Mediterranean Academy of Diplomatic Studies

Human Rights and the Conflict Cycle

Edited by

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Foreword

Since 1990 the Mediterranean Academy of Diplomatic Studies (MEDAC) has been a harbinger of the promotion of human rights in the Mediterranean area. The consistent analysis of human rights issues has succeeded in establishing this dimension of international relations as an extremely important level of analysis.

MEDAC's Human Dimension Programme has, for a decade, provided a constructive framework within which the sensitive study of human rights can be discussed. Improving human relations across the Mediterranean is a prerequisite to enhancing Euro-Mediterranean relations at a political and economic level.

The setting up of the German Chair in Peace Studies and Conflict Prevention at MEDAC, funded by the German Government, allowed MEDAC to focus more intently on security and conflict issues in our region. In particular, the relevance of human security as conceptual framework for the study of the inter-linkage between human rights and conflict is being highlighted by the newly established German Chair.

The multifaceted challenge of addressing human rights abuses during ongoing conflicts requires a concerted regional and international campaign over a long period of time. In addition to individual nation states working together to manage the human suffering caused by conflict, other international actors must also contribute when it comes to achieving this goal.

This includes international organisations that are well equipped to assist in identifying causes of human rights

discrimination and offer remedies in such intolerable situations. In the Mediterranean, numerous international groupings, including the European Union, the League of Arab States, the Organization for Security and Cooperation in Europe (OSCE), the 5+5, the Mediterranean Forum, the Council of Europe, and the Olive Group, all have a particular role to play when it comes to mainstreaming a human rights agenda for action.

Non-governmental organisations (NGOs) also have a very important complementary role to play in this regard. NGOs are by definition entrenched into the fabric of civil society and thus are extremely well positioned to address human rights abuses at a grass roots level.

This publication provides unique insight into the dynamics of human rights and the conflict cycle. Under the leadership of Dr. Omar Grech, during the past decade the Human Dimension programme at MEDAC has continuously highlighted the human rights deficit that exists in the Mediterranean. The recent addition of the German Chair under the stewardship of Dr. Monika Wohlfeld has introduced a complementary perspective on this issue as evident in this publication.

As a confidence building promoter and academic centre of excellence on Mediterranean relations, MEDAC looks forward to continue championing respect for human rights. This publication also confirms MEDAC's commitment to focusing on human security in the Mediterranean.

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Introduction

Monika Wohlfeld and Omar Grech

This publication is a result of the first joint research activity undertaken by the Human Dimension Programme and the first German Chair for Conflict Prevention and Peace Studies at MEDAC. The synergy between the two MEDAC programmes is obvious in that they both focus on issues which are now covered by the concept of human security. The seminar on Human Rights and the Conflict Cycle was conceived of as part of this synergetic effort. As editors of this publication and organisers of the seminar we were aware of coming from different academic disciplines and professional backgrounds. The seminar and publication sought to bring together our respective professional and academic experiences. The Coordinator of the Human Dimension Programme is a lawyer with a strong interest in human rights who has worked extensively with NGOs, while the German Chair is a war and conflict expert and a conflict prevention practitioner with extensive background in international organizations. This combination allowed us to put together a programme for the seminar and for this publication that attempts to bridge the divides between academia and practice, between NGOs and international organizations, between the human rights community and the conflict resolution community. The result has been a fruitful interaction between the speakers and contributors to this volume, based on their personal experience and focus, and interest in reaching out across the divides.

The starting point for this discussion must be the end of the Cold War, and the ensuing discussion about what

constitutes security in today's world. In the post-Cold War period academics and later also politicians and practitioners began to speak of a broader definition of security. After a first period of hope for a new peaceful world, the recognition that the security agenda is much more complex than in the past, and that the end of the bipolar global order either unleashed or uncovered a wide range of (often interconnected) interstate, intrastate and transnational security problems, threats and concerns. The new definitions of security differed in how far they were prepared to go in recognizing the broadening of security concerns such as, for example, health issues, or gender relations.

A new organising concept emerged in the discussion - the concept of human security. This concept questions the previously dominant state-centric approach to security, and shifts the focus to individuals, to human beings. Attention is thus given to people suffering insecurity within or inside states. Although making the human being a reference point is not new, the term human security emerged only in the 1990s in the UN context. The United Nations Development Programme's 1994 Human Development Report is considered a milestone publication in the field of human security, with its argument that ensuring "freedom from want" and "freedom from fear" for all persons is the best path to tackle the problem of global insecurity.[1] There are proponents of a narrow definition of human security who focus on violent threats to individuals, and proponents of a broad definition who argue that the threat agenda should include hunger, disease and natural disasters. In its broadest

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[1] UNDP Human Development Report 1994, (1994) **New dimensions of human security**. New York, Oxford University Press.

formulation, human security also encompasses economic insecurity and 'threats to human dignity'.

Thus it is easy to discern the way in which the security debate reflects the human rights agenda. In particular the broader definitions of human security are directly or indirectly informed and based on human rights discussions and references, and it is not an accident that this concept emerged in the UN framework.

'From a normative perspective the concept serves to highlight the importance of good global norms. Human security is an underlying motivation for the Universal Declaration of Human Rights, the UN Charter, the Geneva Conventions, the Ottawa Treaty, and the International Criminal Court.'[2]

Interestingly enough, the link between the concept of human security and human rights is mostly implicitly rather than explicitly recognised. Nevertheless, in the security debate, since the end of the Cold War, human rights are increasingly recognised as a relevant factor. Significantly, the discussion has been reflected in a variety of fora, including in international organizations. While in some regional contexts, such as Asia, multilateral organizations, reflecting the views of the member states, continued to emphasise the notion of state sovereignty, others, especially in the European context went further, to indicate that state sovereignty is not absolute when it comes to human rights issues. The heads of participating States of the Organization for Security and Co-operation in Europe, for example,

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[2] Kerr, P. (2010) Human Security. In: Collins, A. ed. **Contemporary Security Studies**. Oxford, Oxford University Press, p. 123.

agreed during the Summit held in Helsinki in 1992 in the resulting document *The Challenge of Change***:**

'We emphasise that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. The protection and promotion of the human rights and fundamental freedoms and the strengthening of democratic institutions continue to be a vital basis for our comprehensive security.'[3]

This ground-breaking recognition in the context of a multilateral organization was achieved with some difficulty and continues to cause tensions among the participating States of the Organization, some of which resent the intrusiveness of the Organization on matters such as elections. This commitment to the human dimension is reflected in the structure of the Organization, with its Office for Democratic Institutions and Human Rights (ODIHR), which monitors the commitments in the human dimension, and which adopts a methodical, vocal and on occasion critical stance in addressing shortcomings of participating States. It is for this reason that we invited a practitioner from the Human Rights Department of ODIHR to contribute to this project.

While the European countries have been at the forefront in acknowledging a direct link between respect for human rights and security, other regions were more cautious. Not surprisingly thus, the UN has also, albeit to a lesser degree,

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[3] Conference for Security and Co-operation Summit 1992. Helsinki (1992) **The Challenge of Change.**

moved away from an absolute interpretation of state sovereignty. Indeed, within the UN Charter there existed an inherent tension between sovereignty and human rights. Article 1 of the Charter lists, as one of the organization's aims:

"promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

On the other hand, Article 2 states that:

"nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."

This dialectic between state sovereignty and human rights within UN structures and in UN practice has come further to the fore since the end of the Cold War. Over the past decade the UN Security Council has acted under Chapter VII (which deals with threats to international peace and security) in situations where no direct threat to international security was discernible. In most of these cases the real motives behind Security Council action were humanitarian concerns amidst situations of massive human rights abuses. A number of Security Council resolutions have highlighted the importance of the observance of human rights in conflict and post-conflict situations. For example Security Council Resolution 1088 of 1996:

"Underlines the obligation of the parties under the Peace Agreement to secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, calls upon them to cooperate

fully with the work of the Human Rights Ombudsman and the Human Rights Chamber and to implement their conclusions and decisions, and calls upon the authorities in Bosnia and Herzegovina to cooperate fully with the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights and other intergovernmental or regional human rights missions or organizations to monitor closely the human rights situation in Bosnia and Herzegovina."

In this context one can observe that 'The United Nations is increasingly combining efforts to prevent or end conflicts with measures aimed at reducing human rights abuses in situation of internal violence.'[4]

It is thus clear where the agendas of conflict resolution practitioners and human rights community converge increasingly. It is less clear why they would not converge at all points, and in all situations.

Not every security concern or threat will lead to conflict, that is a struggle between various actors having different interests. And not every conflict is necessarily a negative occurrence, in particular if it can be solved by peaceful means, in a democratically structured political system based on rule of law and human rights, as Jan-Robert Uhl argues in this volume. But not every conflict is, or could be, solved using domestic institutions and mechanisms and by non-violent means.

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[4] United Nations (n.d.) **Human Rights and Conflict: A United Nations Priority** [Internet]. Available from: <http://www.un.org/rights/HRToday/hrconfl.htm>

One particular aspect of the emergence of the human security agenda has been the notion of humanitarian intervention and responsibility to protect (R2P). The volume does not focus on this particular aspect of the debate; rather, it addresses identity-based, internal conflict. But it is worthwhile to recall the key aspects of the debate on humanitarian intervention and responsibility to protect. As Gareth Evans and Mohammed Sahnoun, the authors of the key study on this matter, argue:

'The international community in the last decade repeatedly made a mess of handling the many demands that were made for 'humanitarian intervention': coercive action against a state to protect people within its borders from suffering grave harm. Disagreement continues about whether there is a right of intervention, how and when it should be exercised and under whose authority'.[5] Consequently, *'the whole issue must be reframed not as an argument about the 'right to intervene' but also the 'responsibility to protect'. And it has to be accepted that although this responsibility is owed by all sovereign states to their own citizens in the first instance, it must be picked up by the international community if that first-tier responsibility is abdicated, or if it cannot be exercised.'* The two authors recognise that *'working against the standard of sovereignty of states has been the increasing impact in recent decades of human rights norms, bringing a shift from a culture of sovereign impunity to one of national and international accountability. The increasing influence of the concept of human security has also played a role...'*[6]

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[5] Evans, G and Sahnoun, M, (2002) The Responsibility to Protect, Revisiting Humanitarian Intervention. **Foreign Affairs**. Vol. 81 No. 6 November-December, pp. 99-110.

[6] Ibid. See also Bellamy, A. (2010) Humanitarian Intervention. In: Collins, A. ed. **Contemporary Security Studies.** Oxford, Oxford University Press.

With so many different communities involved in addressing human rights issues in the conflict cycle (state institutions, local and international NGOs, human rights defenders and activists, media, international organizations, academics in a number of disciplines such as, *inter alia,* strategic studies, sociology, peace studies, lawyers and judges, conflict resolution experts and so on), it is not surprising that despite broad convergence on the significance of the issue, differences in approaches and priorities abound. It will not be possible to analyse all of these differences and possible clashes, but some key ones (academia and practitioners; NGOs and International Organizations; the human rights community and conflict resolution community) can be highlighted here.

(i) Academia and Practitioners

As in every discipline, the relationship between academic experts and practitioners working on conflict and human rights would benefit from better communication, understanding and, ultimately, co-operation. It is worth pointing out, however, that following the end of the Cold War, the so-called knowledge-action gap has diminished, with the development of new concepts of security.

'Scholarly debate is a normal part of the evolution of new concepts, but it is of little interest to policy-makers. The policy community is, however, increasingly using the concept of human security because it speaks to the

interrelatedness of security, development and the protection of civilians.'[7]

In the security sector, the dichotomy between academics and practitioners is being overcome as more academics take up policy-making roles in government while former policy-makers are more often than not taking up roles in academic circles. This has long been the case in the United States but it is a trend which is also evident in other parts of the world. Thus, the relationship between policy-shaping and policy-making has, overall, become less acrimonious if not exactly harmonious. The dichotomy, however, is still apparent in the realm of policy implementation where the relationship between academics, policy-makers and administrators, bureaucrats and practitioners remains grounded in suspicion.

(ii) NGOs and International Organizations

The divisions between the views of NGOs and International Organizations have been recognised, although both sides use different reasoning in describing those differences. While NGO representatives often argue that '[...] international actors often do not understand problems in the same way as do people on the ground and [...] failure to consult locally can actually make problems worse',[8] representatives of international organizations often speak of disorganised and democratically unaccountable efforts of NGOs on the ground.

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[7] Human Security Centre (2005) **Human Security Report 2005**. Canada, The University of British Columbia.
[8] Saunders, J. (2001) **Bridging Human Rights and Conflict Resolution: A Dialogue Between Critical Communities** [Internet]. Available from: <http://www.cceia.org/resources/articles_papers_reports/161.html>

The tension between these two actors is perhaps less accentuated than the others outlined in this introduction. Examples of cooperation between international organizations and NGOs are quite common. In the field of conflict resolution and human rights, the collaboration between UN agencies and the International Committee of the Red Cross (which, one often forgets, is an NGO) is a paramount example. The UN human rights monitoring mechanisms (such as periodic reports required by various human rights treaties) also involves NGOs indirectly. More often than not, shadow reports presented by NGOs are given adequate relevance by the UN monitoring mechanisms. Organizations such as *Medecins Sans Frontieres* and UNICEF have worked together in situations where children were suffering disease etc. The cooperation is not always smooth and is indeed often fraught with problems, nevertheless it is incontrovertibly happening.

Here too, while practical co-operation is recognised as the ultimate goal, both sides see the way towards this goal as fraught with difficulties.

(iii) The Human Rights Community and the Conflict Resolution Community

A dilemma emerges in this context, which has been recognised and described by numerous researchers – the gap between the human rights activists and the conflict resolution practitioners. Reportedly, 'communication between human rights and conflict resolution groups to date has been surprisingly limited and relations in the field often uneasy.'[9] A number of scholars described the differences in

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[9] Ibid.

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perceptions of conflict but especially need/opportunities for intervention and tools applied between the two communities – the human rights and the conflict resolution communities.[10] Lutz, Babbit and Hannum point out that 'conflict resolvers, eager to achieve a negotiated settlement to a conflict with minimum loss of life, may fail to give sufficient weight to the relevance of human rights to the long-term success of their work. Human rights advocates, on the other hand, may undervalue the pressures, under which mediators operate to bring about an immediate end to loss of life.'[11] Indeed, both communities point out the dangers of failing to understand each others' points of view and the consequent threat to the peace processes.

The differences range between the short-term versus long-term nature of goals of the two communities and the co-operative and supposedly impartial versus adversarial and confrontational nature of their approaches. Members of the conflict resolution community often ask questions relating to the accountability of human rights activists and what are the checks on their activities. Members of the human rights community on the other hand point out that conflict resolution work often hinders the ability of societies to come to terms with the conflict and work effectively on post-conflict reconstruction. They claim that this is the case when amnesties are granted and impunity is allowed.[12]

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[10] See for example Parlevliet, M. (n.d.) Rethinking Conflict Transformation from a Human Rights Perspective, **Berghof Handbook Dialogue** No. 9; Lutz, E., Babbitt, E. and Hannum, H. (2003) Human Rights and Conflict Resolution from the Practitioners' Perspectives, **The Fletcher Forum of World Affairs**, Vol. 27:1, Winter/Spring.
[11] Op. cit. Lutz *et al*, (2003) p. 173.
[12] Op.cit. Saunders (2001)

However, most writers on this matter also indicate that in some cases the efforts have been complementary in that, for example, the right timing of release of a human rights report by an NGO that shames and condemns human rights abuses helps practitioners to bring about conflict resolution.

The perspective for closer co-operation between the two communities is arguably a positive one, as is the recognition of the significance of respect for human rights and the need for some form of follow-up on human rights abuses following the end of conflict (international tribunals, national prosecution, truth commissions) grows.[13] It is worth noting that authors do not call for a merger of the two fields, but rather for more constructive approaches towards dialogue and co-operation between them, which would allow the human rights community to go beyond a legalistic view, and emphasis on shaming, and the conflict resolution community to better understand the important role that human rights work plays at all stages of the conflict cycle.

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[13] Ibid.

1 An Overview of the Conflict Cycle

Monika Wohlfeld

Introduction

The project title Human Rights and the Conflict Cycle reflects the notion that human rights concerns may differ according to the phases of conflict. Significantly, the concept of conflict phases, also described as life cycle of conflict, or conflict cycle, has been developed primarily in the context of what will be called here conflict and conflict resolution research, and human rights literature appears largely to disregard the complexity of the debate and especially the models developed. While human rights literature, particularly in the post-Cold War era, does provide insight into the role that human rights play in conflict, it largely uses a simple three stage model of conflict (conflict escalation or intensification, armed conflict and conflict de-escalation or post-conflict stage) or even no model at all. This raises the question of whether the human rights field would not benefit from the concepts and models of the conflict cycle that conflict resolution experts have developed.

On the other hand, it is acknowledged that the conflict cycle models developed by the conflict resolution community suffer from a number of shortcomings. These shortcomings include the fact that there is no clarity on some basic terms used, that conflicts are not linear and that there is no automaticity in moving through the different stages of conflict. These issues will be addressed in this chapter. The shortcomings beg the question of whether the conflict cycle models should be adopted uncritically by the human rights

community, or whether there are any elements that might be useful.

This chapter will thus look at the concept of the conflict cycle and present a variety of models developed. It will also analyse corresponding notions of stage of involvement or intervention in conflict, which are particularly useful for the conflict resolution practitioner, but also for human rights experts. Furthermore, it will consider difficulties in defining stages of conflict and shortcomings of the models developed. Finally, it will consider the ways in which human rights literature could be enriched by taking into account the work undertaken on the conflict cycle by conflict resolution experts.

The Conflict Cycle

The first step towards understanding and thence addressing a conflict is to be able to define the structure of the conflict and its dynamics. Much attention has been devoted in this context by academics and also conflict resolution practitioners to the notion of the life cycle of a conflict, or conflict cycle. A conflict is a dynamic situation and the intensity of conflict changes over time. Arguably, the concept of the conflict cycle helps to understand this dynamic.

In literature on conflict, when the conflict cycle or phases are addressed, the level of complexity of models differs depending on the purpose of the writers, but most of them acknowledge, at least implicitly, the notion of a circular pattern to conflict. Significantly, some see the circular pattern simply as a repeated pattern of escalation and de-

escalation and others refer to the fact that escalating from stability to crisis and war and de-escalation back to that situation creates a circle. The proposition that conflict cycles are recurring is strongly supported by empirical research and work of numerous scholars. In addition, some claim that once a conflict has taken place, the probability of conflict re-occurring becomes significantly higher.

Stages of conflict in human rights literature

Most of relevant human rights literature focuses on one stage of conflict, most often the stage of negotiating or implementing peace agreements[14]. Some authors focus on conflict transformation, the stage of moving from violence to sustainable peace[15]. Much attention is also paid in human rights literature to truth commissions, which are associated with the stage following armed conflict.[16] Some of the writers do acknowledge that 'human rights violations are causes and consequences of armed conflict'[17], which in a sense provides for a division of conflict into two phases.

If human rights literature uses a model of conflict or focuses on several stages of it, more often than not it is a

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[14] See for example International Council on Human Rights Policy. (2006) **Negotiating Justice,Human Rights and Peace Agreements.** International Council on Human Rights Policy; Minow, M. (1998) **Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence**. Boston, Beacon Press.; von Kaltenborn-Stachau, H. (2008) **The Missing Link: Fostering Positive Citizen-State Relations in Post-Conflict Environments.** Washington DC, IBRD and WB.

[15] See for example Parlevliet, M. (2009) **Rethinking Conflict Transformation from a Human Rights Perspective**. Berghof Research Centre for Constructive Conflict Management.

[16] See for example Rotberg, R. and Thompson, D. eds. (2000) **Truth v Justice: The Morality of Truth Commissions**. Princeton, Princeton University Press.

[17] Op. cit. Parlevliet (2009) p. 5

very simple model of conflict. For example Julie A. Mertus and Jeffrey W. Helsing in their book 'Human Rights and Conflict', divide their work in three stages to a conflict: the conflict intensification stage, the armed conflict stage and the post-conflict/post crisis stage. Each of them has specific characteristics. The conflict intensification stage is *inter alia* marked by human rights violations as root causes of conflict, and failure to address human rights issues hinders conflict prevention efforts. During the armed conflict stage, competing factions take up arms and human rights abuses are both a common by-product of the violence and a component of wartime strategy, while human rights norms and concerns inform efforts for international intervention. During the post-conflict/post crisis stage violent conflict ceases and efforts at rebuilding begin. Here human rights considerations play a role in peace agreements, the treatment of refugees, civil society building efforts, human rights education campaigns and the creation of truth commissions and other efforts to hold perpetrators of human rights abuses accountable. The authors indicate that this third stage can lead to a new round of intensified conflict.[18]

Lutz, Babbitt and Hannum too suggest that:

'*violent conflict and other circumstances in which massive violations of human rights are occurring can be divided roughly into three stages: the period before violence breaks out when prevention is possible; the violent conflict period; and the period after the conflict ends or the human rights violation cease.*'[19]

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[18] Mertus, J. and Helsing, J. (2006) **Human Rights and Conflict: Exploring the Links between Rights, Law and Peacebuilding**. Washington DC, United States Institute of Peace, p. 10.
[19] Op. cit. Lutz *et al*. (2003) p.185.

These authors warn that the phases often blur. Michelle Maiese also writes that:

'*many conflicts are sparked by a failure to protect human rights [...]. As conflict intensifies, hatred accumulates and makes restoration of peace more difficult. In order to stop this cycle of violence, states must institute policies aimed at human rights protection*'[20], thus also implicitly subscribing to a three-stage model.

The three stage model is parsimonious, but it does not adequately reflect the work undertaken by the human rights community on conflict as, for example, it does not give sufficient attention to root causes of conflict and thus does not lend itself to reflections on early warning, and to the post-conflict situations, in which human rights abuses often continue or in some cases even increase. It would appear that literature on conflict and human rights would benefit significantly from more differentiated attention to the stages of conflict.

Models of conflict cycle in conflict resolution literature

More differentiated models have been developed by conflict resolution experts. Although the various efforts towards defining conflict cycles are not necessarily contradictory, they differ significantly in terms of their complexity. Thus, while some writers put forward a very simple model with three stages, others add on features and work with models with several more stages or even several

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[20] Maiese, M. (2004) **Human Rights Protection** [Internet] Available from: <http://www.beyondintractability.org/essay/human_rights_protect/ > p.1

parallel sub-conflicts, defined by issue area rather than geographically, and each of them with different dynamics.

