 29-44.
[xxiv] Marc Limon and Hilary Power, "History of the United Nations Special Procedure Mechanisms" *Universal Rights Group* (2014): 4.
[xxv] Ibid., 5; see also, Jan Eckel, "Human Rights and Decolonization: New Perspectives and Open Questions," *Humanity*, vol. 1 (2010): 111-135.
[xxvi] Limon and Power, "Special Procedure," 7.
[xxvii] Ibid., 9.
[xxviii] Ibid., 6.
[xxix] Mertus, "United Nations and Human Rights," 54; see also Henry Steiner, Phillip Alston and Ryan Goodman (eds.), *International Human Rights in Context: Law, Politics, Morals*, 3rd ed., (Oxford, Oxford University Press, 2007): 754.
[xxx] Alex Conte and Richard Burchill, 2nd ed., *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (New York: Routledge, 2016).
[xxxi] Which, however, goes back to earlier proposals for a UN human rights figurehead going back to the late 1940s; see Mertus, *United Nations and Human Rights*, 8.
[xxxii] W. Ofuatey-Kodjoe, "The United Nations and human rights," in, *Human Rights and Societies in Transition: Causes, Consequences, Responses*, ed. R. Thakur and P. Malcontent (United Nations University Press, 2004): 103-118, 111.
[xxxiii] See in relation to Iraq: Security Council resolution 678, 29 Novemver 1990, and 688, 5 April, 1991; to Somalia: Security Council resolution 794, 3 December, 1992; and Haiti, Security Council resolution 940, 31 July, 1994; see also Richard B. Lillich, "The Role of the UN Security Council in Protecting Human Rights in Crisis Situtations: UN Humanitarian Intervention in the Post-Cold War World," *Tulane Journal of International and Comparative Law*, vol. 3, (1995): 1-17.
[xxxiv] See Michael O'Flaherty, "Human Rights Monitoring and Armed Conflict: Challenges for the UN," *Disarmament Forum* (2004): 47-58, 49; see also *The Security Council and Human Rights – An Evolving Role*, Security Council Report – Research Report, 25 January 2016; and David P. Forsythe, *The UN Security Council and Human Rights: State Sovereignty and Human Dignity* (Friedrich-Ebert-Stiftung: Global Policy and Security Policy, 2012).
[xxxv] *Renewing the United Nations: A Programme for Reform, Report of the Secretary-General* (General Assembly Document A/52/L.72/Rev.1), 19 December 1997.
[xxxvi] See United Nations Development Programme (UNDP), *Human Development Report* (Oxford University Press, 1990); see also Varun Gauri and Siri Gloppen, 'Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy', 44 *Polity* (2012) 485–503; and Florian Hoffmann, "Revolution or Regression: Retracing the Turn to Rights in 'Law and

Development,'" *Finnish Yearbook of International Law*, ed. Jarna Petman, vol. 23, 2012-2013 (2016): 45-72.

[xxxvii] In Sierra-Leone (UNAMSIL), Guinea- Bissau (UNOGBIS), Democratic Republic of Congo (MONUC), and Ethiopia and Eritrea (UNMEE), as well as in those UN missions where the UN assumed transitional authority, notably in Kosovo (UNMIK) and East Timor (UNTAET).

[xxxviii] See *Report of the Panel on United Nations Peace Operations* (A/55/305), 21 August, 2000; *Strengthening of the United Nations: an agenda for further change*, *Report of the Secretary-General* (A/57/387), 9 September 2002.

[xxxix] O'Flaherty, "Human Rights Monitoring," 50.

[xl] This was particularly in evidence during UNMIK in Kosovo, where one of the main UN-promoted human rights institutions, the Kosovo Ombudsperson, was regularly hindered in his work by the refusal of the UN-led transitional authorities to provide information on security-relevant policies; this was no coincidence, as even the Secretary-General's Special Representative ultimately privileged the security over the human rights mandate; see Florian Hoffmann, "A Beacon of Light in the Dark - the UN's experience with peacekeeping ombudspersons as illustrated by the Ombudsperson Institution in Kosovo", in *Unintended Consequences of Peacekeeping*, ed. Cedric de Koning and Chiyuki Aoi (Tokyo: UNU Press, 2007): 221-249.

[xli] See, for instance, Hans Peter Schmitz, "A Human Rights-Based Approach (HRBA) in Practice: Evaluating NGO Development Efforts," *Polity*, vol. 44 (2012): 523–541.

[xlii] Sakiko Fukuda-Parr, 'The Human Development Paradigm: Operationalizing Sen's Ideas on Capabilities', *Feminist Economics*, vol. 9 (2003): 301–317. See, as well, Richard Jolly, Louis Emmeri, and Thomas Weiss, *UN Ideas that changed the World* (Bloomington: Indiana University Press, 2009).

[xliii] Florian Hoffmann*, "*In Quite a State: trials and tribulations of an old concept in new times" in *Progress in International Law*, ed. Russell Miller and Rebecca Bratspies (Leiden: Brill, 2007): 263-288.

[xliv] See Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press, 2011).