Many writers include in their models the escalation and de-escalation phases, thus being able to present them as graphs, mostly in curve or, more correctly, wave form. Still others divide the escalation and de-escalation parts into phases. Finally, the more complex models reflect the fact that a conflict will consist of several waves, one after another. Here the presentations will differ, with more complicated approaches drawing the waves in different sizes and acknowledging that each wave may reach different levels of intensity. The most complex models view conflict as a series of such graphs on top of each other, arguing that any conflict will consist of numerous sub-conflicts. Indeed, the latter approach, while cumbersome, also suggests that it is possible to approach the subconflicts separately, which may be helpful in efforts to de-escalate a situation.[21]

The Conflict Prevention Network of the European Commission has identified four stages of the conflict cycle: stable peace, unstable peace, high tension and open conflict. In this approach, pre-conflict and post-conflict phases are opposed directions of the linear approach, in that in post-conflict situation the conflict intensity diminishes from open conflict to high tension and so on, to stable peace.

'*Each of these stages differs in terms of the kinds of causes that are present, their associated features, the turning points or thresholds that mark the transition from one phase*

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[21] For different conflict curves, see for example Swanstroem, N. and Weissmann, M. (2005) Conflict, Conflict Prevention. Conflict Management and Beyond: a Conceptual Exploration. **Concept Paper** Central Asia-Caucasus Institute, Silk Road Studies Programme, pp. 15-18.

to another, and the type of international engagement that is most emphasised.'[22]

This approach does not specifically analyse the role of human rights, but they are present throughout in the analysis. Other models distinguish several other conflict stages.[23]

One important difference in the various definitions of the conflict cycle is whether scholars include in it the stage of peace and stability initially and after the conflict. In other words the difference is whether scholars consider the absence of conflict as a stage of conflict cycle, or whether they start looking at the situation when tensions arise, and abandon its study before peace and stability have been achieved. This is not just a rhetorical difference. For some it is a philosophical difference, and they see the study of peace as a distinct discipline from the study of conflict and war. For others it is also of key significance whether a peaceful

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[22] Stiftung Wissenschaft und Politik/Conflict Prevention Network eds. Peace-Building and Conflict Prevention in Developing Countries: A Practical Guide (principal contributors: Michael Lund and Andreas Mehler) **CPN Guidebook** Draft Document (1999) Brussels, Ebenhausen pp. 19–23. as quoted by Zellner, W. in *The OSCE: Uniquely Qualified for a Conflict-Prevention Role.* Van Tongeren et al. eds. (2002) **Searching for Peace in Europe and Eurasia: An Overview of Conflict Prevention and Peacebuilding Activities**. Bolder, Lynne Rienner Publishers.

[23] To give some other examples, The Health as a Bridge for Peace project defines five phases: impeding crisis, outbreak of violence, war, post-crisis, stable peace. Rodriguez-Garcia, R. et al. (2001) How Can Health Serve as a Bridge for Peace? **CERTI Crisis and Transition Tool Kit Policy Paper**, February. [Internet] Available from: <http://www.certi.org/publications/policy/gwc-12-a-brief.htm.> The very comprehensive Beyond Intractability website identifies a set of 9 phases: no conflict, latent conflict, emergence, escalation, (hurting) stalemate, de-escalation, settlement\resolution, post-conflict peacebuilding and reconciliation. Brahm, E. (2003) Conflict Stages. In: Burgess, G and Burgess, H. eds. **Beyond Intractability**. Conflict Research Consortium, University of Colorado, Boulder. [Internet] Available from: <http://www.beyondintractability.org/essay/conflict_stages/> Posted September 2003.

and stable situation should be watched for any signs of tensions arising and, therefore, early warning can be given, or whether the work of conflict resolution and human rights experts starts when tensions and hostilities emerge.

The larger issue here is whether, as happens often in real life, efforts to address conflicts begin after escalation has taken place and mistrust between the parties has been built-up. In these cases any effort is likely to be costly and difficult. The other option is that intervention could start much earlier when, in principle, the parties are likely to be much more accepting of them.

Additionally, it is worth noting that literature on the conflict cycle, and efforts to develop conflict cycle models, in particular those that do not include the early warning stage, do not focus on the root causes of conflict. Instead, they focus only on the intensity level of the conflict and its duration. This evidently is a shortcoming, one which could possibly be bridged by linking the conflict cycle literature to work undertaken on root causes of conflict and, in particular, on the significance of human rights, and on early warning indicators.

Some interesting efforts have been undertaken to highlight the role of early warning and to develop indicators for conflict. One such example is work undertaken by the Stockholm International Peace Research Institute (SIPRI), which identifies a category of early warning indicators, 'justice and human rights', as the first on a list of several categories.[24] There are numerous such efforts. Certainly

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[24] Hagmayer-Gaverus, G. and Weissmann, M. (2003) Early Warning Indicators for Preventive Policy – a New Approach in Early Warning Research. **SIPRI Working Paper**, March.

patterns of rights violations, including minority rights are also recognised in the context of the work of NGOs and international organizations such as the UN and the OSCE as an important early warning of conflict.

Stages of involvement or intervention in conflict resolution literature

The division into stages or phases and the understanding of conflict as circular is the starting point for research on conflict prevention, management and resolution. It also helps the practitioner, whether governmental, intergovernmental or NGO to decide when and how to get involved in addressing a conflict. However, in order to make the notion of conflict cycle more relevant in the study of reactions to conflict and to provide guidance to practitioner, parallel conceptions of the conflict cycle, which focus on the stages of involvement, have been developed. At its simplest, and corresponding to the simple conflict cycle model delineated above, it has three stages – conflict prevention, crisis management, and post-conflict rehabilitation. However, much more complex models have been developed.

Michael Lund and Susan Votaw West, in their article on 'A Toolbox to Respond to Conflict and Build Peace', attempt to provide policy-makers and practitioners with a set of consistent terms pertaining to intervention that integrate the phases of conflict and policy interventions.

They identify conflict prevention (preventive diplomacy, preventive action, crisis prevention, preventive peace-building), crisis management, conflict management (conflict mitigation), peace enforcement, conflict termination,

peacekeeping, conflict resolution (post-conflict peacebuilding).[25] This, while useful is, however, more of a comprehensive list than a model.

However, some organizations and authors, especially those focused on conflict prevention, rightly add early warning, and argue that the most important step is from early warning to early action. Some acknowledge that conflict prevention has two stages: structural and operational prevention (also called primary and secondary prevention, or direct and structural prevention) applicable at different stages and directed respectively at issues with longer-term perspective and shorter term perspective. Others distinguish between preventive diplomacy and conflict prevention. These early stages of early warning and different stages of conflict prevention do require significant attention because, clearly, this is the most adequate, least costly and most effective point in time to react to a developing crisis. It is surprising to see that much of the work undertaken on the stages of involvement or intervention does not include early warning. One could speculate why this is so. The most convincing reasons may be the fact that so much information is available in the interconnected and globalised world that early warning becomes irrelevant. However, one must add that in particular with large amounts of information, analysis and interpretation become the key. Another reason may be that the conflict resolution community is exactly what it is called – a set of experts that get interested and/or involved when there is a conflict that needs resolving. A final reason that may be of relevance could be the issue of visibility of

[25] Lund, M. and Votaw West, S. (1998) **A Toolbox to Respond to Conflict and Build Peace, in Prevention and management of violent conflicts: an international directory.** [Internet] Available from: <http://www.conflict-prevention.net/page.php?id=45&formid=72&action=show&articleid=55>

both the problems that are to be addressed and efforts to resolve them – or as is being said sometimes, the lack of visibility of early warning and conflict prevention efforts.

An additional difficulty in the context of defining the stages of involvement and intervention is the multitude of terms used to describe the forms of intervention, and in addition the fact that different communities may use different terms for similar forms of engagement. To give an example, Michael Lund refers to two roughly parallel series: the p and the c series, whereby the p refers to preventive diplomacy, peacemaking, peace enforcement, peacekeeping and peace-building used in the UN context, and c to terms such as conflict prevention, crisis management, conflict management, conflict mitigation, conflict termination, and conflict resolution which he describes as used in academic literature on the subject.[26] Even this is a simplification, as often the terms are mixed.

To give an example, the Conflict Prevention Centre of the Organization for Security and Co-operation in Europe, a regional organization under the UN Charter, uses in its work a conflict cycle definition which includes early warning, conflict prevention, crisis management, and post-conflict rehabilitation,[27] and not the p series. The emphasis of the Organization is on conflict prevention, and occasionally it is acknowledged that conflict–prevention and post-conflict rehabilitation may in some cases be very similar in terms of aim (preventing conflict or recurrence of conflicts) and tools available to achieve this aim. In turn some academics use the

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[26] Lund, M. (1996) **Preventing Violent Conflict: A Strategy for Preventive Diplomacy**. Washington D.C., United States Institute of Peace Press, p. 40.
[27] See for example website of the OSCE Conflict Prevention Centre (n.d.). [Internet] Available from: <http://www.osce.org/cpc/>

p series rather than the c series to speak of stages of involvement.

The differences are not just cosmetic or linguistic. It appears that unlike in the human rights literature, the literature on conflict cycles and on conflict resolution does not have an agreed upon vocabulary. While some authors have attempted to produce glossaries of terms[28], the discourse is not very accessible, and human rights experts (who in principle deal with a subject much better delineated and defined) may shy away from dealing with it.

Clearly, the starting point for any efforts to define the stages of involvement or intervention must be an understanding of the stages of the conflict cycle. Thus, even though some charts and models only accommodate the stages of intervention, one can only hope that behind such efforts there is some sound reference to the conflict cycle. Only an understanding where the conflict is at allows the practitioner to decide when and in which way to become engaged.

Some models integrate the stages of conflict with stages of involvement, creating an analytical model (admittedly a simplified construction) that may be of use to both theoretical and practical approaches to conflict. Examples of such integrated charts can take either a wave form or a circle form.[29]

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[28] Op. cit. Lund (1996) p. 39.
[29] Ibid. p. 38 , Op. cit. Rodriguez-Garcia (2001) p. 22.
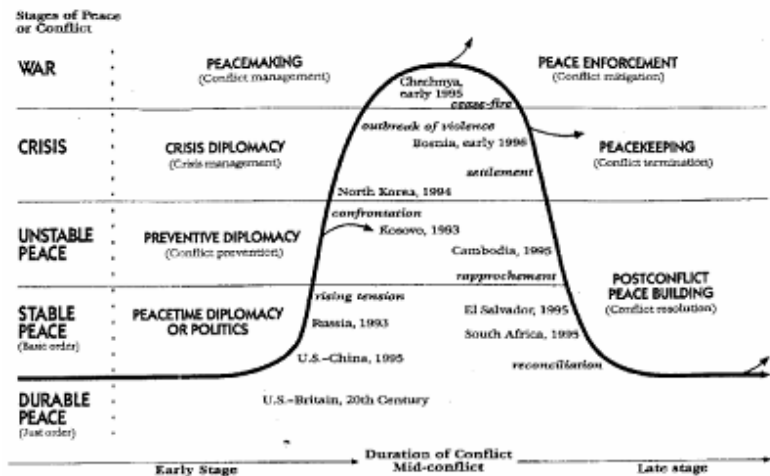
Graph 1: Life Cycle of a Conflict, from. Lund, M. (1996) **Preventing Violent Conflicts: A Strategy for Preventive Diplomacy.** Washington D.C., United States Institute for Peace Press, p. 38.

Graph 2: Integrated view of the conflict cycle, from health professionals' perspective, from Rodriguez-Garcia, R. *et al*, (2001) How Can Health Serve as a Bridge for Peace?. **CERTI Crisis and Transition Tool Kit Policy Paper,** February.

Albrecht Schnabel presents in his chapter an integrated model of peace and conflict dynamics, which he co-developed for a UN System Staff College, and which aims at overcoming some of the difficulties that other models have in addressing the impact of various events and efforts.

Problems of defining stages of conflict and stages of involvement

No agreed upon vocabulary

As has been noted above, the conflict resolution field is not based on an agreed set of terms and definitions. This reflects the fact that it is a cross-disciplinary field, as much as the fact that it is not based on some universally accepted documents (although one could for example argue that UN Security Council resolutions could in principle provide such a basis). Consequently, as has been argued in this chapter, the human rights field may find conflict resolution research and discourse not accessible and confusing.

Conflicts not predictable

One of the difficulties in defining what are the various stages of conflict is that all of these models are idealised. Conflicts usually do not follow a linear or predictable path. They evolve in fits, which mark progress and setbacks towards resolution. Because violent conflicts are non-linear and contingent upon events, models cannot be used mechanically. Transitions from one stage to another may differ in terms of form and speed. Escalation may resume after stalemate or negotiation. Escalation and de-escalation

may alternate. Negotiations may take place in the absence of a stalemate. If one accepts the proposition that there are several sub-conflicts in any conflict, and their dynamics are different, than it becomes even more difficult to define the stages of conflict.

It is worth underlining that transition from stage to stage in the direction of peace requires effort. In particular, there is no automaticity in the transition from war to peace – many intervening factors can change the course of things but, even more significantly, much work has to be invested in such a development. The conflict cycle models that do not include references to such work (or involvement or intervention), may be misleading.

End of conflict often does not translate into drop in structural violence and of human rights infringements

As work on post-conflict situations indicates, de-escalation and end of armed violence mostly does not have the effect of ending structural violence and human rights violations. Significantly, as Albrecht Schnabel argues in his chapter, for instance small arms violence against women tends to increase after wars. Others indicate that levels of domestic violence increase after conflicts. As a World Bank publication on the subject of gender and conflict indicates, 'with the transition from conflict to peace, a shift in GBV [gender based violence] seems to take place from the public to the private domain through an increase in domestic violence'.[30] Martina Vanderberg, writing about the situation

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[30] Bouta, T., Frerks, G. and Bannon, I. (2005) **Gender, Conflict and Development.** The International Bank for Reconstruction and Development/The World Bank, p. xxi.

of women in Tajikistan after the civil war, also argues that 'as in many post-conflict societies, domestic violence appears to have spiked upward after the official cessation of hostilities.'[31] In fact, arguably, it is all vulnerable groups such as women, children, minorities and refugees that often experience discrimination and/or violence in post-conflict societies. Thus, models of the conflict cycle seldom accommodate such specificities of post-conflict situations, and thus may not be entirely adequate for the use of the human rights community.

Models do not reflect subjective perceptions of conflict stages

An additional difficulty that needs to be highlighted here is the following: models do not necessarily take into account the subjective perceptions of where a conflict is at. Views of whether a conflict is escalating and at which pace will, for example, differ between those close to events and those further away, and those within the country and outside of it.

Perceptions may vary according to the amount and kind of information available about the situation. The key role here is played by media reporting. As many have observed, television images often tend to distort perspectives. To give an example, a localised violent demonstration, which finds itself played and replayed on international news channels can give the impression of a massive crisis affecting a country, at the same time when inhabitants of the same city report of not noticing anything themselves. Some refer to violence-

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[31] Vandenberg, M. (2001) Women, Violence and Tajikistan, **Eurasia Policy Forum,** 20 February, p. 2, [Internet] Available from: <http://www.eurasianet.org/policy_forum/vand022001.shtml>

centred way of reporting. Rabea Hass writes for example that 'reports about victims and violence are usually a guarantor for a high circulation, since sensationalism sells.'[32]

Conversely, when images are not available and information flow is restricted by authorities or circumstances, the real extent of a crisis or conflict can emerge only slowly, if at all. The 'CNN effect' also implies that after some days of intense reporting, there is less attention paid to any given conflict, thus giving the impression that it has somehow resolved itself or become less relevant.

Views can differ among individuals, not only because of scope of information available to them, but also because of loyalties, experience, predisposition, interest in certain issues, willingness to listen to information or analyses. The perception of which stage a conflict is at may differ not only from individual to individual, but also from group to group involved. As Eric Brahm argues:

'...the stage of a conflict is determined subjectively by those involved. Some participants may see the conflict as escalating, while others believe it is de-escalating; one side may perceive itself to be in a hurting stalemate, while the other side believes it can prevail through continued force. Determining each party's assumptions regarding the stage of the conflict is thus important, before one can design a conflict management, transformation, or resolution strategy.'[33]

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[32] Hass, R. (2009) Media as Civil Society Actors in Israel and their Influence on the Israel-Palestine Conflict**. Human Rights in Conflicts: the Role of Civil Society Working Paper Series**. 01/09, February, p. 15.

[33] Brahm, E. (2003) Conflict Stages. In: Burgess, G and Burgess, H. eds. **Beyond Intractability**. Conflict Research Consortium, University of Colorado, Boulder. [Internet] Available from: <http://www.beyondintractability.org/essay/conflict_stages/> Posted September 2003. .

It is worth noting that the sequence of the phases differs from group to group. Moderates, hardliners, spoilers, and various other factions within each camp tend to be in different phases of intractability at any given time. Therefore 'shifts in the relative size and influence of those factions will produce changes in the conflict's course.'[34] Finally, one can appreciate that there are significant differences if not in perceptions of stages of conflict, then certainly in strategies and tactics for involvement of participants and interveners in the different phases of the conflict. To give an example, while the stage of stalemate may be a signal to a certain set of participants in the conflict that more resources are needed in order to militarily overcome the perceived enemy, for interveners, a stalemate may be a signal that the participants may be ready for mediation.

Thus, interestingly, a practitioner's needs may not be fulfilled by analyzing where the conflict is at, but also where it is perceived to be by ALL key individuals and groups, as well as what involvement it lends itself to. This is rather difficult to do at distance, hence presence on the ground, ideally in the form of consultants, staff, permanent office or field mission may be needed.

How could human rights literature benefit from a more differentiated view of the conflict cycle?

While many authors argue that it is difficult to reconcile the safeguarding of human rights with conflict resolution or that the human rights community and conflict resolution

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[34] Ibid.

community often act in ways which impede each others' efforts[35], arguably the human rights community can learn from the more differentiated view of the conflict cycle that the conflict resolution experts provide. It is beyond the scope of this chapter to present the extent and content of tensions between the two communities, and the efforts of numerous writers to bridge the divide. However, the review of respective literature indicates that there are also basic differences in understanding the conflict cycle, with the human rights community paying relatively little attention to the nuances of the various stages of conflict or involvement in conflict. The human rights community would benefit from a more nuanced understanding of the conflict cycle, such as provided by a variety of authors from the field of conflict resolution, in order to be able to adequately reflect on the much differentiated nature of the stages of conflict, and the corresponding, sometime nuanced, link to human rights.

However, the human rights field seems to be more clearly defined than the conflict resolution field[36], which lacks a framework such as the Universal Declaration of Human Rights, and as this chapter indicates, also clearly defined and agreed upon terms and definitions, which creates difficulties for those who wish to apply the concepts and models developed by it.

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[35] See for example Op. cit. Lutz, p. 173; Anonymous (1996) Human Rights in Peace Negotiations, **Human Rights Quarterly** 18 (2); Maiese, M. (2003) **Human Rights Violations**, June, p. 3 [Internet] Available from: <http://www.beyondintractability.org/essay/human_rights_violations/>; Op. cit. Saunders [Internet] Available from: <http://www.cceia.org/resources/articles_papers_reports/161.html>; Special Issue of **Human Rights Dialogue on Integrating Human Rights and Peace Work.** (2002), Winter, Series 2, Number 7.
[36] Op. cit. Saunders (2001)

In addition, the conflict resolution field offers many different models of the conflict cycle, with differing complexities. From the perspective of this author, the key aspects to focus on in selecting an appropriate model of the conflict cycle in the context of the discussion of the role of human rights in conflict are those stages of conflict which allow for more focused attention to early warning and conflict prevention, especially structural conflict prevention. Joe Saunders, who writes about bridging the divide between the two communities reflects this in the following way: *'Human rights work is [...] a tool of analysis and policy formation, as rights violations can be an early warning of escalating conflict. Furthermore, human rights education, promotion, and monitoring can play an important role in preventing conflict and maintaining peace in the long run.'*[37]

Similarly, more reflection may be needed on the link between human rights and the post-conflict stages, although here, the concept of conflict cycle and its models may not be entirely helpful to the human rights community because as has been argued above, during these stages trends pertaining to human rights situation and abuses often do not follow the logic of the conflict cycle models.

Arguably, projects such as this one, aimed at bringing together experts working in the different fields and willing to entertain cross-disciplinary approaches, can contribute to cross-fertilisation needed to bring ideas from one field of research to another.

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[37] Ibid.

2 Human Rights and the Conflict Cycle: A Synopsis

Omar Grech

Introduction: A Complex Relationship

When discussing the relationship between human rights and the conflict cycle, one may question whether any relationship between the two is possible apart from an inherently contradictory one. The Universal Declaration of Human Rights emphasises at the outset the notion that human rights and peace are inextricably linked:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"

Thus, if human rights is the foundation upon which peace is built does it not follow that violent conflict is a denial of human rights in itself? The inclusion of peace as a human right has not yet attained legal status and definition[38] although most human rights treaties and programmes of action make explicit or implicit references to peace as a component of - or even a pre-requisite for - a human rights culture. If one were to adopt the thesis that peace is a human right, naturally there can be no possible dialectic between peace and the conflict cycle except to state that violent conflict is a breach of human rights and thus should be eliminated. Such a response, however, evades the

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[38] On peace as a human right see, *inter alia*, Roche, D. (2003) **The Human Right to Peace**. Ottawa, Novalis.

fundamental reality that violent conflicts do exist and that condemning them or wishing them away will not necessarily yield any positive result.

The adoption of a human rights approach to the conflict cycle, I contend, may provide guidance as to how to respond to the threat of violent conflict, its containment when it erupts and also its resolution. While it would be foolish to prescribe a rights-based approach as a panacea to all the maladies associated with violent conflict, it is worth assessing the contribution that such an approach may provide to conflict studies. The realisation that human rights principles have a role to play within the conflict arena has led practitioners and academics away from a purely adversarial conception of the relationship between conflict (as well as conflict resolvers) and human rights (as well as human rights advocates).

It is now clear that the stereotypical portrayal of human rights advocates as moralising and mindless actors ready to derail a peace process for the sake of human rights principles on the one hand; and the depiction of conflict resolvers as unprincipled, pragmatist protagonists of shady deals involving unsavoury characters on the other hand, are both equally deceptive. The reality is more complex; a complexity that is in keeping with the difficulties inherent in conflict and human rights themselves. One of the central tenets of this paper is that a broader understanding of human rights, eschewing a purely legalistic and litigious interpretation, may prove to be a useful tool in bridging divides, combating monochromatic identities and normalising post-conflict societies.

Such a broad understanding of human rights allows conflict resolvers to view the human rights agenda as a complementary one to the conflict resolution one. It also allows human rights advocates to conceptualise their work in conflict resolution as an ongoing, long-term project that may and should use methods other than courts and tribunals in achieving their aims. The role of human rights education in this context is of particular relevance.

These considerations, as well as others, have made it possible for academics and practitioners to take a nuanced, versatile and balanced approach in defining the relationship between human rights and conflict:

"The relationship between conflict management and resolution on the one hand, and human rights promotion, on the other, is multifaceted, intricate, and fluid, evolving in response not only to changes in comtemporary violent conflict but also to the two camps' growing experience in working as partners rather than as competitors." [39]

I would add that such an approach is also aided by changes in the understanding of human rights as suggested above.

The human needs theory of conflict and the fulfilment of human needs as a conflict prevention measure

The study of conflict and conflict resolution has evolved significantly since the 1950s and 1960s when conflict analysis and resolution emerged as a distinct academic

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[39] Mertus, J.A. and Helsing, J.W. eds. (2006) **Human Rights & Conflict.** Washington, United States Institite for Peace Press. p. x

discipline. Conflict studies are now a discipline which is attracting more students, practitioners and academics as evidenced by the growing number of undergraduate and graduate programmes in conflict analysis and resolution. As conflict analysis matured as an academic discipline so, naturally, did the body of literature that attempts to explain why and how conflicts emerge and how best to resolve such conflicts. It is beyond the scope of this paper to examine the various conflict and conflict resolution models that have emerged over the past four decades[40]. Nevertheless the theories which have had a significant impact on conflict resolution and which are closely linked to the values, discourse and context of human rights deserve to be mentioned.

In particular Edward Azar's theory of protracted social conflict based on lack of access to human needs has strong linkages with the underlying rationale of human rights as a system which addresses the most fundamental human needs (such as food, health, education, political participation etc). This human needs theory of conflict as developed by Azar and John Burton amongst others is summarised by Wallensteen:

"With the needs-based approach, it is the difficulty of meeting an individual's party's need that is the origin of the conflict and the key to its solution. The analysis aims at locating unmet needs."[41]

If we look at specific human rights discourse in this context we note that the cold war division between economic

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[40] For a good general overview see, *inter alia*, Ramsbotham, O., Woodhouse, T. and Miall, H. (2005) **Contemporary Conflict Resolution**. 2nd ed., Cambridge, Polity Press.

[41] Wallensteen, P. (2007) **Understanding Conflict Resolution**. 2nd ed., London, Sage, p.41.

and social rights on the one hand and civil and political rights on the other re-emerges. Breaches of economic and social rights (mainly through discrimination in access to public goods) are identified in some of the literature as underlying causes of conflict whereas breaches of civil and political rights (especially personal integrity rights) are considered as the immediate triggers of violent conflict. In fact it has been suggested that:

"More often than not the relevant proximate causes are political, including rapid regime change and uncertainty; external intervention; elections; democratic transitions or military coups; protests or insurgent violence, which provoke brutal government crackdowns; and discriminatory policies. For our purposes it is important to note that underlying causes are often associated with violations of economic and social rights, but that proximate causes are more frequently linked to abuses of civil and political rights."[42]

However, a caveat should be added to this. Human rights violations of economic and social nature, even severe ones characterized by extreme poverty, do not necessarily, or even frequently, result in violent conflict. As Nelson cogently points out: "Much of humanity has lived in acute poverty for most of history, but has not been in a state of chronic rebellion."[43] The real underlying cause of conflict in terms of human rights is, I suggest, the 'discriminatorisation' of relative poverty i.e. when poverty is, or is somehow perceived as, 'inflicted' on certain groups. Interpreting

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[42] Thoms, O. And Ron, J. (2007) Do Human Rights Violations Cause Internal Conflict? **Human Rights Quarterly**, Vol. 29, No. 3, August.
[43] Nelson, J. (n.d) **Poverty, Inequality and Conflict in Developing Countries** [Internet] Available from: <www.rbf.org/pdf/poverty.pdf>.

Thoms and Ron it appears that the most probable risk factor for violent conflict is a scenario where individuals within a group are poorer than individuals in another group because of their appertaining to their specific group. This poverty is usually relative poverty exemplified by lesser access to public goods. Put in simple terms, one may illustrate this risk factor as follows: I am poor because I am discriminated against and I am discriminated against because I am Hindu or black or Catholic etc.

When this equation is internalised by the group and becomes part of their identity the stage is set for potential escalation of conflict. This internalisation of discrimination tends to occur as the fact of being discriminated against becomes part and parcel of the group identity and, indeed, part of the collective memory of that group. Thus, discrimination may serve to forge and strengthen a particular group identity. Once discrimination and victimhood enters the group's collective memory it persists through time even when the actual discrimination ceases. Indeed Thoms and Ron suggest that:

"in some cases, the truth of the matter matters less than popular perception. If one group has disproportionate control over the state, others may feel discriminated against because they lack a sense of participation and trust[44]."

This is particularly relevant in identity-based conflicts in the context of divided communities. These scenarios typically present a situation where a particular ethnic, religious or political group controls the resources of the state (through majoritarism, military repression etc.) and excludes the other groups within the state from access to structures

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[44] Op. cit. Thoms and Ron (2007)

and benefits. This discrimination helps further forge the identities of the respective groups. The group in power perceives itself as special and superior while the excluded group's idenity is further strengthened through the experience of discrimination. The shared experience of domination on one side and the shared experience of suffering discrimination on the other side thus serves to further cement the respective identities. The re-inforcement of the group identity in its turn accentuates the underlying causes of conflict by exacerbating the polarisation of society and the sense of grievance of the excluded group. Thus the stage is set for escalation to violent conflict, once the discriminated group witnesses abuses of personal integrity rights such as police violence, arbitrary arrest, torture etc. This seems to indicate that the risk of conflict increases in similar situations for:

"If rights are denied, needs are frustrated, which creates a potential for violent conflict as people seek to find ways to address their basic needs, since these are non-negotiable."[45]

This sense of grievance that is created does not appear to be an immediate trigger for escalation to violent conflict. Instead, the literature suggests that it is repression that transforms grievance into active antagonism:

"although individuals and groups may grudgingly tolerate economic inequality and discrimination for years, they are likely to respond with violence when physically threatened or attacked."[46]

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[45] Op. cit. Parlevliet (2009) p.5
[46] Goodwin, J. (2001) **No Other Way Out: States and Revolutionary Movements**, Cambridge University Press.

Returning to the human needs theory of conflict one can note that addressing violations of economic and social rights may serve to fulfil the unmet needs while preventing violation of personal integrity rights could avoid conflict escalating into violence. Such a framework of analysis provides clear indications on how and where to intervene in conflict prevention terms. Clarity, however, does not equate with ease and the task of addressing abuses of human rights in divided societies remains a delicate and complex one. Essentially, professionals advising on conflict prevention in the context of divided societies riven by discrimination have the unenviable task of balancing the demand for rapid change from the discriminated group with the instinctive resistance to change of the dominant group.

The role of humanitarian law in attenuating conflict repercussions

The difficulties inherent in preventing violent conflict is evidenced by the fact that violent conflicts continue to erupt even at a time when unparalleled structures, attention and strategies have been devised in the field of conflict prevention and conflict resolution. Civil conflict, in particular, continues to break out at regular intervals. Once violent conflict breaks out, human rights are necessarily the first casualties of the conflict.

This is widely acknowledged by states, civil society and international organizations such as the United Nations:

"The human rights abuses prevalent in internal conflicts are now among the most atrocious in the world. In 1996, there were 19 ongoing situations of internal violence around

the world in which 1,000 people or more were killed…The number of conflict-related deaths is only a small indication of the tremendous amount of suffering, displacement and devastation caused by conflicts. Assaults on the fundamental right to life are widespread -- massacres, indiscriminate attacks on civilians, executions of prisoners, starvation of entire populations... Women and girls are raped by soldiers and forced into prostitution, and children are abducted to serve as soldiers.... Homes, schools and hospitals are deliberately destroyed...The collapse of infrastructure and civic institutions undermines the range of civil, economic, political and social rights."[47]

Severe breaches of human rights committed during armed conflict have a negative impact not only on the direct victims but also on the communities wherein they are perpetrated. Communities traumatised by atrocious human rights abuses during conflict will arguably be animated by a greater demand for revenge. This will render the resolution of the conflict more tortuous and post-conflict normalisation more challenging. Memories of ethnic cleansing, rape, torture, wanton destruction of property and killing of civilians are likely to be enduring images, that become part of the group's collective memory and which may continue to fuel hatred for generations.

This is why humanitarian law is an important aspect of the relationship between human rights and the conflict cycle. Legally, human rights law and humanitarian law are related but distinct branches of the law[48]. However, they are both

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[47] United Nations (n.d.) **Human Rights and Conflict: A United Nations Priority**. [Internet] Available from:
<http://www.un.org/rights/HRToday/hrconfl.htm>
[48] In a nutshell the most basic distinction between human rights law and humanitarian law refers to their scope of application with human rights norms protecting individuals in peacetime and humanitarian law rules protecting individuals in situations of armed conflict.

grounded in the same values of human dignity and, I would argue, taking a less legalistic approach is useful also in this context. International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, participating in the hostilities and restricts the means and methods of warfare. Thus humanitarian law attempts to regulate conflict and attenuate its worse effects, particularly on civilians, which may render the transition from conflict to peace less problematic. Nevertheless international humanitarian law (IHL) is also facing a number of challenges.

One of the main challenges being faced by international humanitarian law is that it developed as a series of norms designed to mitigate the effects of international armed conflict. Indeed the bulk of the rules of IHL refer to inter-state conflict. The Four Geneva Conventions of 1949, which are considered to be the cornerstones of IHL, only regulate in a cursory fashion internal armed conflict in their common article 3. The rise of inter-state conflict has, to a considerable degree, found IHL unprepared. The international community has sought to remedy these lacunae by introducing international treaties which also regulate the means and methods of warfare in internal conflicts. One such example is the 1977 Additional Protocol 2 to the Four Geneva Conventions. The difficulty in ensuring compliance with IHL inherent in the context of violent conflict is intensified in situations where the conflicting parties are not states but rather non-state actors such as guerrila groups etc.

This lack of compliance with IHL has also been a spur for the establishment of court-based systems to enforce its rules. Indeed the International Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda and the International Criminal Court are all examples of courts designed to 'end impunity' for, *inter alia*, grave breaches of IHL (war crimes). This movement towards functioning enforcement mechanisms for IHL may also, as we shall see, prove to be an obstacle to conflict resolution. This is particularly the case where during the conflict rival groups have been accused of grave violations with the threat of prosecution pending.

A different approach argues that the premise on which the edifice of humanitarian law is built, that of humanising war, is intself misguided and flawed. Rendering conflict more human may lead to its prolongation rather than its conclusion. This approach posits that conflict management of the kind undertaken under the auspices of humanitarian law is destined to be counter-productive by creating conditions of 'acceptable levels of violence'. Such conditions, one may argue, are unlikely to create the momentum for resolving the conflict and are more likely to drag out the armed conflict for a longer period of time. Empirical research testing this hypothesis is not readily available, partly because testing whether parties are more or less likely to continue armed conflict with more or less observance of humanitarian law rules seems a venture reliant on too many variables. What is clear is that some conflicts, which have witnessed persistent violations of humanitarian law norms, such as the Israeli-Palestinian conflict, have been sad, long sagas.

Human rights and conflict resolution: creative tension?

However long and intractable violent conflicts are, they will at some point be resolved. The crucial question in the context of this paper is whether human rights principles and values are obstacles or aids to conflict resolution. This research question has attracted the most attention from scholars and practioners alike within the broader field of human rights and the conflict cycle. Interest in this specific issue of the relationship between conflict resolution and human rights emerged strongly within the context of the armed conflict in the Balkans in the early to mid 1990s. Mertus and Helsing suggest that an anonymous article in the Spring 1996 edition of the Human Rights Quarterly entitled Human Rights in Peace Negotiations was a trigger to serious debate in this field. Parlevliet also refers to this article as being ground-breaking in the discipline. The article appears to argue that human rights activists were responsible for the prolongation of the Bosnian war and for the additional deaths and destruction such prolongation engendered. I would argue that the article is not the indictment of human rights most understand it to be. Early on in their analysis the authors referred to criticisms levelled at several peace formulae devised throughout the Bosnian conflict.

"Trenchant, therefore, were the voices that called for justice and retribution, and judged every blueprint for peace according to whether, in the eyes of the commentators, they rewarded "aggression" or ethnic cleansing"[49]

The issue of "rewarding aggression", to which the authors return at several points in the article is not, essentially, a

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[49] Anonymous. (1996) Human Rights in Peace Negotiations, **Human Rights Quarterly,** Vol. 18, no.2, May, p.250.

human rights issue. The concept of aggression and the legal consequences of aggression are matters of the international law of war or *jus ad bellum*. The rules of international law governing aggression do oblige states not to recognise acquisition of territory acquired through aggression but this is certainly not a matter of human rights law or practice.

There is then the point of rewarding ethnic cleansing which is a human rights issue. Human rights activists certainly cannot ignore or condone ethnic cleansing and massive violations of human rights. Indeed, in contemporary international law and politics the concept of humanitarian intervention and the responsibility to protect has emerged ever more strongly. The international community has thus taken on board the humanitarian imperative of protecting people from genocide and ethnic cleansing (vide Kosovo). It seems that, after all, the principle of not rewarding ethnic cleansing and indeed of stopping ethnic cleansing are matters upon which the United Nations and other organizations now agree. Be that as it may, it is not human rights activists who refused or rejected the numerous peace plans produced at various stages of the conflict. It was the parties to the conflict themselves who had the power and thus the responsibility to accept or reject peace deals. The responsibility for the prolongation of the war and the ensuing deaths thus rests squarely with them. In the same article President Clinton is quoted as saying, "Only the parties to this terrible conflict can end it." Peace negotiators have a role as mediators, human rights advocates have a role too in documenting human rights violations and highlighting them (and also to promote human rights values and culture) while it is up to the parties to end any conflict.

In their Concluding Observations the authors state that:

"[t]argeting violators of human rights and bringing them to justice is essential. Accusation, however, comes more easily than making peace. The quest for justice for yesterday's victims of atrocities should not be pursued in such a manner that it makes today's living the dead of tomorrow. That, for the human rights community, is one of the lessons from the former Yugoslavia."[50] What is, then, the lesson to be drawn from the Bosnian conflict for the human rights community? Is it that they should not comment on human rights violations during conflict? Is it that there should not be international tribunals established to punish violators of human rights? Or is it that they should not criticise peace agreements?

Answering each of these questions in turn, I would suggest that the *raison d'etre* of the human rights community is fundamentally twofold: documenting and highlighting human rights violations as well as promoting a human rights culture through education, understood in its broadest sense. It is therefore impossible to expect that the human rights community will not document and highlight human rights violations, especially systematic and massive abuses such as happened in Bosnia and elsewhere. That they should do so adhering to the most scrupulous standards of fairness and ethics is certainly an important condition to be fulfilled at all times. That such documentation should also be done with sensitivity to time and context is also an important consideration.

The establishment of the International Tribunal for Yugoslavia was a United Nations Security Council decision.

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[50] Ibid. p.258

Certainly the human rights community lobbied for the establishment of the tribunal but the decision to establish the tribunal through a Security Council resolution was not a human rights community decision. Human rights activists lobby on many occasions, the Security Council rarely takes notice. Indeed Geoffrey Robertson argues that the creation of the ICTY "was conceived as a fig leaf to cover the UN's early reluctance to intervene in the Balkans."[51] It is therefore difficult to ascertain what lesson the human rights community should draw from the Bosnian experience in this respect. The criticism in the article referred to Richard Goldstone who as Chief Prosecutor made certain statements which, the authors considered, imperilled the peace process. Without entering the merits of whether the ICTY was a good idea or not, the criticism made by the authors implies that Prosecutors and Judges in such tribunals ought to be careful and understand the delicacy of the context in which they are operating, not that such tribunals are, in themselves, an obstacle to peace.

The final question I attempt to respond to is whether the Bosnian experience indicates that the human rights community should not criticise peace agreements. As noted earlier, whether or not to accept a peace agreement is the ultimate responsibility of the parties to the conflict. In situations of violent conflict the most immediate imperative is the ending of the violence. However, experience has demonstrated that peace agreements are processes rather than static legal instruments. Concentrating solely on the immediate cessation of violence, while ignoring longer term normalisation structures and procedures, including human rights concerns, may very well be counter-productive in the

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[51] Robertson, G. (2006) **Crimes Against Humanity.** 3rd ed. London, Penguin Books.

longer term. It would seem legitimate for the human rights community to call for the inclusion of human rights structures and processes within the agreement. At the same time criticisms of amnesties for crimes against humanity and genocide may be taken to risk destabilising peace processes and agreements. Nevertheless, the UN itself seems now to have taken this route. In fact then UN Secretary General Kofi Annan instructed his personal representative to Sierra Leone to append a reservation to his signature to the agreement stating that the UN did not subscribe to any amnesty granted through the agreement for persons accused of genocide etc.

The UN Secretary-General, Kofi Annan, rejected in his report to the UN Security Council the proposed amnesty:

"As in other peace accords, many compromises were necessary in the Lome Peace Agreement. As a result, some of the terms which this peace has obtained, in particular the provisions on amnesty, are difficult to reconcile with the goal of ending the culture of impunity, which inspired the creation of the United Nations Tribunals for Rwanda and the Former Yugoslavia, and the future International Criminal Court. Hence the instruction to my Special Representative to enter a reservation when he signed the peace agreement stating that, for the United Nations, the amnesty cannot cover international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law [….]."[52]

[52] United Nationals Observer Mission in Sierra Leone (1999) **Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone**. 30 July.

Whatever the lessons for human rights advocates emanating from Bosnia, I would contend that lessons should be drawn from every conflict not just by the human rights community but more broadly, including by peace negotiators and conflict resolvers.

One of the lessons that needs to be learned and re-learned within the scenario of violent conflict is how to deal with the legacy of massive and systematic human rights abuses. Dealing with such issues by keeping both the justice and peace perspectives is perhaps the most difficult issue to resolve in the complex relationship between human rights and conflict. The reference to 'learning and re-learning' is an especially important one in this context. The argument of human rights advocates is that grave human rights violations must not go unpunished for a number of reasons. Some of these reasons may be summarised thus: (i) if impunity prevails, those sections of the community who have suffered these grave human rights breaches will retain a sense of grievance, thus imperilling the long term peace (ii) the punishment of individuals guilty of grave human rights abuses may serve as a deterrent (iii) you cannot build a just society on a culture of impunity. Moreover, as illustrated by the example of the UN Secretary General's stance vis-a-vis Sierra Leone, amnesties for genocide and crimes against humanity are increasingly illegal under international law.[53]

On the other hand, insistence on prosecuting individuals within a conflict resolution context may certainly prove to be an obstacle in ensuring a cessation of hostilities. A number

[53] The 1948 Convention on the Prevention and Punishment of the Crime of Genocide establishes a legal duty on state parties to prosecute or extradite individuals accused of genocide. This probably is also a rule of customary international law.

of responses have been tentatively put forward in resolving this conundrum. Trials are the most legalistic responses and may take a variety of guises: domestic courts, hybrid courts and international tribunals. Truth Commissions seek to uncover the truth but are not prosecutorial devices.They are intended to allow truth to emerge as an antidote to denial (of human rights atrocities) and amnesia. One may contend that Truth Commissions are pschycological and sociological responses. Reparations are another instrument designed to acknowledge suffering and offering a financial compensation for such suffering. There are many other responses which, ultimately, may all be incomplete responses to massive atrocities and grave violations of human rights. Martha Minow comments that

"Responses to collective violence lurch among rhetorics of history (truth), theology (forgiveness), justice (punishment, compensation and deterrence), therapy (healing), art (commendation and disturbance) and education (learning lessons). None is adequate."[54]

However, a combination of these responses may begin to allow communities and individuals to recognise themselves as human beings with rights and responsibilities. Such an understanding is ultimately what human rights are about: the value of human dignity that is at the core of human rights discourse as evidenced in the opening lines of the Universal Declaration of Human Rights. These thoughts do not provide guidance as to which combination of resources to use and at which point in time to use them. Perhaps it is unwise to give any guidance since such decsions must rely heavily on the particularities of the conflict and the communities in which the conflict has existed. For example, some in South Africa

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[54] Op. cit. Minow (1998) p.147

question whether the Truth and Reconciliation Commission would have been possible without the charisma of personalities such as Nelson Mandela and Desmond Tutu. Thus, personalities, histories, geographies and other local factors will all play a part in making these difficult choices.

The time factor is also an important one; what may seem impossible early on in the post-conflict stage may be eminently do-able within a 10-20 year time frame. If one looks at the trajectory of post-Pinochet Chile one can see a vivid example of this. General Pinochet's regime, having engaged in very grave violations of human rights towards political opponents, relinquished power in the early 1990s. He left the presidential office with amnesties, a seat for life in the Senate and other assurances. When Spanish and UK judicial authorities attempted to prosecute General Pinochet for crimes against humanity in 1998 the Chilean government objected in the strongest possible terms. Numerous politicians and opinion formers in Europe and elsewhere argued that these attempts at prosecuting Pinochet were undermining Chilean national reconciliation etc. It seemed impossible for justice and peace to cohabit in Chile. In 2000 a Chilean Court stripped Pinochet of his immunity and at the time of his death he was still involved in legal wrangles relating to his period in power. Although Pinochet never faced justice, the change in such a short period of time is remarkable. This may be a salutary lesson to human rights activists engaged in work in post-conflict societies. While there are some who hold strictly to the view that justice delayed is justice denied, justice deferred may be the wisest course in certain contexts.