[xlv] *An Agenda for Peace, Report of the Secretary-General* (A/47/277), 31 January 1992; see also Mary Kaldor, *Human Security: Reflections on Globalization and Intervention* (Cambridge: Polity Press, 2007).

[xlvi] United Nations Development Program, *Human Development Report 1994* (Oxford: Oxford University Press, 1994).

[xlvii] Keith Krause, "Is Human Security 'More Than Just a Good Idea'", in *Bonn International Center for Conversion Brief 30* (2004), http://www.bicc.de/publications/briefs/brief30/content.phpp.

[xlviii] UNDP, "Development Report 1994"

[xlix] *We The Peoples (Millenium Report), Report of the Secretary-General* (A/RES/54), 3 April 2000, p. 6.

[l] Mack, "Human Security", 47.

[li] Kenneth Anderson and Monica Schurtman, "Symposium: The United Nations Family: Challenges of Law and Development: The United Nations Response to the Crisis of Landmines in the Developing World," *Harvard International Law Journal*, vol. 36 (1995): 359-371.

[lii] Krause, "Human Security," 45; and Mark Duffield and Nicholas Waddell, "Securing Humans in a Dangerous World", *International Politics*, vol 43 (2006): 1-23.

[liii] *The Responsibility to Protect, Report of the International Commission on Intervention and State Security*, International Development Research Center (2001).

[liv] *Human Security Now, Commission on Human Security* (2003).

[lv], *A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Change* (2004), 7.
[lvi] Kal Raustiala, "Rethinking the Sovereignty Debate in International Economic Law," *Journal of International Economic Law*, vol. 6(4) (2003): 841-878; Abram and Antonia H. Chayes, *The New Sovereignty - Compliance with International Regulatory Agreement* (Harvard: Harvard University Press, 1998); Anne-Marie Slaughter, "Sovereignty and Power in a Networked World Order," *Stanford Journal of International Law*, vol. 4 (2004): 287-327.
[lvii] See Ben Golder, "Theorizing Human Rights," in *Oxford Handbook of the Theory of International Law*, ed. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press): 684-700; and Florian Hoffmann, "Shooting into the Dark: Toward a Pragmatic Theory of Human Rights (Activism)," *Texas International Law Journal*, vol. 41 (2006): 403-414.
[lviii] See Stephen Humphreys, *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* (Cambridge University Press, 2010).
[lix] See David Trubek, "Law and Development", in *International Encyclopedia of the Social and Behavioral Sciences*, ed. N. J. Smelser and Paul B. Baltes (Oxford: Pergamon, 2001): 8443–8446.
[lx] Gathii, "Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law," *Buffalo Human Rights Law Review*, vol. 5 (1999): 107–174.
[lxi] David Kennedy, "Law and Development Economics: Toward a New Alliance," in *Law and Economics with Chinese Characteristics: Institutions for Promoting Development in the Twenty-First Century*, ed. David Kennedy and Joseph E. Stiglitz (Oxford: Oxford University Press 2003) 19–70.
[lxii] See, respectively, Security Council resolution 827, 25 May 1993 (ICTY); and Security Council resolution 955, 8 November 1994 (ICTR); see also Ruti Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Law Journal*, no. 16 (2003): 69-94; and, critically, Vasuki Nesiah, "Theories of Transitional Justice: Cashing In the Blue Chips," in *Oxford Handbook of the Theory of International Law*, ed. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016): 779-796.
[lxiii] Frédéric Mégret, "The International Criminal Court and State Sovereignty: the 'Problem of an International Criminal Law' Re-examined," in *International Humanitarian Law: Prospects*, ed. John Carey, John Pritchard and Bill Dunlap (New York: Transnational Publishers, 2006): 405-515; and Robert Cryer, "International Criminal Law vs State Sovereignty: Another Round?, " *European Journal of International Law*, vol. 16 (2006): 979-1000.
[lxiv] See Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building* (Oxford: Oxford University Press, 2004); and Hoffmann, "Beacon of Light," 241
[lxv] Alston, "Does the Past Matter," 2077.
[lxvi] See Ellen L. Lutz, Eileen F. Babbitt and Hurst Hannum, "Human Rights and Conflict Resolution from the Practitioner's Perspectives," *Fletcher Forum of World Affairs*, vol. 27 (2003): 173-193.
[lxvii] Hoffmann, "Shooting Into the Dark," 684.
[lxviii] See Philipp Alston, *Non-State Actors and Human Rights* (Oxford: Oxford University Press, 2005) and A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006).
[lxix] See Kevin Avruch, "Culture, Relativism, and Human Rights," in *Human Rights and Conflict*, ed. Julie Mertus and Jeffrey W. Helsing (Washington D.C.: Unites States Institute for Peace Press, 2006): 97-120.
[lxx] For the former, see, inter alia, Tor Krever, "International Criminal Law: An Ideology Critique" *Leiden Journal of International Law*, vol. 26 (2013): 701-723; and Florian

Hoffmann, "International Legalism and International Politics," in *Oxford Handbook of the Theory of International Law*, ed. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016): 954-984; for the latter, see Malcolm Langford and Sakiko Fukuda-Parr, "The Turn to Metrics" *Nordic Journal of Human Rights,* no. 30 (2012): 222-238.