Human rights promotion as a stabilising and normalising factor in post-conflict societies

Conflict resolution is mainly concerned with ending hostilies or putting an end to violence. In Galtung's terminology, conflict resolvers primary role is to achieve negative peace i.e, absence of direct violence. In post-conflict societies the main challenge that is faced by communities is to build positive peace by eliminating cultural and structural violence. In everyday terminology post-conflict societies need to re-build communities where the 'us and them model' of a divided society is replaced by an 'all of us together' model. Such an inclusive, pluralistic society necessarily eschews discrimination and provides a shared space and a shared experience. According to Ramsbotham, Woodhouse and Miall we end "structural violence by removing structural contradictions and injustices and cultural behaviour by changing attitudes"[55]

In order to examine the role of human rights in societies which seek to end injustices and change attitudes it is necessary to revert to a reflection on the Universal Declaration of Human Rights. The first paragraph in the Preamble refers to the premise that the "equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The notion of equality (thus non-discrimination) and justice (thus the absence of injustice) and human rights are inextricably yoked together. In fact Article 1 of the Declaration postulates that individuals "should act towards one another in a spirit of brotherhood" as an essential prerequisite for the observance of human rights. Societies based on these tenets of equality,

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[55] Op. cit. Ramsbotham *et al*. (2005) p.11.

justice and brotherhood seem to fulfil the criteria for positive peace as defined by conflict analysts.

Moving beyond issues of punishment and retribution, how do human rights structures and methods assist a society suffering from structural or cultural violence embark on a process of normalisation? From a purely perceptual perspective, the existence of human rights structures such as national human rights commissions may give comfort to those sectors of society which were at the receiving end of injustice. If these commissions are given adequate powers and resources and are staffed by competent individuals on a cross-community basis, they will give a sense of protection to communities who have lived long periods of discrimination. Moreover, if these national human rights institutions seek to reach out in a proactive manner to all sections of society they may serve a further perceptual purpose. This purpose is that of giving these sections of society a sense of political participation by having a stake in such public bodies.

Human rights education, whether provided by national human rights commissions or by civil society, is another crucial contribution that human rights may provide to post-conflict societies. The concept of human rights education as described by the UN General Assembly is particularly pertinent in this respect:

"Human rights education should involve more than the provision of information and should constitute a comprehensive life-long process by which people at all levels in development and in all strata of society learn respect for

the dignity of others and the means and methods of ensuring that respect in all societies.''[56]

If individuals within a given society understand that all members of that society possess a dignity that needs to be recognised and respected then the attitudinal changes required for ending cultural violence begin to appear possible. A crucial dimension of human rights education is the 'values and dispositions' aspect[57]. This dimension emphasises how individuals may gain experience of, develop and practice values and dispositions which are crucial to a just, democratic and peaceful society which respects and promotes the human rights of all. Among the values explored in this dimension are those of caring for yourself and for others together with a sense of responsibility and a sense of belonging.

Another critical dimension in human rights education dwells in 'ideas and understandings' which focuses, among others, on the critical role of relationships, the relevance of compromise and negotiation, the concepts of democracy, citizenship, community and governance as well as cultural identities, conflicts and conciliations. The idea of the centrality of relationships exposes individuals to reflections on the need to foster economic, social, cultural and political relationships based on equality and reciprocity and an understanding that mutual benefits flow from such relations. In the context of peace and human rights an understanding of

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[56]General Assembly United Nations (1994) Resolution 49/184 of 1994 **United Nations Decade for Human Rights Education** [Internet] Available from: <http://www.un-documents.net/a49r184.htm>

[57] This and subsequent points on human rights education are derived from the Euro-Mediterranean Human Rights Network (EMHRN) publication prepared by the EMHRN Human Rights Education Working Group 2003: **Human Rights Education: a background paper** to which the author has contributed.

compromise and negotiation is important as is the ability to identify what is essential and what is subsidiary. All of the above and other human rights education dimensions seem to be particularly apposite and urgent in post-conflict societies.

Furthermore, with reference to the vexed issue of how to deal with a legacy of mass atrocities and secure a peaceful future, Minow argues that "deliberate programs of education, teaching materials, books, exhibits, and events for adults and children – all of these are vital responses to mass violence."[58]

The emphasis on human rights education, apart from its instrinsic value, which hopefully emerges from the above, also serves a further purpose. One may argue that this educational approach allows us to look at human rights within a broader perspective. The emphasis is not purely, or in some cases not even primarily, on legalistic and penal perspectives. Instead this approach presents human rights very much in the holistic spirit of the Universal Declaration of Human Rights which concludes its Preamble with a call which places human rights education at its core by enjoining:

"Every individual and every organ of society, keeping this Declaration constantly in mind, [to] strive by teaching and education to promote respect for these rights and freedoms..."

Conclusion

This short overview presented some of the points of intersection and interaction between human rights and the

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[58] Op. cit. Minow (1998) p.144

conflict cycle. The most significant ideas which, I hope, emerge from these points of intersection are that:

(i) human rights need to be understood not merely within a legal normative context but also within a social, economic, cultural and specifically an educational one; and

(ii) although there are points of tension between the legal normative dimension of human rights and particular stages of the conflict cycle, a holistic view of both human rights and the conflict cycle presents more complementarities than competition.

Too much emphasis has been placed on the legalistic perspective of human rights with not enough attention paid to sociological and philosophical aspects, including the values base and educational dimensions. This is not to deny the importance of the legal dimension but is rather an invitation to consider human rights in their broadest sense. In the context of the conflict cycle this is a particularly important consideration. As outlined above, violent conflicts, particularly identity-based inter-state conflicts, have at their core issues of structural injustices and cultural prejudices. While legal safeguards guaranteeing equality and non-discrimination are an essential tool for removing injustices, they may not suffice on their own. Other tools are required to buttress legal safeguards and ensure structural and behavioural change. Winning hearts and minds is not a matter for legislation alone. Human rights education has already been noted as one of these tools. Human rights education, in order to be effective in this respect, must not only focus on awareness-raising of rights and duties. Minow, quoting a civil society educationalist, remarks that:

"Education is too often teaching, not knowing; teaching cannot be just about facts, but must be about empathy, participation, finding common humanity, asking kids where does the hate come from, relevance."

In all of these contexts engaging with conflict analysts and resolvers is useful to the human rights community itself. By having to reflect on what contribution human rights approaches may provide to conflict studies, human rights advocates and educationalists are required to question their own assumptions and working methods. This may allow them to discover new avenues for working both in societies that are at peace, as well as in communities facing the threat, reality or legacy of violent conflict.

3 Mainstreaming Human Rights in Responding to the Conflict Cycle: the Role of International Organizations

Robert-Jan Uhl and Cornelius Wiesener[59]

1. Introduction

This article outlines the role of international organizations in integrating human rights in the conflict cycle. It discusses the actions taken by international organizations at the various stages of national and international conflicts and the lessons learned from the experience of international organizations in this area. The focus will be on the United Nations (UN) and the Organization for Security and Co-operation in Europe (OSCE).

2. Conflict

A conflict may be defined as a struggle between actors having different interests. Conflict in itself should not necessarily be considered something negative, but rather as a constructive element of a dynamic society; in a democratically structured political system based on the rule of law and human rights, conflicts in any sphere of life would ideally be regulated by non-violent means, using available institutions and mechanisms.

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[59] Both authors are writing in their personal capacity; the views expressed in this article are not necessarily those of the OSCE or the OSCE/ODIHR.

Conflict, however, becomes very problematic when the actors involved resort to violence to advance their cause. This is true for both conflicts existing between actors within a country as well as between states. This is where conflict prevention comes into play. Thus, for the purposes of this article, the term 'conflict' will be used as encompassing violent conflicts both at the national and international level, such as civil disturbances, civil wars and inter-state armed conflicts.

3. The Conflict Cycle

A conflict is a dynamic process with changing levels of intensity over time. In this regard, conflicts are commonly described as a cycle: escalating from relative calm and peace into crisis and war, thereafter de-escalating into relative peace. Practice shows that these cycles recur unless the root causes of the conflict are addressed properly. Understanding this process is essential in order to identify how, where and when to apply different strategies and measures of conflict prevention and management.[60] For this purpose, five different stages during the conflict can be distinguished: the early warning phase, the conflict prevention phase, the peace-making phase, the peace-keeping phase and the peace-building phase. There may be overlaps between these phases. It is noteworthy that in most cases, the engagement of the international community differs between the phases.[61] During the early warning phase, it is primarily the task of domestic actors to respond to signs of potential violence, as

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[60] Swanström, N and Weissmann, M. (2005) Conflict, Conflict Prevention and Conflict Management and beyond: a conceptual exploration, **Concept Paper,** Central Asia-Caucasus Institute & Silk Road Studies Programme (summer), 9-10.
[61] Ramcharan, B. (2004) Human Rights and Conflict Prevention. **Human Rights Law Review** 4, 1: 1-18, at 2-4.

international involvement is still very low. Once fighting has erupted and there is a real risk of full-blown violence, conflict prevention measures – often provided by international actors – will be necessary. In case prevention fails, peace-making measures will have to be employed. These may range from international efforts to forge a peace deal between the warring parties to a genuine military intervention under the auspice of the UN.

The subsequent peace-keeping phase aims at further stabilising the situation after the end of active hostilities. This stage will often require very significant involvement of the international community, for instance by providing military observers or even a robust peace-keeping force. In some exceptional cases, as in Kosovo and East Timor, the UN may even set up an international transitional administration with quasi-state functions. In recent years, the peace-building phase has drawn much attention. This phase aims at rebuilding the infrastructure of the country and eliminating the root causes of the initial conflict in order to prevent a future relapse into violence. In order to increase local ownership in this process, peace-building efforts are characterised by an enhanced cooperation with local actors.

4. Human rights

Human rights are contained in a number of international instruments. There are a number of different types of rights, including civil and political rights, such as the right to vote and stand for election or the freedom of assembly; economic, social and cultural rights, such as the right to food or the right to an adequate standard of living. Major instruments include the International Covenant on Civil and Political

Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR). A number of instruments also deal with specific human rights issues in greater detail, such as the Convention against Torture (CAT) or the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). A number of regional organizations have also promulgated human rights instruments, such as the Council of Europe's European Convention on Human Rights,[62] the African Union's Banjul Charter on Human and Peoples' Rights[63] or the American Convention on Human Rights,[64] adopted by most member states of the Organization of American States.

All human rights may be relevant in different ways to determining the likelihood of conflict or in ending conflicts. It is important to note that the responsibility for the implementation of human rights obligations lies with the State: it is States which are responsible for respecting, protecting, promoting and fulfilling the human rights of all those under their jurisdiction. This is not the responsibility of international organizations such as the UN or the OSCE, though such organizations may of course offer assistance to governments to help them implement their international obligations.

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[62] European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 November 1950, entered into force on 3 September 1953.

[63] African [Banjul] Charter on Human and Peoples' Rights, adopted on 27 June 1981, entered into force on 21 October 1986.

[64] American Convention on Human Rights, adopted on 22 November 1969, entered into force on 18 July 1978.

5. Why involve human rights in the conflict cycle?

Why is it important to include human rights considerations in this conflict cycle? Clearly, there are many different causes of conflict, be they economic, social or political. The human rights situation of a particular group may also constitute a separate cause of a conflict. Moreover, violations of fundamental rights and freedoms are often also a by-product of an ongoing conflict and may even lead to further escalation. Hence, human rights play a different role in each of the phases of the conflict cycle.

In the early warning phase, human rights violations may constitute one of the indicators of pending conflict. For example, in an ethnic conflict between a majority and a minority community, one can measure whether the equal right to education is being implemented. Are children from both ethnic groups being allowed to attend schools? Are those schools funded equally? Are they segregated? The answers to these questions, which lie in the realm of the human right to education and freedom from discrimination, can provide valuable information on the likelihood of a conflict. One effective tool to address human rights problems at this early stage are national human rights institutions, such as ombudsman institutions. Their existence and the adequacy of their mandates is therefore an important indicator for human rights based conflict risk analysis.[65]

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[65] Besides this, Bertrand Ra mcharan also lists other indicators such as the constitutional design, the level of good governance and rule of law, the inclusiveness of the national vision, th e state of freedom of expression and religion, the shape of the national security doctrine and the level of accountability and demo cratic control of the police and the armed forces, states of emergency and derogation from rights, the state of accession to international human rights instruments, the findings of treaty-based bodies and UN human rights investigations, and the existence of preventive mechanisms to address genocide, ethnic cleansing and mass killing; see Ramcharan, B. (2005) Human Rights Dimension: Human Rights Risk Analysis. In: Ramcharan, B. ed. **Conflict Prevention in Practice. Essays in Honour of Jim Sutterlin.** Leiden, Nijhoff, pp. 229-235.

In the prevention phase, progress or regress in the human rights situation may be used as an indicator of how well measures taken to prevent the conflict are working. We may think here of a situation where a conflict between the government and the opposition breaks out because the police use excessive force to break up anti-government rallies and arbitrarily detain a great number of their supporters. Such measures, constituting a violation of the freedom of peaceful assembly and the right to liberty, can spark widespread violence and unrest which may be difficult to bring under control, and can in some cases contribute to the fall of a government. In dealing with such cases, it may be useful for the international community, in conjunction with local actors, to work with the police and other governmental bodies to train the police in applying modern forms of crowd control to reduce the incidence of violent confrontation between protesters and police.

In the peace-making phase, it is important to ensure that human rights considerations are fully taken into account. This may be done by ensuring human rights are an integral part of peace agreements negotiated between the parties to the conflict. Without such an approach, the human rights violations that contributed to the outbreak of the conflict may occur again. For example, where a minority community has traditionally faced discrimination in employment, positive measures may be included to ensure members of these minorities have better chances on the labour market, in line with international labour rights standards.

Similarly, the actions taken or promoted by the international community in the peacekeeping and peace-building phases must take full account of international human rights standards in order to build a lasting peace and prevent a flare-up of the conflict. In ethnic conflict zones, for example, lasting peace is not possible without attention to fulfilling equal treatment and non-discrimination provisions of international human rights instruments. These should be monitored by international organizations. The same is true for conflicts over resources: the risk of a flare-up of the conflict is much reduced where the economic rights of all groups are fulfilled through an equitable distribution of national resources.

In including human rights in the efforts of the international community, it is important that a holistic approach to human rights is taken. As noted by the 1993 Vienna Declaration and Programme of Action, "all human rights are universal, indivisible, interdependent and interrelated".[66] Without an equal emphasis on all human rights, whether they be civil and political rights, economic, social or cultural rights, non-discrimination or minority rights, efforts to prevent, contain, and reduce conflict will be likely to be less effective.

For example, where individuals do not enjoy the freedom to form political parties or civic associations in violation of their right to freedom of association, their ability to make their voices heard is reduced, which may in turn reduce their standard of living and contribute to resentment that causes conflicts in the first place. Similarly, the full enjoyment of

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[66] United Nations General Assembly. **Vienna Declaration and Programme of Action** as adopted by the World Conference on Human Rights on 25 June 1993, A/CONF.157/23.

civil and political rights may be severely hampered if the basic necessities which individuals are entitled to under international human rights law, such as the right to food and the right to an adequate standard of living, are not properly protected. Civil and political rights cannot be enjoyed fully if basic needs such as adequate shelter, food and water are not met. It also needs no argument that conflicts are more likely to arise in situations where minority communities are oppressed and discriminated against and not able to fully enjoy their human rights and fundamental freedoms: this has, time and again, proved to be a breeding ground for conflict.

Clearly, there is not only a positive trade-off between the various types of human rights, but also between human rights and conflict resolution measures. Fully including human rights in the various phases of the conflict cycle will have a positive effect on such measures. It will give the international community and national actors greater information on the likelihood of conflict, allowing them to prepare for it better. At the same time, a human rights approach to preventing conflict and to assist in the reconciliation of conflict can be a helpful tool in designing programmes and policies, allowing the international community to check whether all individuals benefit from those programs. For example, when reconstruction efforts such as building a bridge are conducted, international donors may take account of the different needs of women in a community. A classical example is that women in some regions move on foot, and men by car; a bridge can then be built to accommodate both types of travel, accommodating the free movement of both groups.

As the OSCE has noted in a recent handbook,[67] it is important that gender aspects are taken fully into account during conflict as well. Again, this plays a role in each of the various phases of the conflict cycle. This aspect was also acknowledged by the UN Security Council in resolution 1325 on 'Women, Peace and Security'.[68] In the early warning phase, gender indicators may serve to inform both national and international actors on the evolving role of women and men in society. In the prevention phase, gender should be fully taken into account. Without the full involvement of women in conflict prevention efforts, the effectiveness of such measures will be much reduced.

Similar considerations play a role in the post-conflict phases. Inequalities that already exist in society are often strengthened in time of conflict, and this must be borne in mind when formulating solutions. Thus, peace agreements and power-sharing arrangements must also take the situation of women and their interests into account. In this regard, a great potential lies in security sector reforms promoting the inclusion and participation of women in the police, armed forces and other agencies. Moreover, where conflicts involve gross human rights violations against women, such as sexual violence, peace accords have to ensure accountability for such violations and provide for the rehabilitation and support of victims.

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[67] OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2009) **Gender and Early Warning Systems - An Introduction.** [Internet] Available from <http://www.osce.org/item/41377.html?ch=1387> 17 November 2009
[68] UN Security Council. (2000) **Resolution 1325 Women, Peace and Security**. Adopted on 31 October 2000.

6. Human rights in the conflict cycle: some examples from the practice of the United Nations

The United Nations and a number of its agencies actively use human rights in the various stages of the conflict cycle.

Firstly, they are used as a predictor of conflict and as a basis for their planning, especially in the field of humanitarian assistance. A number of UN agencies set up a unified Humanitarian Early Warning System (HEWS) to identify crises with humanitarian implications.[69] The assessment is based on a variety of indicators, including the human rights situation of the country in question.[70] Hence, where large-scale human rights violations occur, organizations such as the World Food Programme or the UNHCR will shift their attention and resources to address the risk of crisis.

Secondly, the UN uses human rights as a tool for preventing and managing conflict. As Kofi Annan held in his Report 'In larger Freedom':

"Not only are development, security and human rights all imperative; they also reinforce each other. [...]. And countries which are well governed and respect the human rights of their citizens are better placed to avoid the horrors of conflict and to overcome obstacles to development. [...] Accordingly, we will not enjoy development without security, we will not enjoy security without development, and we will

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[69] For more information on the activities of the HEWS, see [Internet] Available from: <http://www.hewsweb.org.>

[70] Adeel, A and Voulieris Kassinis, E. (1998) The Humanitarian Early Warning System: From Concept to Practice. In: Davies, J and Gurr T. R. eds**. Preventive Measures. Building risk assessment and crisis early warning systems.** Lanham, Rowman & Littlefield, pp. 203-211.

not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed."[71]

The UN has therefore striven to include human rights at various stages in its conflict-related activities, most prominently by establishing field missions in crisis countries.

UN Human Rights Field Operations

Human rights field operations are generally set up under the auspices of the Office of the High Commissioner for Human Rights (OHCHR) and carried out in close co-operation with other UN agencies, such as UNDP or UNHCR offices as well as peace-keeping missions, if present.[72]

Once they have deployed at a relatively early stage of the conflict, human rights field officers engage in comprehensive risk assessment and carry out fact-finding and investigations. Although conflict preventive effects of such measures are often limited, the mere presence of human rights field officers may help de-escalate violence and deter spoilers. Moreover, information gathering by human rights field officers is an important step for further mission planning. It may prove particularly useful when peace-keepers are deployed in the same theatre. Based on their expertise, human rights officers may be able to inform them

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[71] United Nations Report of the Secretary-General. (2005) **In larger freedom: towards development, security and human rights for all.** A/59/2005, 21 March 2005, para. 16-17.
[72] O'Flaherty, M. (2004) Human rights monitoring and armed conflict: challenges for the UN. **Disarmament Forum. Human Rights, Human Security and Disarmament** 3 pp. 47-57.

about communities at risk and which areas should be extensively patrolled.[73]

Given the wide range of tasks assigned to peace-keeping personnel and the high interaction between them and the local population, in-mission human rights sensitisation is of enormous importance.[74] Only if peace-keepers abide by high standards will the operation's presence have a real impact on conflict solution and be able to further the respect of human rights among local actors.

In the post-conflict peacemaking and peace-building phases, the UN and the international community have learned a number of valuable lessons. Various international peace agreements contain clauses on human and minority rights. A good example is the so-called Dayton Agreement, which ended the war in Bosnia in 1995. Apart from a number of military and power-sharing arrangements for the new post-war state, the Dayton Agreement also contained an annex on human rights, which spells out the human rights obligations of the parties and provides for two major institutional arrangements for their protection: an ombudsperson for human rights and a human rights chamber. The latter was partly staffed with international judges and played an active role in the protection of fundamental human rights during the first eight years of post-war Bosnia, before a newly established Constitutional Court took over this function in 2004.

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[73] Ramcharan, B. (2007) Human Rights Field Operations in Partnership for Peace. In: O'Flaherty, M. ed. **The Human Rights Field Operation. Law, Theory and Practice.** Aldershot, Ashgate, pp. 105-23.

[74] Op. cit. O'Flaherty (2004) p. 53.

Another example of peace-building efforts having a strong human rights approach can be found in the activities of the newly established UN Peace-building Commission, which, for instance, provided funds for the creation of a human rights commission in Sierra Leone – the first of its pilot countries.

International and Internationalised Criminal Tribunals

The UN's human rights-based approach to peace and security is also evident in its efforts to end impunity by holding major perpetrators of genocide, war crimes and crimes against humanity criminally responsible. This process first started in 1993, when the UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) with jurisdiction over war crimes, crimes against humanity and genocide. In its respective resolution, the Council emphasised that by prosecuting persons responsible for serious crimes in the context of the wars in the former Yugoslavia, the Tribunal would "contribute to the restoration and maintenance of peace".[75] The same reasoning was relied on when the Security Council established the International Criminal Tribunal for Rwanda (ICTR) following the mass-killings of Tutsis and moderate Hutus in early 1994.[76] While the ICTR aimed at the post-conflict phase by bringing to justice those most responsible for the Rwandan genocide, the ICTY was also established to deter further atrocities and (by doing so) to prevent

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[75] UN Security Council. (1993) Resolution 827, adopted on 25 May 1993. [Internet]. Available from < http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/306/28/IMG/N9330628.pdf?OpenElement>
[76] UN Security Council (1994) Resolution 955, adopted on 8 November 1994. [Internet]. Available from: <http://www.un.org/ictr/english/Resolutions/955e.htm>

escalation of an on-going conflict. In 2002, the UN Secretary General negotiated an agreement with the Government of Sierra Leone to establish a Special Court for Sierra Leone (SCSL). The SCSL is partly staffed with international judges and has jurisdiction over serious international crimes committed after 1996 during the Sierra Leone civil war. As for the former Yugoslavia, the ICTY is soon to close down and is currently engaged in transferring some more low-profile cases to domestic institutions in the region, the most prominent being the Section for War Crimes of the Court of Bosnia and Herzegovina set up in 2005.[77]

The activities of the international criminal tribunals led to the establishment of the International Criminal Court (ICC) in June 2002. Unlike the ad-hoc tribunals, the ICC is based on a multilateral treaty – the Rome Statute – and functions as a permanent court with jurisdiction for international crimes occurring on the territory of a State Party after the adoption of the Rome Statute.[78] It therefore has the potential to serve as an effective conflict prevention and management tool by addressing impunity and deterring crimes at all stages of the conflict cycle.[79] Moreover, the ICC is based on the principle of complementarity, i.e. it will only get involved where the respective state which has jurisdiction is unwilling or unable

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[77] For more information on the mandate and activities of the section for War Crimes of the Court of Bosnia and Herzegovina, see [Internet]. Available from: <http://www.registrarbih.gov.ba>.

[78] See also Schabas, W. (2007) **An introduction to the International Criminal Court.** 3rd. ed. Cambridge, Cambridge University Press.

[79] For a more critical account of this potential, see Kasimbazi, E. (2008) The Prosecution of Criminals as a Peace-building Tool: Cooperation with the ICC and the Case of the LRA in Northern Uganda. In: Arnold, R. ed. **Law enforcement within the framework of peace support operations.** Leiden, Nijhoff, pp. 33-49.

genuinely to carry out an investigation or prosecution.[80] The international community therefore has a firm interest in strengthening the capacity of states to address impunity at the earliest possible stage and to hold perpetrators to account before the situation escalates into full-fledged conflict.

7. Human rights in the conflict cycle: some examples from the practice of the OSCE

The OSCE – a regional security organization constituting a regional arrangement under Chapter VIII of the UN Charter – has played a pioneering role in linking human rights and security as part of a comprehensive approach to security. The OSCE does not deal exclusively with military or security issues, but takes a cross-cutting approach including its three dimensions, the politico-military, economic and political, and human dimension.

The 1975 Helsinki Final Act recognised the respect for human rights and fundamental freedoms as one of its ten guiding principles. This was a breakthrough in the history of human rights protection. For the first time, human rights principles were included as an explicit and integral element of a regional security framework alongside politico-military and economic issues. Numerous follow-up documents have reinforced the acknowledgement of a comprehensive approach to security, such as the 1990 Paris Charter or the Charter for European Security, adopted in Istanbul in 1999.[81]

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[80] Rome Statute of the International Criminal Court, adopted on 17 July 1998, entered into force on 1 July 2002. Art. 17(1)(a).
[81] For further information, see OSCE Human Dimension Commitments (2005) Volume 1, Thematic Compilation, 2nd ed. [Internet] Available from: <http://www.osce.org/odihr/item_11_16237.html.>

OSCE High Commissioner on National Minorities

In the prevention phase, the OSCE High Commissioner on National Minorities plays an important role. The High Commissioner is explicitly mandated to "provide 'early warning' and, as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues that have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict" within the OSCE area.[82] This refers both to tensions arising between different groups within states as well as inter-ethnic conflicts with the potential to spill over state borders.

The High Commissioner attempts to prevent conflicts before they start, using means of silent diplomacy, such as confidential recommendations to governments of the participating states. Such steps are often supported by targeted projects in support of education, language and participation in the various dimensions of public life, as well as media access and development, and are sometimes carried out in co-operation with OSCE Field Missions, or with other international organizations, such as the UN, the Council of Europe (CoE) or the EU. The emphasis of these projects is always on early action and prevention of conflict, and they aim to close gaps such as in the field of education, language, participation in public life, as well as access to the media. Moreover, the High Commissioner also acts as a catalyst by stimulating domestic authorities and other actors, to follow

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[82] For more information on the mandate and activities of the OSCE High Commissioner on National Minorities see [Internet]. Available from: <http://www.osce.org/hcnm/>

up projects in specific fields or to develop their own tension-reducing projects.[83]

An example for a long-term commitment of the High Commissioner has been the situation of the Russian-speaking minority in the Baltic republics. His interventions and the impacts that they had on the situation of language rights and the issue of citizenship, has helped to prevent violent conflict between the Russian-speaking and the majority communities in all three countries, as well as an inter-state conflict with the Russian Federation.

OSCE Office for Democratic Institutions and Human Rights (ODIHR)

The ODIHR is the main OSCE institution in the human dimension. It cooperates closely with OSCE actors in the other dimensions and in the field. A good example of such an approach is the ODIHR's human rights and anti-terrorism programme. While recognising that in acting to prevent and punish acts of terrorism, States are fulfilling their positive obligation to protect the right to life of the individuals under their jurisdiction, the ODIHR recognises that violating other human rights in the fight against terrorism not only violates states' international human rights obligations, but also acts counter-productively by unnecessarily giving terrorist organizations an additional recruitment tool. The programme therefore developed a handbook on human rights in the fight against terrorism and has developed training tools for

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[83] Drzewicki, K. and de Graaf, V. (2006) The Activities of the OSCE High Commissioner on National Minorities (July 2006-December 2007). In: **European Yearbook of Minority Issues** 6, 7, pp. 435-459 at 440.

officials involved in the fight against terrorism, such as police, judicial and intelligence officials.[84]

The ODIHR has also assisted a number of participating States in ensuring they monitor peaceful assemblies in line with international human rights standards. For example, in Moldova, the ODIHR trained local human rights activists to monitor public assemblies for a period of nine months, drawing conclusions on the situation and making recommendations for improvements in policing and legislation. This project has had a markedly positive impact on relations between civil society and the police and local authorities.

Similarly, the ODIHR has also contributed to post-conflict rehabilitation by providing analyses of the human rights situation in post-conflict areas. For example, the ODIHR's report, Human Rights in the War-Affected Areas Following the Conflict in Georgia, analyses the human rights situation in the conflict zone based on a monitoring exercise conducted jointly with the OSCE High Commissioner for National Minorities and provides a number of recommendations to improve the human rights situation.[85]

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[84] OSCE Office for Democratic Institutions and Human Rights, ODIHR. (2007) **Countering Terrorism, Protecting Human Rights: A Manual**. 26 November. [Internet], Available from <http://www.osce.org/item/28294.html?ch=98>

[85] OSCE Office for Democratic Institutions and Human Rights, ODIHR. (2008) **Human Rights in the War-Affected Areas Following the Conflict in Georgia.** Report for OSCE Office for Democratic Institutions and Human Rights. [Internet], Available from:

<http://www.osce.org/documents/odihr/2008/12/35656_en.pdf>

OSCE Field Missions

The OSCE Kosovo Verification Mission (KVM) was initially set up to verify the compliance by Serbian forces and the Kosovo Liberation Army (KLA) with the UN Security Council resolutions for a peaceful solution of the crisis.[86] Nevertheless, in the course of the operation (1998-1999) it also became involved in comprehensive human rights monitoring. Although the KVM could not prevent a further escalation of the conflict, its information on the overall human rights situation proved helpful for the subsequent deployment of the OSCE and the UN in Kosovo in June 1999. The KVM, therefore, set an important precedent for subsequent OSCE field missions.[87]

Current field presences follow a comprehensive approach, undertaking a wide range of activities throughout the OSCE's three dimensions. Some missions were explicitly set up to prevent conflict, such as the OSCE Spill-over Mission to Skopje, whose original mandate called on the Mission to monitor developments along the borders with Serbia and in other areas which may suffer from spill-over and to help prevent possible conflict in the region. Since the Ohrid Agreement, which ended a short-lived armed conflict between the national security forces and the UÇK (National Liberation Army − NLA) in 2001, the Mission has been actively assisting the government in the implementation of the peace agreement, e.g. in order to increase the

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[86] For more information on the mandate, please visit the website of the Kosovo Verification Mission. (n.d.) [Internet], Available from:
<http://www.osce.org/item/22063.html>
[87] Ringgaard-Pedersen, S. and Lyth, A. (2007) The Human Rights Field Operations of the Organization for Security and Co-operation in Europe. In: O'Flaherty, M. ed. **The Human Rights Field Operation: Law, Theory and Practice**. Ashgate Publishing House, pp. 361-79.

representation of non-majority communities in public administration, military and public enterprises, and to strengthen the institutions of local self-government.[88] In this regard, the OSCE Spill-over Mission to Skopje closely cooperates with other international actors such as the European Union, which was a key player in negotiating the Ohrid Agreement in 2001.

Some other OSCE Missions were created to deal only with the aftermath of conflict, such as the OSCE Mission to Bosnia and Herzegovina and the OSCE Mission in Kosovo. Their mandates vary accordingly, but all recognise the need to take an inclusive, cross-cutting approach. Under the Dayton Peace Agreement, the OSCE Mission is assigned the task of supporting the development of representative and democratic state institutions and of closely monitoring the human rights situation in Bosnia and Herzegovina. Monitors assess the level of implementation of human rights obligations and provide technical assistance to the government authorities and the civil society in areas such as economic and social rights, judicial and legal reform, war crimes, trafficking in human beings, rights of national minorities and strengthening the role of the national Ombudsperson. Moreover, the OSCE Mission also assists the authorities in overcoming the military division of the country, developing State-level defence structures, and fully implementing OSCE and other international politico-military commitments.[89]

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[88] For more information on the OSCE Spill-over Mission to Skopje please see Alice Ackermann's chapter in this book.
[89] For more information, please visit the website of the OSCE Mission to Bosnia and Herzegovina. [Internet], Available from: <http://www.oscebih.org>

In Kosovo, the OSCE (re-) deployed when UNMIK and KFOR established their international presence in summer 1999. Since then, the OSCE Mission has been tasked with the promotion of human rights and good governance. Besides others, the Mission has been focusing on capacity-building, by supporting the work of the human rights units in Kosovo's ministries and helping to establish such units in municipalities.[90] Beside UNMIK, the OSCE Mission to Kosovo also closely cooperates with the European Union Rule of Law Mission in Kosovo (EULEX), established in 2008 in order to assist and support the self-governing authorities in the rule of law area, specifically in the police, judiciary and customs areas.

Other OSCE Bodies

In addition, various Vienna-based organs of the OSCE also deal with issues of conflict prevention and rehabilitation. For instance, the Conflict Prevention Centre (CPC) supports the Chairman-in-Office and other OSCE bodies at all possible stages of the conflict cycle and thus plays a key role in supporting OSCE field operations. Moreover, the Strategic Police Matters Unit (SPMU) supports policing in all OSCE participating States as part of the rule of law and fundamental democratic principles and develops accountable policing services through assessment, expert advice and assistance.

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[90] For more information, please visit the website of the OSCE Mission in Kosovo, [Internet]. Available from: <www.osce.org/kosovo>.

8. Concluding remarks

The international community has learned a number of lessons from its work in the various phases of the conflict cycle. It is important to build capacity for early warning after a conflict has occurred to prevent an escalation of the conflict as well as a deterioration of the general human rights situation as such.

Local ownership is also important: the international community must involve a broad cross-section of national actors, including NGOs, in their prevention and conflict management activities. For example, support for NHRIs through the OSCE as well as the UN will bolster the capacity in the early warning phase, both in post-conflict areas as well as in places not (yet) affected by conflict. Another example of such a local ownership approach is a recently launched project, jointly run by the ODIHR and the UN, which aims at strengthening capacity in the countries of the former Yugoslavia to take over cases from the ICTY.[91]

Human rights form an integral part of the international community's engagement in all phases of the conflict cycle. As we have seen, international organizations such as the UN and the OSCE are applying the lessons from the past and ensuring that human rights form an integral part of their work in all these phases. It is important that international organizations and the international community continue to

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[91] ODIHR. (2009) **Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer, Final Report.** September. The report was produced by the ODIHR, in conjunction with the ICTY and the UN Interregional Crime and Justice Research Institute (UNICRI). [Internet] Available from:
<http://www.icty.org/x/file/About/Reports%20and%20Publications/report_supporting_transition_en.pdf>

learn from experience how to prevent conflicts, how to manage them when they occur so as to reduce their negative impact on the human rights situation and how to ensure that, after the conflict, a lasting peace is built on a solid foundation. This requires political will and adequate resources, and an ability to adapt to situations and develop appropriate responses. It is only by continuing to learn from the past that the number, intensity and effects of conflicts on the human rights of individuals may be reduced in the future.

4 Mainstreaming Human Rights in Responding to the Conflict Cycle: The Role of NGOs

Albrecht Schnabel[92]

1. Introduction

As tensions and conflicts escalate, human rights are continuously and increasingly violated through structural and direct violence committed against parts, or all, of the population. In turn, at the same time as human rights are violated, the likelihood and potential for tension and conflict rise. Violence breeds counter-violence. Over time, structural violence breeds direct violence and vice versa. In contrast, a decrease of direct and structural human rights violations diminishes the potential and occurrence of violent conflict.[93]

Thus both the provision and violation of human rights play important roles at every stage of the so-called 'conflict

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[93] See Horowitz, S. and Schnabel, A. eds. (2004) **Human Rights and Societies in Transition: Causes, Consequences, Responses.** Tokyo, United Nations University Press. However, falling levels of conflict and direct violence towards the end of and after armed violence do not necessarily translate into an equally positive drop in structural violence and human rights infringements. To the contrary, for instance, small arms violence against women tends to increase after war. See Farr, V. , Myrttinen, H. and Schnabel, A. eds. (2009) **Sexed Pistols: The Gendered Impacts of Small Arms and Light Weapons.** Tokyo, United Nations University Press; and, by the same authors, **Sexed Pistols: The Gendered Impacts of Prolific Small Arms.** (2010) Policy Brief 1. Tokyo, United Nations University.

cycle' – focusing on human rights reduces conflict escalation, reduces the 'longevity' of protracted conflicts, supports conflict settlement and eases and supports post-conflict peace-building and consolidation. It helps mainstreaming human security provision[94] in response to the conflict cycle, while the latter, in, turn mainstreams continuous attention to human rights. NGOs possess comparative advantages vis-à-vis other actors' contributions to conflict management and peace-building[95]; and they have numerous important roles to play in mainstreaming human rights as part of their efforts to de-escalate tensions and violent conflict along the various stages of the 'conflict cycle'[96]. In his discussion the author will draw on activities and approaches by organizations in whose activities he was directly involved.[97]

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[94] Schnabel, A. (2008) The Human Security Approach to Direct and Structural Violence. In**: SIPRI Yearbook 2008: Armaments, Disarmament and International Security.** Oxford, Oxford University Press, pp. 87-96.

[95] The term 'peace-building' shall be used throughout the chapter as a synonym for all constructive efforts towards the prevention and management of conflict and the consolidation of negative and positive peace. For the author's use of terminology, particularly the relationship between various approaches to the concepts of peace, security, violence and conflict, see Schnabel, A. (2008) The Human Security Approach to Direct and Structural Violence. In **SIPRI Yearbook 2008**, Oxford, Oxford University Press. pp.87-96.

[96] The term 'conflict cycle' will be commented on and defined for the purpose of this chapter immediately following the introductory section.

[97] This includes Swiss Peace Foundation (Swisspeace) and its Early Analysis of Tensions and Fact Finding , Centre for Peacebuilding , National Centre of Competence in Research North-South and Afghan Civil Society Forum programmes and Geneva Centre for the Democratic Control of Armed Forces and its International Secrutiy Sector Advisory Team programme.

2. The conflict cycle, human rights, human security and the role of NGOs

Although we speak of a conflict cycle, this is a misleading term. The term suggests a cyclical relationship of conflict and peace. It presumes it to be necessary that peace eventually evolves into conflict, and conflict back into peace. Yet peace and conflict are highly dynamic processes that do not follow cyclical patterns of life and death (such as is implied in the term 'life cycle of conflict'). Moreover, there is no linear progression from peace to conflict or, in reverse direction, from conflict to peace. Thus, the discussions in this chapter will discuss developments along what could be more adequately described as 'stages of conflict escalation and de-escalation that characterise and are characterised by non-linear peace and conflict dynamics'.

2.1 The conflict cycle as 'peace and conflict dynamics'[98]

The various stages of conflict escalation and de-escalation can be defined and labelled in a variety of ways. Earlier in the book, Monika Wohlfeld has discussed several variations of the conflict cycle, each of which reflects a different conflict context, configuration and correlation of conflict parties or sequence of escalatory and de-escalatory patterns. I would like to base my discussions on a model that was originally developed for a UN System Staff College (UNSSC) training course on 'Early Warning and Preventive Measures: Building UN Capacity'. The model was

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[98] The following comments are based on the explanatory text adapted by the author to accompany the 'peace and conflict dynamics' model. For further details, see [Internet] Available from:
<http://www.unssc.org/web/programmemes/PS/>.

subsequently revised and updated by the author of this chapter for use in UNSSC follow-on training activities labelled 'Conflict Prevention: Analysis for Action'.[99] The model is meant to aid those involved in conflict prevention activities to structure both their analysis as well as their specific policy and programme activities along a number of dynamic stages of conflict escalation and de-escalation, with a focus on UN contributions to the de-escalation of violence and the return to peace and stability. The trainers involved in the exercise are mostly members of NGOs, while the recipients of the training come from the UN, regional organizations and partner NGOs in the field. Throughout the training human rights issues are treated as one of three major crosscutting themes, along with gender and HIV/AIDS.

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[99] Ibid. See also Dufresne, C. and Schnabel, A. (2004) Building UN Capacity in Early Warning and Prevention. In: Schnabel, A and Carment, D. eds**. Conflict Prevention from Rhetoric to Reality: Organizations and Institutions.** Lanham, Maryland, Lexington Books, pp. 363-385.
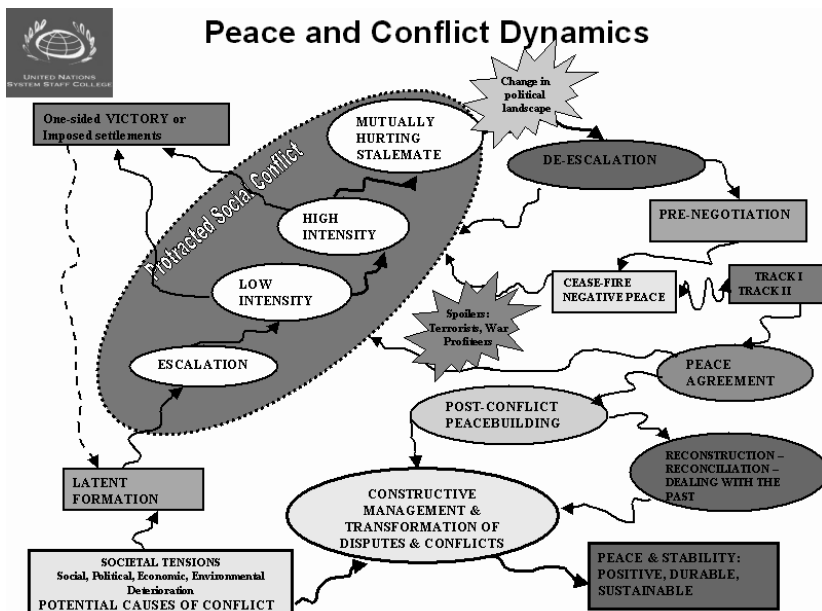
Figure 1: Peace and Conflict Dynamics, UN System Staff College Training on *Conflict Prevention: Analysis for Action*.

Ideally, tensions and conflicts are resolved at the lowest escalation level possible. Conflict dynamics do not escalate to higher levels of violence if mitigation measures are taken and are effective. Without such measures conflict is bound to intensify. The speed and direction of conflict dynamics depend on intentional and unintentional decisions and acts by internal and external actors. Conflict dynamics can be manipulated (i.e. escalated or de-escalated) at any time and at any conflict stage. Being properly prepared to deal with expected and unexpected drivers and triggers of conflict escalation, and to take advantage of opportunities for positive 'manipulation' is key to successful conflict prevention. Identifying, monitoring and acting upon

systematic human rights violations are part and parcel of such preparedness.

In order to plan and implement suitable and effective preventive and de-escalatory action, there must be a common and thorough understanding of the roots, possible dynamics and consequences of the conflict and its potential for escalation, including the role of human rights violations in causing, triggering and escalating, as well as preventing, violent conflict. Otherwise, diverse and mutually exclusive stakes and interests will stand in the way of successful prevention.

Ideally, the state and its institutions should be able and willing to fulfil their responsibility to mitigate conflict, address adaptation needs and de-escalate tensions as they arise. However, all too often the state is unable or unwilling to manage conflict and requires assistance or forceful encouragement from external actors. Usually, no one single actor is best placed to lead efforts in addressing conflict situations and resolving conflict causes. Individual actors are uniquely placed and equipped to meet particular prevention and adaptation needs – at different levels, times and in different roles. While all actors with a potentially constructive role (civil society, government agencies, regional organizations or the UN) need to join efforts to tilt the conflict cycle towards dynamics that support peace and stability, NGOs in particular ensure the inclusion of a wide variety of stakeholders below and beyond the state.

2.2 The link of human needs, human rights, human security

The dynamics of the conflict cycle are closely linked to the provision (or lack of provision) of human security; while the level of human security depends on the degree to which human needs and human rights are provided. Peace results from human security provision, while conflict results from human insecurity that is characterized largely by direct and indirect human rights violations. The denial of rights can be a powerful cause, driver or trigger of counter-violence by those who are deprived of their rights. In turn, escalating violence leads to further human rights violations. As Omar Grech has rightly pointed out in his chapter earlier on in the volume, human rights violations are indeed both a cause and result of conflict.

A particularly dangerous stage in the life cycle of a conflict is the stage of protracted conflict: Low but consistent levels of direct violence alongside high levels of structural violence are a consequence – as well as cause – of persistent human rights violations. This can also result in highly destructive 'violation fatigue', the acceptance and toleration of violations – and violence – as 'normality'.

On the other hand, human rights provisions cause peace and result from peace: Human rights are closely linked to the notion of positive peace, much beyond the much more limited notion of negative peace. Levels of human rights provision can serve as indicators of societal stability and the provision of positive peace, an argument presented by Monika Wohlfeld in her comments on the link between human rights and early warning. Once basic security needs, such as human, intergroup and societal security are satisfied,

accompanied by a basic level of economic security and well-being, citizens will be eager to express their political and communal needs, and they will demand to participate in social and political life, which allows them hold their governments accountable for the provision and protection of their rights and needs.[100] The provision of human rights therefore not only helps minimise the potential for violent conflict, but it also facilitates maximising opportunities for the early resolution and peaceful channelling of tensions, disputes and other drivers of armed conflict. Table 1 outlines some basic priority areas of human right provision and protection at each stage of the peace and conflict dynamics model.

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[100] Op. cit. Schnabel. In: Carment and Schnabel eds (2004) p.114

Table 1: Role of human rights work at various stages of a *Dynamic* Peace and Conflict Model

Conflict Stage	Focus of Human Rights Work by NGOs (and other actors)
Positive & Sustainable Peace	Promotion of human rights of general population, both nationally and internationally
Societal Tensions & Constructive Conflict Management	Promotion of human rights of general population
Latent – Formation	Special attention given to minorities & marginalised & vulnerable groups
Escalation – Confrontation	Special attention given to political movements and opposition groups and parties
Low Intensity	All of the above
High Intensity – Endurance	All of the above + special attention given to persecuted groups & civilian population abused as instruments of war
Imposed Settlement – Negative Peace	All of the above + special attention given to persecuted groups & civilian population abused as instruments of war
Protracted Social Conflict	All of the above + special attention given to persecuted groups & civilian population abused as instruments of war
Mutually Hurting Stalemate	All of the above + special attention given to persecuted groups & civilian population abused as instruments of war
Change in Political Landscape	Special attention given to 'new' opposition movements and groups

De-escalation – Improvement	Special attention given to civilian population & demobilised state & non-state combatants
Pre-negotiations	Special attention paid to formulating and including new standards of human rights protection & human needs/security provision in national dialogues, peace processes, cease-fire and peace agreements
Track One & Track Two Diplomacy	Special attention paid to formulating and including new standards of human rights protection & human needs/security provision in national dialogues, peace processes, cease-fire and peace agreements
Cease-fire	Special attention paid to inclusion of human rights protection of civilian population, demobilised combatants, veterans & often neglected female combatants and child soldiers and their communities
Settlement – Negotiation – Peace Agreement	Special attention paid to inclusion of international human rights standards and procedures in peace processes; and specific references made to, for instance, security sector reform (SSR) principles in peace agreements
Post-conflict Peacebuilding	Promotion of human rights of general population along with

	continued special attention paid to all groups mentioned above
Reconstruction/Reconciliation	Promotion of human rights of general population along with continued special attention paid to all groups mentioned above
Positive & Sustainable Peace	Promotion of human rights of general population, both nationally and internationally

The provision of human rights can never be taken for granted – not at any time and in any society: particularly the silent, structural violence caused by the persistent denial of human rights and people's ability to meet their human needs can happen so slowly and invisibly that human rights violations and resulting structural violence become embedded in daily social, economic and political life. This can reach a point where they are not anymore perceived as outright injustice committed by an incapable or negligent state, but as a matter of destiny. It is the responsibility of politically alert NGOs to avoid such inertia by drawing the population's attention to the rights they are supposed to enjoy and call upon those authorities inside and outside the state that can assist in securing the respect of such rights. This can significantly reduce levels of human suffering – levels that might be tolerated by official government authorities but are never desired by those who are affected.

3. The conflict cycle and the role of NGOs in promoting human rights: Opportunities and limits

The effectiveness and efficiency, and thus the potential contribution to human rights promotion at various stages of the conflict cycle, depends on a number of characteristics and qualities of an NGO: including its thematic expertise; its core competences and core activities; the main 'instruments', tools and approaches it utilises in its work; its means and resources; and a number of external factors, such as the nature and characteristics of the relevant stage of conflict and its comparative position, condition and performance vis-à-vis other national and international actors that are involved in peace, security and human rights promotion.

3.1 The roles of NGOs in promoting human rights

Today's international human rights regime consists of an accumulating body of internationally accepted norms and legal instruments, along with efforts by Intergovernmental Organizations (IGOs), NGOs, and national governments to promote improved human rights practices. Unfortunately, the process of abstract standard setting has made more rapid progress than efforts to legitimise and enforce the standards in practice. Practical efforts by intergovernmental organizations and governments have been slow as states still give priority to the principle of non-intervention. Moreover, their own security and economic interests constrain their promotion of human rights abroad. This is where NGOs come into the equation. The work of human rights NGOs and their individual and organizational supporters are crucial for a more effective functioning of the international human rights regime. NGOs are engaged in popularising and

advancing human rights causes nationally and internationally. Moreover:

"[t]hese informational and advocacy functions can potentially have significant impacts on elite and public opinion, fertilising and organising local human rights traditions and movements to the point where they become prominent and influential in domestic culture and politics.

"This slow, decentralised process of building human rights awareness through local contacts is probably the international human rights regime's most powerful and consistent force for positive change."[101]

As the results of a previous study suggest, the work and impact of NGOs' human rights work are indeed effective. The creation of international human rights norms and decentralised propagation of these norms by NGOs seem to have a greater impact than actions taken by states – whether individually through their own foreign policies or collectively through decisions, practises and norm-setting of international organizations. In large part as a result of the work of local and international NGOs:

"even for the most repressive regimes human rights norms have become difficult to ignore …[as they]… feel compelled to make up excuses for their abuses, thus implicitly admitting fault and accepting the need for remedial action."[102]

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[101] Schnabel, A. and Horowitz, S. (2002) NGO's Critical Role in Advancing Human Rights in Transition Societies. **Podium**, 2 (December), p.1.

[102] Ibid. See also Op. cit. Horowitz and Schnabel eds. (2004). These conclusions are based on findings from the study on Human Rights and Societies in Transition, jointly undertaken by the United Nations University and the University of Wisconsin-Milwaukee, and co-directed by one of the authors of

The United Nations "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms" outlines and recognises the position and contribution of civil society organizations (CSOs) in the promotion and protection of human rights.[103] The Declaration recognises the right both for individuals and CSOs to promote and campaign on human rights issues. States shall adopt legislative and take administrative and other steps to effectively guarantee these rights (Article 2). Among the rights specified are:

- The right to form, join and participate in non-governmental organizations, associations or groups to promote and protect human rights both at national and international levels (Article 5);
- The right for CSOs to participate in government and the conduct of public affairs, including to submit to

this chapter. The results of the study culminate in country- and region-specific recommendations for state, non-state and intergovernmental actors actively involved in assisting political, social and economic transition processes. The study found that, wherever regimes allow sufficient freedom, and as long as human rights norms can be plausibly presented as consistent with local traditions and widely held collective goals, they tend to be supported by wide segments of public opinion – including the political opposition and important elements traditionally allied with authoritarian rulers. In this way, human rights norms have been widely embraced in post-communist countries, in many parts of post-Cold War Africa, in Argentina (and most of the rest of Latin America), in Turkey, in South Korea and Taiwan, and in India, the countries and regions on which the study focused. Even in highly authoritarian countries such as Iran and the PRC, to further cases covered in the study, human rights norms have been widely accepted by the opposition, much of the population, and influential segments of the elite. See also, by the same authors, Transitions to Democracy and Rule of Law. In: Forsythe, D ed. **The Human Rights Encyclopedia** Vol. 5, Oxford, Oxford University Press, pp. 87-92.
[103] See: United Nations (1999) **General Assembly Resolution 53/144** (8 March), [Internet], Available from:
<http://daccessdds.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

governmental bodies and agencies and organizations concerned with public affairs criticism and proposals; for improving their functioning, and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms (Article 8);

- The right to complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State (Article 9(3)(a));

- The right to participate in peaceful activities against violations of human rights and fundamental freedoms (Article 12).

The Declaration recognises the important role of NGOs in human rights education, training and research (Article 16). Given the freedom and opportunity to carry out those rights, most NGOs have the potential to play a constructive role at most conflict stages, although their strengths can be played out best before the outbreak of armed violence and after armed violence has ended, as they depend on a reasonably stable and peaceful environment – in a context of negative peace they can focus on improving conditions for and addressing violations of positive peace.

Non-governmental organizations, "private, self-governing, not-for-profit institutions dedicated to alleviating human suffering, promoting education, health, economic

development, environmental protection, human rights, and conflict resolution, and encouraging the establishment of democratic institutions and civil society"[104], are actively engaged in peace and security promotion through a variety of activities. They include the provision of humanitarian assistance in emergency situations; the promotion / advocacy and monitoring of human rights; support and assistance for civil society and long-term social and economic development in countries suffering from poverty; support in peace promotion, conflict management and resolution (particularly non-violent conflict management); and capacity-building and the strengthening of local capacities and competencies.

One can distinguish the nature, roles and functions of NGOs according to different key characteristics: There are international, national and local NGOs; there are secular and religious NGOs. They can be distinguished according to organizational structures, cultures, size, staffing, geographical reach and financial wealth. NGOs differ according to their thematic focuses – there are humanitarian NGOs (focussing on relief and development), human rights NGOs (focussing on the identification and alleviation of political, economic or social repression), civil-society building NGOs (supporting and nourishing the growth of local civil society and democratic culture), and conflict resolution NGOs (focussing on formal and informal dialogue and negotiation between conflictive parties).[105] Although the types of organization, sense of purpose and areas of expertise

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[104] Aall, P. R (2004) Non-governmental Organizations and Conflict Prevention: Roles, Capabilities, Limitations. In: Carment, D and Schnabel, A. eds. **Conflict Prevention from Rhetoric to Reality: Opportunities and Innovations.**
Lanham, Maryland, Lexington Books, p.178.
[105] For a more detailed discussion on these characteristics and distinctions, see ibid.

and thematic focus differ between individual NGOs, most view each other as part of a larger community of actors in conflict prevention, management and resolution. There are a number of attributes that they have in common; attributes that can, as we will see further down, be advantageous or disadvantageous in their efforts to make constructive contributions to conflict management in general, and to contribute to human rights promotion in particular. Those attributes include the following:

First, they do not have the official status of a government agency or intergovernmental organization. *Second*, they serve as bridges and intermediaries between official circles and actors (Track 1) and grassroots level actors (Track 3). *Third*, they tend to take pride in being organizations that think, plan and act independent from official political, economic or ideological agendas. *Fourth*, they lack political and economic influence – and thus the ability to back their demands and expectations with the powerful 'carrots/incentives' and 'sticks/penalties' states and international organizations apply.[106] *Fifth*, they are often working on sensitive and politically delicate issues, especially in situations when focussing on a subject such as human rights, which requires them to criticise and directly oppose government policies, behaviours and actions. NGOs are political actors; and in a society where repressive governments might not serve the interests of their population, some NGOs will take it upon themselves to represent those interests and thus put themselves at great risk of government reprisal. *Sixth*, when working in insecure environments – either in oppressive authoritarian political contexts or in conflict and post-conflict contexts marked by instability, insecurity and crime – local as well as

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[106] Ibid. p.180

international NGOs depend on protection, sometimes provided by private security companies or peacekeepers. For many NGOs this is a mixed blessing, as they fear that reliance on armed protection puts their independence and impartiality at risk. *Seventh*, they depend on creative and flexible strategies, particularly as they tend to operate on short-term financing and under pressure for quick results-based delivery. And, *eighth*, as they often fulfil public service roles that should have been provided by government agencies – and thus draw attention to the government's inadequacies and neglect – they are not always considered to be assets but instead nuisances by government authorities.

3.2 General strengths and weaknesses of NGOs vis-à-vis states and intergovernmental actors

Compared to state and intergovernmental actors, NGOs display a number of very specific strengths and weaknesses that define the extent to which they are in a position to monitor, promote and advocate as well as positively reinforce respect for human rights.

3.2.1 Strengths

The particular strengths of NGOs include the following characteristics: They tend to be less bureaucratic than government agencies (or programmes of international organizations), relatively small in size and staffed by relatively young, idealistic, open-minded and motivated individuals, all of which adds flexibility to their responses within constantly evolving local environments. They tend to be bound less by official policies, ideologies and political

objectives. International NGOs tend to be eager to cooperate with local actors and to take advantage of their informal status to cooperate with and across all formal and informal actors through interactive activities such as workshops, meetings, conferences, mediation or inter-group dialogues. As noted by Marina Caparini and Eden Cole in their examination of civil society organizations in security sector governance, an important component on the post-conflict peace-building agenda is the fact that:

"[m]oreover, independent CSOs can remain untainted by party politics and often have public credibility since they are seen to be independent of government. Some larger NGOs dealing with single issues achieve public recognition because of their acknowledged national or international expertise. These groups, such as Amnesty International or Human Rights Watch, may have a well-developed international profile that enables them to speak on more than equal terms with governments and international organizations. This expertise is a valuable resource in the policy-making process since it gives policy makers and legislators access to information that is credible but independent."[107]

3.2.2 Weaknesses

Some of the strengths of NGOs can easily turn out to be weaknesses: due to their preference for independence, there is often very little coordination and cooperation among

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[107] Cole, E., Eppert, K. and Kinzelbach, K. eds. (2008) **Public Oversight of the Security Sector: A Handbook for Civil Society Organizations.** Geneva, Geneva Centre for the Democratic Control of Armed Forces and Bratislava, United Nations Development Programmeme Regional Centre.

NGOs, as well as between NGOs and other actors. Competition between NGOs can be significant, particularly for scarce financial resources offered by a limited number of donors to a growing number of NGOs working in similar thematic areas. Often, financial support is available only for short project durations and only for very specific tasks, objectives, themes or regions, sometimes depending on a particular donor's – changing – preferences. This last point highlights a significant vulnerability of NGOs: They depend greatly on the good will, support and interests of their donors. Many NGOs are partly or entirely supported by government agencies. As a result they stand to compromise some of the neutrality, objectivity and independence they so highly value. Their supposed independence is often little more than a romantic illusion, which, especially in the case of international NGOs, is often not properly understood by their local partners. An NGO and its individual projects often receive funds from a diversity of donors, which further complicates matters. Their financial fortunes depend greatly on their founders, political connections and influential contacts within the donor community, without which they might not have come into existence in the very first place. Their financial destiny and political clout (and thus opportunities for 'impact') can be highly personified and closely linked to individuals, particularly in cases of smaller NGOs with a limited and narrow financial support base.

Moreover, many NGOs suffer from an accountability problem. Particularly, smaller NGOs do not follow basic good governance principles. They are run quite hierarchically by a limited number of persons who are often drawn from a small group of founders or their immediate circles of confidants. In practice this might not be particularly problematic as long as the latter are dedicated to

such principles as transparency, inclusiveness or accountability not only to the donors but also to the audiences they serve. On the other hand, many NGOs are committed to good governance principles and, for instance, install councils or advisory boards that perform external and – somewhat impartial – oversight functions.

Many NGOs walk a thin line between welcoming outside financial support to fund government-critical activities in the name of human rights, democracy and development, and of being instrumentalised by external actors in subverting state sovereignty. This has for instance been an issue in the context of early warning activities that rely on information collected by local NGOs. Even if the focus of information collection is on open, publicly available sources, such NGOs are eyed with much suspicion by government authorities who suspect them of providing intelligence services for external actors that might be set on changing political, economic or social conditions against the wishes and preferences of the country's political authorities. NGOs that collaborate with those external actors run the risk of being accused of treason, particularly if they collaborate with external actors while carrying out domestic advocacy work.[108]

As is the case in all fields of non-governmental activity, when conflict management NGOs' competencies, thematic

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[108] Several of the local coordinators and field monitors of FAST International, an early warning system serving a number of Northern development agencies as well as NGO and IGO communities worldwide, had to struggle with such security problems, as their work was eyed with much suspicion by their government authorities. For more information on FAST which operated from 1998 to 2008 but was suspended due to lack of funding, see [Internet], Available from: <http://www.swisspeace.ch/typo3/en/peace-conflict-research/previous-projects/fast-international/index.html >.

priority areas and capacities overlap, effectiveness suffers. While NGOs compete for the most visible and – in terms of funding prospects – lucrative assignments, many donors prefer to work with established, large NGOs, partnering up again and again with small groups of 'usual suspects.' Cooperation with the most powerful actors (governments, regional organizations or the UN) thus becomes a possibility only for the very largest, international NGOs. For instance, while there have been hearings of the UN Security Council with NGOs, it was primarily organizations like OXFAM, CARE and similarly large (Northern!) NGOs with global reputation and reach that were given the opportunity to speak at these fora. From currently approximately 3,200 NGO with consultative status with the Economic and Social Council (ECOSOC), in addition to tens of thousands of other NGOs, only few of them have the opportunity to participate in UN meetings in New York or Geneva or boast offices in those places. For instance, throughout 2009 about one-third of all ECOSOC-accredited NGOs participated in UN meetings. Of these 1,065 organizations, 68 organizations came from Africa, 59 from Latin America and the Caribbean, and 75 from Asia. In contrast, 198 organizations came from Europe and 283 from North America. 39 percent of the 4,144 representatives sent by those NGOs came from North America, while only 11 percent came from Africa, 7 percent from Asia and 6 percent from Latin America and the Caribbean.[109] The global NGO community is not very representative, especially geographically. The richest and largest NGOs come from the North, while Southern NGOs heavily depend on funds from Northern foundations, government agencies or partner NGOs.

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[109] These and further statistics are available on the website of the UN Department of Economic and Social Affairs – NGO Branch. [Internet] Available from: <http://esango.un.org/irene/index.html?page=static&content=stats>.

For many potential donors and partners, NGOs project an image of being chaotic, poorly organised and undisciplined institutions, organizations without much structure and purpose. However, those stereotypes do not apply to an increasing number of very well and professionally run NGOs. Still, many NGOs suffer from a democratic deficit: there is little accountability, they lack transparency and it is not clear whose interests they represent (ECOSOC UN accreditation standards and procedures, as well as other accountability measures attempt to change these impressions[110]). Many NGOs suffer from a legitimacy problem: in their role and function as public 'watchdogs' of the practices of governments and corporate business they criticise behaviour and preach and demand standards that they themselves cannot always honour.

In addition, many NGOs, particularly smaller, local organizations and those working in post-authoritarian, conflict and post-conflict environments, face considerable security and safety risks.[111] In their work, human rights NGOs and their supporters "are strongly constrained by local conditions. Most importantly, ruling regimes may impose strong restrictions against organised human rights advocacy, to the point of imposing arbitrary, draconian punishments on all those who try. There are also other types of barriers. Based on past national and local experiences, human rights NGOs may be associated with undesirable imposition of alien standards and policies. And even when the will is there, more pressing needs and threats – such as poverty, economic

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[110] For instance, **Humanitarian Accountability Partnership.** [Internet], Available from: <www.hapinternational.org>. For publications on the HAP's approach, see [Internet], Available from:
<http://www.hapinternational.org/projects/publications.aspx#Bib>.
[111] Op. cit. Aall (2004) In: Carment and Schnabel eds. pp. 178-179

instability and civil conflict – necessarily limit locally available audiences and resources."[112] NGOs advocate human rights and 'name and shame' those involved in violations (such as Amnesty International or Human Rights Watch), and they promote open political and economic systems (such as the Open Society Foundation). Other NGOs work in conflictive and violent environments, where the risk of daily crime and violence meets the risk of acting and advocating against the interests of powerful local authorities or criminal networks (such as in the case of human rights NGOs opposing human trafficking). NGOs are working on their own guidance tools[113] or depend on the services of private security companies or support from international peace operations for security support. Security and safety concerns definitely limit the extent to which NGOs can effectively pursue their missions on the ground, particularly when acting against the interests of local and national political, economic and social elites.

The particular strengths, competencies and opportunities for NGOs to facilitate peace, development and stability, human rights promotion and human security provision are constrained and often stymied by their very weaknesses, particularly their lack of public accountability, their small size, unpredictable financial support and limited political clout. Lacking accountability leads, especially among smaller NGOs, to the pursuit of private, sometimes erratic agendas that are counterproductive to long-term engagement on behalf of society overall. Their small size limits the extent to which most NGOs can have an impact on larger trends

[112] Op. cit. Schnabel and Horowitz eds. (2004) p. 1
[113] Van Brabant, K. (2000) Operational Security Management in Violent Environments: A Field Manual for Aid Agencies. **Good Practice Review, Humanitarian Practice Network.** June**.** London, Overseas Development Institute.

and developments beyond the confines of particular projects and sites of activity. Their dependence on external financial support limits the size and extent of activities they are able to support, while creating enormous pressure to please and satisfy donor interests and agendas that might run counter to project objectives. Moreover, dependence on short-term funding requires many NGOs to spend an unreasonably large amount of time on fundraising and reporting, or on the pursuit of readily measurable and impact-friendly activities that run counter to long-term agendas of sustainable conflict prevention and peace-building. Furthermore, projects with positive long-term potential are unlikely to be carried through to reach their intended objectives when erratic funding decisions driven by donors' political preferences and decisions leave NGOs no choice but to terminate activities and investments that render no quick and measurable result. In the end, many NGOs find themselves in the unfortunate situation of having to betray their own principles in order to stay in business: Their paymasters (often states and major foundations) leave them little other choice.

Finally, frustrated either by the repeated inability to facilitate long-term change or the precarious and unpredictable employment or contract conditions, many of those working in NGOs leave for more promising pastures in governmental and intergovernmental institutions. This is both a blessing and a curse. On the one hand this capacity transfer strengthens the competence and capacity of governments and intergovernmental organizations to make better informed, more effective and meaningful contributions to peace-building. On the other hand, however, it deprives NGOs – especially local and small NGOs in the Global South – of talented, experienced and well connected,

'established' and respected individuals, further weakening their own capacity and political clout.

4. Conclusion: Towards effective NGO strategies in prioritising human rights along the conflict cycle

In the discussion above we have explored the opportunities and obstacles experienced by NGOs in their contributions to peace-building, including the promotion and protection of human rights. Compared to state and intergovernmental actors, NGOs have less political and financial clout with which they can reinforce their requests and demands. In advocating human rights, NGOs have to rely on the capacity and willingness of local and national civil society organizations, political parties or public officials to support their demands for human rights improvements. NGOs contribute to mainstreaming and embedding a deeper appreciation for and commitment to human rights provisions through their various functions: by monitoring human rights standards and performance; through advocacy; through education and training of officials, practitioners and academics; and through their efforts in sensitising and familiarising public audiences as well as political, cultural and religious authorities or private businesses. Some main lessons have emerged in the preceding examination of NGOs' contributions to embed human rights in responses along the conflict cycle. The remainder of this section will highlight those lessons.

The importance of collaborative efforts

NGOs realise that they can only be effective in a sustainable manner, particularly in situations of increased levels of violence and in closed societies with authoritarian rule, when they collaborate with other like-minded NGOs, with state actors or international organizations. Still, for some of the reasons already mentioned above, many NGOs are not used or ready to coordinate their work with others. They are afraid of losing their independence, flexibility or financial backing as a consequence of unfavourable divisions of labour. They also fear losing control over their own programmes, instead becoming small and insignificant contributors to the efforts of larger and more influential actors whose approaches and objectives they might not even condone.

The importance of local NGO efforts

It is often the sum of many small and silent violations out in the countryside, unnoticed by failing or failed states who do not have the means, will and physical presence to see and mitigate the violation of human rights and enforce their provision, that create the monstrosity of overall levels of rights violations. The efforts by local NGOs and other civil society and grassroots initiatives contribute greatly to rights promotion at all levels of the conflict cycle. If they want to contribute more than symbolic gestures, they need to collaborate with other actors to assure that, for instance, locally successful programmes secure the necessary financing to be maintained, and that successful initiatives are carried to the rest of the country. While particularly small local NGOs might make extremely helpful contributions in

furthering awareness of human rights violations and respect for human rights provision, they need partners to carry their successful experiences beyond the limited confines of their own activities. They might be willing to join larger-scale efforts that are initiated and financed by larger national and international NGOs who can secure funds, political clout and contacts with broader NGO networks and international organizations. Together, they might have enough power and influence to help translate real needs into official government policy, thus aligning local and national practice with international standards.

The deterrent role of NGOs' human rights advocacy

NGOs – small and large, local and international – play important roles in securing human rights a central place in peace and conflict management (whereas, as is all too often forgotten, the management of peace is as critical and challenging a task as that of managing conflict!). Highlighting international human rights norms and the presence and consequence of their violation can serve as a powerful deterrent. It forces states and the international community to consider shared norms, apply them at early stages and by doing so, prevent crises and avert much suffering. It also alerts populations to the existence of and their rightful entitlement to a wide range of social, economic, political and civil rights created to meet their basic human needs and provide for their basic human security requirements.

The positive impact of human rights promotion on the conflict cycle

The promotion, provision and protection of human rights fosters and reinvigorates democratisation; facilitates economic development and thus narrows the inequality gap; addresses and prevents violent conflict; and thus reduces conflict-related violations. These are all important contributions to breaking out of the vicious conflict 'cycle'. In addition, as mentioned previously in the chapter, the creation of international human rights norms and the decentralised promotion of these norms by NGOs tend to have a greater impact than actions taken by states – whether individually through their own foreign policies or collectively through decisions of intergovernmental organizations. In large part thanks to the work of local and international NGOs, human rights norms have become difficult to ignore for even the most repressive regimes.[114] As a result, as Aall notes, NGOs' "ability to gain the ear of influential decision-makers in the national capitals of powerful states is important as a prod to action in responding to early signs of conflict."[115]

NGOs' comparative advantages

NGOs tend to be smaller, more flexible, informal and adaptive than state and intergovernmental actors. They tend to be primarily focused on the provision of human security, unlike state and intergovernmental actors whose actions are also heavily influenced by larger political or geostrategic interests. NGOs are thus destined to allow more effective

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[114] Op. cit. Schnabel and Horowitz (2002) p. 1
[115] Op. cit. Aall (2004) In: Carment and Schnabel p. 183

and sustainable engagement in human rights promotion and provision at all stages of the conflict cycle. The greatest challenge in the consolidation of sustainable and positive peace is the ability to establish and maintain institutions, structures and processes that allow for the non-violent and non-aggressive channelling of tensions and conflicts. That challenge could be mastered with the help of effective 'oversight' and support from non-governmental actors that are sufficiently detached from elite-driven economic and political interests, which often stand in the way of the provision of populations' human (security) needs.

In order to analyse, select and design NGO's options for engagement along the stages of the conflict cycle – or, as is the preferred term in this chapter, along the stages of peace and conflict dynamics (see Table 1) – and subsequently design and carry out the most effective engagement strategies it is important to collect, assess and understand for each individual stage the following information:

- the specific nature and characteristics of the specific stage;
- the relevance of human rights provision and violation as both cause and consequence (and thus evidence) of violence and tension, but also of peace and stability;
- the actual potential roles of NGOs for human rights promotion;
- the actual potential positive impact of NGOs' human rights work on human security, peace and stability;
- and the specific requirements for cooperation and coordination of NGO activities among themselves and in partnership with state and intergovernmental actors.

If donors (mostly government donors) embrace a similarly inclusive and coordinated approach in planning and funding their support for NGOs, a significant step would be taken towards ensuring that human rights and human security concerns are adequately embedded along the conflict cycle as the core driving forces of conflict prevention, management and peace building activities.

5 Human Rights in Conflict Prevention: The Case of the Former Yugoslav Republic of Macedonia

Alice Ackermann

I. Introduction

The prevention of armed conflict remains one of the most pressing challenges in the twenty-first century. As violations of human rights, including the rights of persons belonging to national minorities, are often a root cause of conflict, as well as a consequence of any violent acts committed during conflicts, it is imperative that the protection and promotion of human rights also lie at the core of conflict prevention. It is in this regard that monitoring, protecting and promoting human rights can serve as a crucial instrument in the conflict prevention toolbox.

The complex linkage between human rights and conflict prevention has long been recognised by a number of international and regional organizations as well as other international actors who have been involved in the protection and safeguarding of human rights and national minority rights. This chapter will explore one such actor, namely, the Organization for Security and Co-operation in Europe (OSCE), which has been at the forefront of the protection of national minority rights since 1992 when OSCE participating States established the position of OSCE High Commissioner on National Minorities (HCNM) as an instrument of conflict prevention. The only regional organization in the international arena to have established such an Office, the High Commissioner over the course of eighteen years has

been crucial in averting conflicts and tensions or their escalation, triggered over issues related to the rights of persons belonging to national minorities.

Before exploring more specifically the role of the OSCE and that of its High Commissioner particularly within the context of a well-documented case study, that of the Former Yugoslav Republic of Macedonia, this chapter will first take a closer look at the concept of conflict prevention and the historical background of its emergence as a political concept in international relations. The chapter will also briefly delineate the role of the High Commissioner in general, and then more specifically in the case of the Former Yugoslav Republic of Macedonia.

II. The Concept of Conflict Prevention

In general, conflict prevention refers to any action that can be undertaken to prevent a conflict or crisis in the early phases of its emergence, when there is no violence yet, or at best only sporadic violence. It is important that preventive action occur before significant violent conflict erupts. A distinction is often made between *'primary prevention'* – that is in cases where "new conflicts threaten to erupt", and *'post conflict secondary prevention`* related to those preventive actions that can be taken to prevent recent conflicts re-igniting. In this broader definition, therefore, conflict prevention also can apply to a "post-conflict environment" where the objective is to prevent the re-emergence of tensions or violence that may trigger once more an armed conflict.

There are also two different means of prevention – we therefore distinguish between *'direct' or 'operational prevention'* and *'structural prevention.'* In the first instance, direct or operational prevention refers to preventive action that is undertaken to address the immediate tensions. This can be done through political instruments such as good offices, dialogue facilitation, mediation, sanctions, or preventive deployments. Structural prevention addresses the underlying sources of conflict and crisis situations, such as state weakness, discriminatory policies, economic injustices, or other societal disparities.[116]

A third parameter of conflict prevention also exists, introduced, by the United Nations (UN) Secretary-General in his "Progress Report on the Prevention of Armed Conflict" to the General Assembly in July 2006. The Report refers to "systemic prevention" that is, "measures to address global risk of conflict that transcend particular States."[117] It entails that transnational threats, such as for example the illicit trade in small arms and light weapons and narcotics, environmental degradation, or underdevelopment are tackled, but also that trade in resources known to fuel conflict, such as for example, diamonds, are regulated, so as to reduce the vulnerability of certain States to armed conflict.[118]

[116] Lund, M. (2009) Post Cold War Conflict Prevention: Progress and Gaps, **Presentation at the Conference on Preventive Diplomacy and Peacemaking**, Alexandria, Egypt, 4-5 November; also, Ackermann, A. (2003) The Idea and Practice of Conflict Prevention. **Journal of Peace Research** 40, 3, pp. 339-347.

[117] See United Nations General Assembly. (2006). **Progress Report on the Prevention of Armed Conflict**. Report of the Secretary-General, A/60/891, 18 July, p. 5.

[118] Ibid. p. 7

As to the historical development of the concept, it is notable that already in 1960 the term "preventive diplomacy" was used officially for the first time in the annual report by UN Secretary-General Dag Hammarskjöld. Its meaning was defined within the context of the Cold War and referred to 'keeping regional conflicts localised so as to prevent their violent spill-over into the superpower arena."[119] Then in 1992, UN Secretary-General Boutros Boutros-Ghali redefined the term "preventive diplomacy" to reflect on the changes in the post-Cold War environment, which were believed to allow for more concerted action in preventing armed conflicts. In his Report to the Security Council, "An Agenda for Peace," excerpts of which were later summarised and published in an article in the internationally-renowned U.S. journal, *Foreign Affairs*, Boutros-Ghali referred to preventive diplomacy as a policy aimed at preventing conflicts from emerging and also from escalating into violence. In this context, he listed five specific measures for conflict prevention in the politico-military domain: confidence-building measures; fact-finding missions, early warning networks, preventive deployment, and demilitarised zones. Root causes of conflict were to be addressed through economic and social development.[120]   His successor, Secretary-General Kofi Annan, further advanced the idea and practice of conflict prevention. Among his more crucial initiatives was the articulation of the concept of a "culture of prevention" and his argument that the UN had a moral responsibility to prevent large-scale violence, such as genocide.[121]

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[119] Op. cit. Ackermann (2003) p.340
[120] Boutros-Ghali, B. (1992) **An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping**, Report of the Secretary-General adopted by the Summit Meeting of the Security Council on 31 January 1992, A/47/277-S/24111, 17 June, New York, United Nations.
[121] Op. cit. Ackermann (2003) p.340

Since then, most of the international and regional organizations as well as many national governments have come to embrace conflict prevention as a policy tool. For example, apart from the UN, references to conflict prevention as a policy can be found in the documents of various regional organizations (sometimes also referred to as "crisis prevention"), including the European Union, the OSCE, the African Union, the Economic Community of West African States, or the League of Arab States. However, as far as the actual implementation of preventive action is concerned, there often remains a gap between rhetoric and actual realisation on the ground, with a few notable exceptions.

III. The Protection and Promotion of National Minority Rights as Objective and Tool in Conflict Prevention – The Role of the OSCE

As mentioned previously, the protection and promotion of human rights, and in particular of national minority rights, which is the primary focus of this chapter, are both: an objective of, and a crucial tool for conflict prevention. In the OSCE, there are two major instruments in the conflict prevention toolbox for the monitoring and protection of human rights and national minority rights. Those issues related to human rights rest within the Office for Democratic Institutions and Human Rights (ODIHR); those applicable to national minority issues fall into the domain of the High Commissioner on National Minorities.

The importance of national minority rights in conflict prevention is clear : (1) the protection and promotion of such rights can be a primary and secondary preventive tool;

(2) violations of national minority rights and the failure to reach accommodation are among the root causes of conflicts; (3) politicisation of minority issues frequently affect negatively inter-state relations, especially if an ethnic group constitutes a numerical minority in one state but a numerical majority in another state. Inter-ethnic tensions can be a great source of inter-state frictions and can even result in inter-state armed conflicts, and therefore also tend to have wider regional security implications; and (4) there is empirical evidence that constructive conflict management regarding minority and majority issues can reduce the risk of political tension or even armed confrontations.

The creation of an OSCE High Commissioner on National Minorities as an instrument of early warning and conflict prevention involving national minority issues dates to the Helsinki Decision 1992 where the preventive role and functions of the HCNM are outlined, as part of the first dimension of security – the politico-military one. The 1992 Document is also a remarkable testimony to the constructive thinking among OSCE participating states that existed in the early 1990s. It provides evidence that the OSCE was, along with the UN, among the precursors of innovative thinking on conflict prevention.[122] What prompted, of course, such thinking was the political and inter-ethnic violence that engulfed the former Yugoslavia in the early 1990s.

Established as an autonomous institution within the OSCE, the High Commissioner in his mandate is empowered to provide "early warning" and, as appropriate:

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[122] See here, Ackermann, A. (2003) The Prevention of Armed Conflicts as an Emerging Norm in International Conflict Management: The OSCE and the UN as Norm Leaders. **Peace and Conflict Studies** 10, 1 (Spring), pp. 1-14.

"early action" at the earliest possible stage in regard to tensions involving national minority issues that have the potential to develop into a conflict within the CSCE area, affecting peace, stability, or relations between participating States."[123]

The High Commissioner's work falls generally under what was described at the beginning of this chapter as "operational conflict prevention." However, one can also consider the preventive activities on the part of the High Commissioner as "structural conflict prevention" because addressing "structural issues in majority-minority relations is essential if sustainable solutions are to be achieved."[124]

The work of the HCNM continues to involve fact-finding in the field; providing legal and policy advice to governments; dialogue facilitation and mediation; and the initiation of tension-reducing projects. The HCNM also assists participating states in the implementation of their relevant commitments when it comes to minority rights issues. Among the specific areas for assuring an integrative minority policy are the following: participation in public life; integrative education; integration and recognition of the minority language in public life; broadcasting; and police services that are representative of society.

In his approach, the High Commissioner proceeds incrementally, or step-by-step, and his mandate emphasises the importance of "quiet diplomacy" which is designed to assure confidentiality and trust-building. Drawing on groups of experts, the High Commissioner also has over time

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[123] CSCE (1992) **The Challenge of Change.** Helsinki Document 1992, Helsinki Decisions, p. 5.
[124] OSCE High Commissioner on National Minorities Factsheet (2009), p. 2.

developed a series of thematic recommendations and guidelines, including those on educational and linguistic rights of minorities, participation of minorities in public life, media broadcasting in minority languages and policing practices in multi-ethnic societies.[125] Since the creation of the High Commissioner's Office, three eminent international personalities have served the OSCE in this position: Max van der Stoel of the Netherlands (1993-2001); Rolf Ekéus of Sweden (2001-2007); and currently Knut Vollebaek of Norway (since July 2007).

The following case study will delineate how the OSCE High Commissioner has been particularly involved in the case of the Former Yugoslav Republic of Macedonia.

IV. The Case Study: Conflict Prevention in Practice

When the Former Yugoslav Republic of Macedonia became independent in September 1991, in a region with already armed confrontations, there was major concern that the country might also be consumed by warfare. One determining factor was that the country also was home to different ethnic groups, the largest of which were the ethnic Albanians, with a distinct national and cultural identity.[126]

There were four overlapping issues that formed the core of the grievances of ethnic Albanians in the country: group status – that is protest over the status of minority group rather than recognition as a 'constitutive nation;' language and educational rights – and discriminatory practices,

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[125] Ibid. p. 3.
[126] Ethnic Albanians currently constitute about 25 percent of the population (2.1 million inhabitants).

primarily under-representation of Albanians in the administration, armed forces, and police. The preventive work of the High Commissioner was thus crucial in addressing these major grievance and demands.

This was done initially primarily through regular fact-finding missions and visits that were often followed up with specific recommendations addressed to the authorities on how to work towards accommodation. For example, between 1993 and 1995, one of the most critical periods, the then High Commissioner Max van der Stoel conducted twelve visits to the country, meeting with government officials and leaders of the various ethnic groups and parties. These visits addressed and investigated divisive issues that were included in the four categories of grievances and demands voiced by the ethnic Albanian community, including citizenship requirements, television and radio programs for minority groups, education in the minority languages, and professional representation of ethnic Albanians.

The results of such preventive involvement were most impressive. For example, the contentious issue of a separate ethnic Albanian university, the so-called "Tetovo University" that divided the two ethnic communities throughout much of the 1990s, was constructively resolved in 2000, with an agreement to build a multi-lingual institution of higher learning, the South East European (SEE) University, also informally referred to as the "van der Stoel University." It was inaugurated in November 2001, with a curriculum in Albanian, Macedonian, English and other European languages. Broadcasting in all the minority languages was expanded over time. Educational and linguistic rights were enhanced to include education in the Albanian language in primary and secondary schools. A law

had also been introduced in July 2000 for the use of the Albanian language and other languages in private tertiary institutions, which allowed for the establishment of the SEE University. What was significant was that with the involvement of the High Commissioner, the rights of all minorities in the country were gradually expanded, and not only those of ethnic Albanians.[127]

The emergence of an armed insurgency movement in the Former Yugoslav Republic of Macedonia in 2001 caught many by surprise, and unfortunately drew attention away from the constructive and accommodative ways in which majority-minority relations had been managed in the country during the first ten years following independence. The insurgents claimed that not enough had been done to advance the rights of the ethnic Albanian population in the country, in particular with regard to constitutional rights and equality. After several months of violent acts and bloodshed, the armed conflict ended with the signing of a peace accord, the "Ohrid Framework Agreement," that incorporated further measures and stipulations to enhance minority rights, including the introduction of a so-called "double majority" in Parliament, an increase in the number of police officers of Albanian origins, provisions for decentralisation, and expanded linguistic rights.

Since 2001, following the signing of the Ohrid Framework Agreement, minority rights have been further expanded and all minority communities in the country have

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[127] Ackermann, A. (2000) **Making Peace Prevail: Preventing Violent Conflict in Macedonia,** Syracuse, New York, Syracuse University Press; Ackermann, A. (2002) On the Razor's Edge: Macedonia Ten Years after Independence. In: Institute for Peace Research and Security Policy at the University of Hamburg (IFSH). eds. **OSCE Yearbook 2001**, Baden-Baden, Germany, Nomos, pp. 117-135.

benefitted from further changes that were introduced over time. However, the preventive role of the HCNM continues in the Former Yugoslav Republic of Macedonia, in particular because of mounting concerns over growing "ethnic separation" particularly in the educational domain. The High Commissioner has emphasised that segregation is "unwelcome or even dangerous for inter-ethnic relations" because when minority communities speak the state language poorly, "their chances to fully participate in the public life of the country" is hindered. Misperceptions and ethnic stereotypes also continue to hold in such cases. Segregation was noted to be most evident in the western part of the country, with a more significant Albanian population.[128]

Although the country made great strides in the promotion of minority rights because of a policy of accommodation, this has not led necessarily to more integration. A number of reasons can be listed for such a development, including problems associated with decentralisation, deficiencies in the recruitment system for teachers, a lack of specific training for teachers with a perspective toward educating for a multi-ethnic society, as well as crowding in schools due to a lack of new school facilities.

The current High Commissioner, Ambassador Knut Vollebaeck, is actively promoting a policy of integrated education in the Former Yugoslav Republic of Macedonia to prevent a further politicisation of the educational system. Among his recommendations for an integrated approach to education has been to "depoliticise" the appointments of

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[128] See here for example, OSCE High Commissioner on National Minorities, Feature: "OSCE Works with Authorities in Skopje to reverse Segregation in Education," 21 April 2009.

school directors; to "depoliticise" schoolbooks and curricula; and to "disarm" history, so that it cannot be misused as a political tool. To prevent a "linguistic separation" the High Commissioner has also recommended that there must be adequate instruction in Macedonian, that is, the State language.[129]

The HCNM has received support on this issue from the so-called group of "Principals" – consisting of the Heads of Mission of the EU, NATO, the OSCE and the United States in Skopje. In a statement in January 2010, they emphasised the importance of learning the State language in non-majority communities, and "taking into consideration the recommendations of the OSCE High Commissioner on National Minorities," a proficiency in the Macedonian language will "promote integration of the different communities."[130]

V. Concluding Remarks

As the example of the Former Yugoslav Republic of Macedonia demonstrates, much progress has been made with regard to creating integrated communities but, at the same time, the case study shows how challenges remain. Moreover, minority issues are an important aspect of conflict prevention, and thus, of enhancing European security. This was also pointed out by High Commissioner, Ambassador

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[129] See here for example his speech, **Integrated Education: A Way Forward for Multi-ethnic Societies** Address by OSCE High Commissioner on National Minorities, Knut Vollebaeck, at the South East European (SEE) University, 29 January 2009.
[130] OSCE, Press Release. (2010) **Joint Statement by the Heads of Mission of the EU, NATO, OSCE and the United States in Skopje** SEC.PR/18/10, 29 January.

Vollebaeck, in his address on "National Minority Issues and European Security," at the Corfu Process Meeting in February 2010, which featured a series of discussions on a number of concrete themes, including early warning and conflict prevention. He further emphasised that "we must build further defences together against interethnic conflict in the OSCE area, " calling on states to "respect a certain 'code of conduct' with regard to national minorities."[131]

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[131] **National Minority Issues and European Security.** (2010) Address by OSCE High Commissioner on National Minorities Knut Vollebaeck, 23 February.

6 Conflict and Human Rights: Northern Ireland Explored

Bertrand Borg and Colm Regan

I. Introduction

On April 10, 1998, after thirty years of bloody conflict, political parties from all sides of the Northern Ireland conflict signed the Good Friday Agreement , pledging to dedicate themselves to *'...the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.'* The peace agreement placed at its core an agenda of human rights including a Bill of Rights for Northern Ireland, a Human Rights Commission and the reform of policing and justice procedures and provision.

Characterised historically for its denial or abuse of human rights, Northern Ireland, in the years since the Peace Process, has become increasingly linked to the promotion and protection of human rights as a cornerstone of political and social life and to significant attempts to create a 'culture of human rights' in its day-to-day politics. For some, Northern Ireland, despite its difficulties, now offers a model of the transition from conflict to human rights and political democracy and an 'instructive case' in human rights protection.[132] Since 1995, Northern Ireland has emerged from its most recent phase of conflict and at a variety of significant levels has begun to address the legacy of its historic enmities. Public support for the peace process

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[132] Harvey, C. (2001) Building Bridges? Protecting Human Rights in Northern Ireland, **Human Rights Law Review,** pp. 243-264.

remains very high amongst all communities and the agreement reached in Belfast on February 5th, 2010 represents yet another key 'political shift' towards an enduring peace.

Human rights, in many of its key dimensions, have been at the centre of this process. Human rights, human rights abuses and human rights 'talk' have been an integral part of the Northern Ireland agenda with the denial of the rights of each 'community' providing a justification for continued conflict for decades; they provided much of the underlying argument and justification for events in the period 1960 – 1995, the emergence of the civil rights movement and the subsequent struggle for equality on all sides. Human rights are now explicit in the Good Friday Agreement and the attempt to establish human rights as the fundamental basis for future constitutional arrangements has major implications not only in Northern Ireland but more broadly, and significantly, for the United Kingdom and the Republic of Ireland. The human rights component of the peace process continues to be significantly problematic in its implications for human rights provision in the UK, for devolution itself and for the Westminster political and constitutional systems. [133]

This paper briefly sketches the human rights background to the conflict; outlines the human rights dimensions of the Good Friday Agreement; focuses on the key challenge of drafting, negotiating and implementing a Bill of Rights for Northern Ireland (a fundamental component of that Agreement) and on the context of broader debates

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[133] Donald, A., Leach, P. and Puddephatt, A. (2010) Developing a Bill of Rights for the United Kingdom, **Research Report 51**, Equality and Human Rights Commission, Manchester.

concerning a UK-wide Bill of Rights. The article concludes with some broader issues and challenges that arise in the context of moving from the rights violations context of conflict to the rights protection and promotion context of peace.

II. The human rights background to the Northern Ireland conflict

It is important at the outset to acknowledge the scale and impact of the conflict and to relate its consequences in human terms. Between 1969 and 2001, 3,526 people lost their lives in what is euphemistically known as the 'Troubles' in Northern Ireland. Of the deaths, the vast majority (over 2,000) have been civilians (including members of paramilitary groups from both communities) and the remainder have been from the security forces – the Police Service of Northern Ireland (PSNI, formerly the Royal Ulster Constabulary – RUC) and the British Army. The majority of dead have been male and young, from urban backgrounds and Catholic.[134]

It is estimated that approximately 40,000-50,000 people have been injured during the Troubles – suffering blindness, loss of hearing, disfigurement, and amputations – injuries which impact on 'secondary victims' in families permanently damaged by the severe injury of a close relative or loved one. These deaths and injuries rendered some of the population 'psychiatric casualties' of the conflict, while a

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[134] See Fay, M., Morrissey, M. and Smith, M. (1999) **Northern Ireland's Troubles: The Human Costs**. London, Pluto Press. See also McKittrick, D. et al. (1999) **Lost Lives: The Stories of Men, Women and Children who died as a result of the Northern Ireland Troubles.** Mainstream Publishing, Edinburgh and Darby, J. (1997) **Scorpions in a bottle.** London, Minority Rights Group.

much greater proportion suffered from milder forms of stress.[135]

Human rights abuses fuelled the conflict and were a constant and bloody manifestation of its underlying causes. The conflict has been protracted and costly at every level from the time of the foundation of the Northern Ireland state through to the first civil rights marches in 1968, through the terror campaigns of the 70's and 80's to the emergent peace process of the 90's, the cost has been immense.[136] Although human rights violations alone did not cause the conflict, their ongoing (re)occurrences has prolonged and further deepened it. Bombings, assassinations and 'terror tactics' spread from Northern Ireland to engulf Great Britain and the Irish Republic with the result of fundamentally reduced 'security' for the common person and for all communities. Civil rights in Northern Ireland were seriously eroded and freedom (in the name of security) was sacrificed to a significant extent in both the Irish Republic and Great Britain as a result.[137] Two of the key pieces of evidence of this include the extensive use of emergency legislation where temporary 'security-driven' legal measures became semi-permanent (and not just in Northern Ireland) and which were used beyond their originally intended purpose, and the large number of human rights cases taken to the Strasbourg Court where the

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[135] Cambell, A, Cairns, E and Mallett, J. (2005) The Psychological Impact of 'the Troubles', **Journal of Aggression, Matreatment and Trauma**, Vol. 9 pp. 1-2, 175-184 and Harbison, J. and Harbison, J. eds. (1980) **A Society Under Stress: Children and Young People in Northern Ireland**, Shepton Mallet, Open Books.
[136] Committee on the Administration of Justice (1995) Human Rights: The Agenda for Change – Human Rights, the Northern Ireland Conflict and the Peace Process, Belfast and ibid. Darby (1997).
[137] Rowthorn, B. and Wayne, N. (1988) **Northern Ireland: The Political Economy of Conflict.** Cambridge, Polity Press.

language and thrust of human rights abuses were firmly focused on the state and its failings.[138]

A pivotal period in which the human rights agenda became more explicit and 'operational' in Northern Ireland was that of the 1960's when the struggle for 'civil rights' became the language of the street and of popular politics. The Northern Ireland Civil Rights Association (NICRA) brought groups of Catholics and liberal Protestants together (inspired by the civil rights movements in the United States and elsewhere) to challenge discrimination by the Unionist government through a variety of means, including information provision, public meetings, street protest and civil disobedience campaigning. The issue of equality was central to the core of NICRA's agenda, challenging systematic and widespread political, social, economic and cultural disparity between Catholics and Protestants. NICRA campaigned for universal suffrage; the repeal of the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, which conferred sweeping powers (deemed by the nationalist population as a means of oppression – the Act was repealed in 1973); the disbanding of the B Specials (an armed force of 'special' constables deemed by the nationalist population to be sectarian); the re-drawing of (gerrymandered) electoral boundaries; and the imposition of laws designed to end discrimination in public employment and public housing.[139] It is important to recognise with regard to the civil rights movement that unlike the Irish Republican Army (IRA, dedicated to the elimination of the Northern Ireland state and to a United 32 county Ireland) it

[138] Amnesty International (1994) **Political Killings in Northern Ireland**, London, Amnesty International and Committee on the Administration of Justice, (1995), **No Emergency, No Emergency Law: Emergency Legislation related to Northern Ireland: the Case for Repeal**, Belfast.
[139] Ibid. Rowthorn (1998) p.39

had decided, in effect, to work within the existing political structures to achieve equality and rights. As has been noted by Hancock[140]:

'Rather than attacking the legitimacy of the state or opting out, members of NICRA saw their future as part of Northern Ireland's state, and they were therefore willing to take steps to integrate more fully into the existing system.'

From this point onwards, the cause of human rights (however differentially understood or embraced within each community), became an essential ingredient in the cause of Northern Ireland and, more significantly, peace and security on both islands.

III. Human Rights, the peace process and the Good Friday Agreement

The Good Friday Agreement, one key element in the overall peace process and the basis for the Northern Ireland Act of 1998, the new constitutional arrangement for Northern Ireland, contains an extensive and far-reaching commitment to human rights protection arising directly from the conflict itself but also from UK human rights legislation in addition to that of Europe (the European Convention on Human Rights). According to Harvey[141]: *'The language of rights flows through the Agreement and rights talk has framed the ongoing debate on implementation in many areas of legal and political life.'*

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[140] Hancock, L. (1998) **Northern Ireland: Troubles Brewing.** [Internet], Available from: http://cain.ulst.ac.uk/othelem/landon.htm
[141] Op. cit. Harvey (2001) p. 244

The Good Friday Agreement was by no means the first document to refer to human rights; these were referenced in the Downing Street Declaration of 1993 (which crucially recognised the right to self determination of the people of Northern Ireland) and the Framework Documents for future power sharing in Northern Ireland in 1995. There are numerous references to human rights throughout the text of the Agreement, for example, commitment to the *'protection and vindication of the human rights of all'*, to the *'right to self determination'*; full respect for and equality of *'civil, political, social and cultural rights*, *of freedom from discrimination ... parity of esteem, just and equal treatment'* etc. The key implication and outcome of the Agreement was that whatever governments or parties would exercise sovereignty over Northern Ireland they must do so within specified human rights related safeguards. The human rights references in the Agreement ensured that the settlement would go well beyond Northern Ireland with significant implications for both islands and for human rights in general in both jurisdictions. These implications are most clearly highlighted in the debates and tensions around the drafting and negotiation of a Bill of Rights for Northern Ireland.

The issue of human rights is addressed most directly in the section of the Good Friday Agreement on 'Rights, Safeguards and Equality of Opportunity' where reference is made to the rights to freedom of political thought and of religion, to pursue democratic aspirations by peaceful and legitimate means; to equal opportunities in economic and social activity; to protection from discrimination on the basis of class, creed, disability, gender or ethnicity, equality for women etc. The Agreement, in its human rights provisions, is wide ranging in its implications - it made it a statutory duty for all public authorities to take this human rights

framework into account; it set up a new Northern Ireland Human Rights Commission (with the primary responsibility to consult and advise on the Bill of Rights); it established an Equality Commission and extended human rights into areas such as policing and criminal justice. The key significance of the Agreement is to be seen in the broader human rights framework it enunciates and its rejection of earlier 'piecemeal approaches' with, for example, acceptance of the principle of 'equivalence' – ensuring that an equivalent level of human rights exists in, for example, the Republic of Ireland.[142] The Agreement also included reference to the Republic also setting up a Human Rights Commission, ratifying the Council of Europe Convention on National Minorities, improving employment equality legislation and enhancing respect for the different traditions on the island of Ireland. Importantly, the Agreement also includes reference to the importance of human rights education.

However, despite the numerous references and mechanisms for protecting and promoting human rights outlined in the Agreement, the reality of delivering such rights has, according to the 1999 Human Rights Watch World Report, *'proved disappointing'* as the British government *'consistently failed to translate the provisions into practical and effective human rights protections'*.[143] To date, the implementation of the human rights provisions of the Agreement has been significantly mediated by broader UK political and constitutional issues, no more so than in the challenge of delivering the Bill of Rights for Northern Ireland.

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[142] Ibid. p. 252
[143] Human Rights Watch (1999) **World Report**, Washington

IV. The Bill of Rights Debate

The Northern Ireland Human Rights Commission (NIHRC), established in March 1999 as a direct result of the commitment made by the British Government in the Good Friday Agreement, was mandated with the task of drawing up a Bill of Rights for Northern Ireland. This mandate was unique in that it was the first human rights commission established within the United Kingdom and because it implied that Northern Ireland would be the first region of the UK to have its own Bill of Rights. And, it was also distinctive in the process agreed for deliberating on and agreeing the nature and shape of the Bill.

The NIHRC is independent of government but is accountable to Parliament through the Northern Ireland Secretary of State; its duties include reviewing the adequacy and effectiveness of law and practice relating to human rights; advising the Secretary of State and the Executive Committee of the Northern Ireland Assembly on legislation which is required to protect human rights; advising the Assembly on the compatibility of legislation with national and international human rights obligations; promoting understanding of human rights in Northern Ireland and advising the Secretary of State on the possibilities for defining rights supplementary to those in the European Convention on Human Rights in Westminster legislation. The Commission also has the authority to support individuals with legal proceedings involving human rights issues (something which has proved to be controversial amongst the judiciary); to conduct investigations related to its functions and to undertake research and to publicly publish its findings.

Given the history and legacy of human rights 'culture' and the ongoing tensions between communities in Northern Ireland and the nature and scope if its mandate, it is no surprise that the NIHRC has been heavily criticised and its effective functioning has been significantly undermined. It has been undermined by limited financial resources (for the tasks for which it is mandated); by the limitations to its powers of investigation and by political resistance to its agenda at political level in both Northern Ireland and Westminster. From the outset, key political figures in Northern Ireland (for example David Trimble, the initial First Minister of the Northern Ireland Assembly and who has primary responsibility for human rights) have challenged the legality of the Commission, claiming it has no authority to draft a Bill of Rights despite the fact that the Commission and the Bill of Rights are legal outcomes of the Good Friday Agreement.

The debate surrounding an eventual Bill of Rights for Northern Ireland is perhaps best described as three-dimensional. On the one hand there are disagreements amongst the various political parties *within* Northern Ireland; many of these tend to be related to the particular language proposed for the Bill of Rights. Secondly, there are issues which raise questions for specific social interest groups from the disability sector to women, children, ethnic minorities, trade unions and businesses. Thirdly, there are areas of disagreement between Northern Ireland focused parties (political, trade and civil society groups) and Westminster.

The Bill of Rights Forum (established to formulate recommendations to the Northern Ireland Human Rights Commission and comprising members of a range of business, community, political and trade union groups and

chaired by Australian Chris Sidoti) was given specific terms of reference:

'... To produce agreed recommendations to inform the Northern Ireland Human Rights Commission's advice to Government on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international human rights instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland.'

These terms of reference prompt two important questions. The first poses the challenge as to what precisely constitutes *'the particular circumstances of Northern Ireland'*? The implication of this is that an eventual Bill of Rights must concern itself solely with matters specific to Northern Ireland, and avoid dealing with broader issues already covered by the UK 1998 Human Rights Act (HRA). Some further issues arise from this; if the Bill of Rights focused on *'the particular circumstances of Northern Ireland'*, would it do so by creating rights supplementary to the European Convention on Human Rights (ECHR), or should it instead restrict itself to the ECHR's remit and simply modify or mould existing provisions to fit Northern Ireland?

The majority opinion within the Forum was that the Bill of Rights ought to add to the ECHR, and not simply re-word an already-existing convention; adding to the ECHR or HRA would mean creating particular rights provisions for Northern Ireland. While many of the sectors represented in

the Forum were in favour of having human rights provisions specific to Northern Ireland, a number of objections were raised (for example, in some key respects economic and social conditions are better in Northern Ireland than in other parts of the UK). The Terms of Reference made it clear that the Forum was to recommend only on issues particular to Northern Ireland, and not on more general issues. In this context, is the Bill of Rights a direct consequence of 'the Troubles', or simply informed by them? Some issues could be directly traced back to the conflict, with others less clearly so. Is the mention of 'the particular circumstances of Northern Ireland' an oblique reference to sectarian violence and the Troubles, or could it be understood to mean the wider social, economic and political realities of Northern Ireland?

The second question relates to the challenge of how to interpret *'the principles of mutual respect for the identity and ethos of both communities'*. As a corollary question to this, there was significant tension over the language used in the drafting of the proposed Article 11 of the Bill of Rights which deals with the right to culture, language and identity. The Democratic Unionist Party, the Ulster Unionist Party and the Alliance Party all voted in favour of a draft article which would protect the culture, language and identity of 'a minority or a community'; whereas Sinn Fein, the Social Democratic Labour Party and the various representatives of civil society all argued for specific protection for 'minorities' as distinct from the broader term 'communities'. The issue at stake: if 'communities' were to be listed alongside 'minorities', what repercussions could this have in terms of upholding existing discrimination by majority communities?

In the words of the human rights sector representation:

'The term "minorities" has a specific connotation in international human rights law. The protection of rights is obviously in the interests of everyone in society, whether one is a member of a minority or a majority community... The purpose of minority rights protections is to protect the most vulnerable groups in society, precisely because they are minority groups. It is quite unacceptable to undermine any of the rights that minority communities have as a result of the Framework Convention, and we believe that the current proposals risk doing that.' [144]

Conversely, the Alliance Party representation argued for the inclusion of 'communities' alongside 'minorities':

'Northern Ireland is a complicated society with multiple identities and cross-cutting cleaves. Cultural and identity rights should apply to all persons belonging to different sections of society. Minorities are not fixed, and majorities in one context can be minorities in another. Recognition of the rights of some does not diminish the rights of others.'

In this particular case, the debate over this issue was overruled by Westminster. In its November 2009 consultation paper, the British government argued against the proviso in its entirety:

'It is clear from the Advice that this [recommendation on minority rights] does not primarily refer to the two main communities in Northern Ireland but to other cultural,

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[144] Bill of Rights Forum (2008) **Final Report: Recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland.** Belfast, pp.74-75.

linguistic and ethnic minorities living here. The question of how such minorities should relate to the wider ... is very much part of the national debate started by the Green Paper on a Bill of Rights and Responsibilities and cannot be said to reflect particular circumstances in Northern Ireland"[145]

The proviso *'except for issues of national security'* is included in a number of draft articles on the Bill of Rights. This has been raised as an issue of concern by Sinn Fein, the human rights sector and the broader civil society. Given Northern Ireland's turbulent history, allowing the state the power to suspend rights provisions on 'national security' grounds is understandably cause for concern. Objections over the inclusion of this limiting proviso crop up time and time again across the Forum's deliberations.

There are significant differences of opinion between the Northern Ireland Human Rights Commission and the British Government on any eventual references to the rights of victims of the conflict and the rights of their relatives. The NIHRC's proposals sought to make the 1998 Human Rights Acts apply retrospectively in cases pertaining to the Northern Ireland conflict – something Westminster has categorically ruled out, on the grounds that doing so would create two uneven 'tiers' of rights, in which violations committed as part of the Troubles would be treated differently to any similar crimes committed elsewhere in the UK.

Even if a Bill of Rights were to be agreed upon, there are issues on how it should be integrated into Northern Irish law: three 'models' prevail - repeal the Human Rights Act and have the Bill of Rights replace it (favoured by Sinn Fein and

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[145] A Bill of Rights for Northern Ireland: The Next Steps**.** November 2009 **Consultation Paper.** p.41.

SDLP); amend the Human Rights Act in order to remove any incongruities with the Bill of Rights, and have both functioning side-by-side (favoured by the disability sector, the older people's sector and the trade unions) and retain the Human Rights Act and have the Bill of Rights provide supplementary rights, with separate legislation specific to Northern Ireland (favoured by UUP, Alliance, the business sector, the children's sector, ethnic minority sector and the human rights sector). Having received these proposals, the Commission opted for an approximation of Option 3, in which the 'Convention Rights' laid out in the HRA would be re-enacted:

'alongside [the] Supplementary Rights in a separate piece of legislation, with its own enforcement and implementation mechanisms. This separate legislation would constitute a Bill of Rights for Northern Ireland.' (Advice, p.137)

Westminster remained unconvinced of the NIHRC's suggestion, fearful of the confusion that would arise by having two separate human rights legislative frameworks operating concurrently across the UK. Although Chris Sidoti argued that there was no reason why one couldn't have two separate bills of rights within the one country, the British Government remained unconvinced.

An additional issue that arises is also how would an eventual Bill of Rights be passed? There have been two concrete (and opposing) proposals: one, the Bill would be enacted through Westminster legislation but should first receive cross-community support in the Northern Ireland Assembly and, two, the Bill of Rights should first receive support in a referendum. There is general consensus that

option 1 would be best, but some parties are concerned that it would suit those opposed to a Bill of Rights to have it discussed within the Northern Ireland Assembly, as they would be able to block the bill or try to filibuster it.

The justifiability and enforcement of the Bill is also problematic and reveals the divergence of perspectives across Northern Ireland. Sinn Fein, the SDLP, the children's sector, the human rights sector and the trade unions support the creation of a dedicated Human Rights Court; the DUP, UUP, Alliance, business sector, disability sector, older people's sector, and women's sector favour enforcing the Bill through the existing court system. Other proposals suggest the setting up of a human rights tribunal or a human rights division within existing court structures. The NIHRC and Westminster seem to have agreed on this issue: an eventual Bill of Rights would be enforced through the existing court system, with the NIHRC given statutory powers to monitor and audit its implementation, and a human rights committee established in the Northern Ireland Assembly whose role it would be to scrutinise draft legislation for compliance with the Bill of Rights.

V. Conclusion

In its 2010 research report, the Equality and Human Rights Commission for Great Britain (excluding Northern Ireland) identified 13 key principles arising from the experience of enacting Bills of Rights in 5 jurisdictions – Canada, New Zealand, South Africa and Northern Ireland. These principles include non-regressive (supplementing existing national and international law), democratic (not just in outcome but also in process); inclusive (especially of the

views of those most at risk of human rights abuses); deliberative and participative (building citizenship), educative (in the broadest sense); symbolic (compelling for the public and thus lasting) and, crucially for Northern Ireland, respectful of devolution settlements. Many of these principles have directly informed the Bill of Rights process in Northern Ireland especially those as regards the democratic, deliberative, citizenship and educative dimensions but the process has become mired in debates and difficulties as regards devolution, human rights across the UK and, inevitably as regards constitutional politics.

The devolution statutes across the UK are complicated, and the human rights frameworks underpinning them are directly linked to the Human Rights Act and more broadly to the ECHR. According to the UK legal human rights organization *Justice* a bill of rights covering the devolved jurisdictions would be legally, constitutionally and politically very difficult to achieve. Amendments to the HRA and any enactment of a bill of rights would almost certainly, from a legal perspective, require amendments to those devolution statutes, thus posing significant challenges to the legal status of dimensions of the Good Friday Agreement. Any amendments to the HRA and any enactment of a bill of rights would, from a constitutional or political perspective, need the consent of the devolved institutions. It would also require careful consideration so that the UK would not derogate from its international treaty obligations to the Republic of Ireland in regard to the Belfast (Good Friday) Agreement.[146]

Other difficulties and complications also arise – while it might be possible to have an English Bill of Rights, this

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[146] Justice (2010) **Devolution and Human Rights**. London

would pose a series of problems between the competing jurisdictions within the UK. According to the analysis offered by *Justice*, the HRA works, and at present the devolution framework has also been successful but amendments to the HRA or legislating for a Bill of Rights would be 'dangerous and risky' – to the protection of rights, to the constitution of the UK, and to the Union itself.[147] Additionally, political consensus and consent would be needed across the devolved jurisdictions if there was to be any 'British' or 'UK' Bill of Rights. Some have argued that a debate about a bill of rights for the UK is an exercise that requires reopening competing assumptions about the Union. There is also the problem of language. The British Parliamentary Joint Committee on Human Rights (JCHR) has taken the position that a 'British' Bill of Rights would, by definition, exclude Northern Ireland. Geography also enters the equation in that the term 'British' is relevant, in that Northern Ireland is part of the United Kingdom but not part of Great Britain. A 'British Bill of Rights' therefore could not therefore, by definition, apply to Northern Ireland.

While recent attitude surveys clearly indicate that the majority of people in Northern Ireland support a Northern Ireland Bill of Rights, nonetheless, unionists and loyalists in Northern Ireland regard themselves as, and wish to be acknowledged as 'British', so they may not be willing to accept exclusion from a 'British' Bill of Rights. Any such proposal of exclusion would create, or perhaps more accurately antagonise, unionist and loyalist feeling. In contrast, labelling any Bill of Rights as 'British' might also antagonise the nationalist aspirations and identities in both Scotland and in Northern Ireland.

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[147] Ibid.

The Equality and Human Rights Commission (EHRC) of the UK has summarised the current situation as follows:

'Overall, this review suggests that current circumstances for any process to create a new UK Bill of Rights are unfavourable. Public understanding of – or enthusiasm for - a new Bill of Rights is not assured and there is little discernible popular or civil society momentum behind the idea.'[148]

One commentator interviewed for the EHRC's research captured the implications of the current challenges in the following terms:

'Political positioning has replaced serious consideration ... [A Bill of Rights] is a fundamental piece of the constitutional architecture: it can't be made subject to the day-to-day need for political rhetoric ... This is deadly serious stuff and it should be treated as such.' (EHRC 2010:71)

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[148] Donald, A. (2010) **Developing a Bill of Rights for the UK**, London, Equality and Human Rights Commission, Global Partners & Associates and Human Rights & Social Justice Research Institute, London Metropolitan University p.71