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The United Nations Security Council and Human Rights Advocacy

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The Social Practice of Human Rights: Charting the Frontiers of Research and Advocacy
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Abstract: This paper explores how human rights activism has led to the formal institutionalization of new accountability standards including formal guidelines on prosecutions and amnesties at the United Nations. The paper also explores how norm entrepreneurs inside and outside the UN Security Council have shaped Security Council practice such that it is now contributing to the protection of human rights through selective humanitarian intervention and referrals to the International Criminal Court; as well as the further development of the justice norm through its initiative on the rule of law and the endorsement of UN standards for transitional states. The paper examines how the advocacy practices of the human rights movement have contributed to these developments. It also asks the question whether or not particular Security Council practices should be understood as a new form of human rights advocacy and what the implications of increased Security Council involvement in the regulation of domestic human rights practices of states might be.

Key words: United Nations, Security Council, human rights, rule of law, individual criminal accountability, humanitarian intervention, responsibility to prosecute

WORKING DRAFT – NOT FOR CITATION OR CIRCULATION

Introduction

At the founding of the United Nations (UN), the Security Council was tasked with regulating state sovereignty and maintaining international peace and security. Although the core principles and purposes of the UN outlined in the preamble and Chapter 1 of the Charter also include the reaffirmation of fundamental human rights, different organs were created to achieve

the UN's diverse purposes. The encouragement and monitoring of human rights was assigned to the Economic and Social Council (ECOSOC) and its Commission on Human Rights, which was replaced by the Human Rights Council in 2006. A strict separation of responsibility between these organs was maintained until 1991, when the subject of human rights legitimately entered Security Council deliberations for the first time. The inclusion of human rights concerns during deliberations about Iraq's aggressive behavior toward Kuwait and its threatening behavior in the region, sparked rancorous debate among Security Council members. States like Hungary, Japan and Austria argued that there was a link between enforcing respect for human rights and maintaining international peace and security.¹ China and India argued that addressing human rights concerns was not within the competency of the Security Council and therefore inappropriate to discuss, citing the division of labor created by the UN Charter.² In the two decades since then, violations of the most fundamental human rights, including genocide, war crimes and crimes against humanity, have featured prominently in United Nations Security Council (UNSC) deliberations on situations of inter- and intra-state conflict. This growing prominence of human rights norms is changing the meaning of state sovereignty and international security in the UNSC. Indeed, the Security Council now contributes to limited human rights protection through the selective use of humanitarian intervention, the creation of and referral to international courts and tribunals, and by advocating for the fulfillment of international humanitarian and international human rights law in deliberations, Presidential Statements and Security Council Resolutions.

This paper explores how norm entrepreneurs inside and outside the UNSC have shaped Council practice such that it now concerns itself, albeit on a selective basis, with fundamental

¹ UN Security Council, 11 August 1992 (S/PV.3105), 22, 47, 57.

² UN Security Council, 11 August 1992 (S/PV.3105).

and systematic violations of international human rights and international humanitarian law in conflict situations. Part I describes the emergence of human rights norms in Security Council deliberations and how across a period of two decades, human rights norms changed sovereignty norms such that it became possible for the Council to define gross human rights violations as a threat to international peace and security and to punish its authors through military and judicial measures. Part II examines the Security Council initiative on the rule of law and how a perceived responsibility to protect has evolved into a perceived responsibility to prosecute. This includes the institutionalization of new accountability standards like UN guidelines on prosecutions and amnesties for post-conflict states. Even now, as the Security Council remains divided on the appropriate response to mass killing in Syria, human rights concerns feature prominently in Council deliberations about the situation. The Council meets regularly to discuss Syria's internal affairs and often criticizes the al-Assad regime. In formal meetings, Council members literally dictate to the Syrian government how to manage its police and military forces, how to appropriately respond to the demands and aspirations of its people, and demands that it protects the fundamental human rights of its people. This paper is interested in the effect that human rights advocacy by the human rights movement has had on the UN Security Council, yet it is also interested in exploring whether or not new Security Council practices themselves (advocating for the fulfillment of fundamental human rights and promoting international humanitarian law and international human rights law) should be considered a form of human rights advocacy. This is the subject of the Conclusion. Can we reasonably consider the Security Council as involved in a form of human rights advocacy? What are the implications of UNSC involvement in regulating the domestic human rights practices of the states on their agenda?

Part I: The United Nations Security Council and Human Rights Norms

There has been a dramatic change in international human rights standards over the past several decades. Human rights norms and state adherence to them matter in international politics. While considerable debate remains over the degree to which human rights ideas actually change state behavior, particularly among international relations and international law scholars, human rights discourse has permeated the common language of domestic and international politics. And contemporary beliefs about human rights at the domestic and international level are transforming the meaning of state sovereignty and the legitimate purpose of enforcement action by the United Nations Security Council. As scholar and activist Michael Ignatieff writes, “Human rights has become the dominant moral vocabulary in foreign affairs.” (Ignatieff, 2002).

The UNSC is known as a realm of great power politics and historically it did not consider human rights as a legitimate subject of deliberation or human rights enforcement as a legitimate purpose of council enforcement action. Throughout much of the UN’s history, the state’s treatment of its own population was regarded as within the domestic jurisdiction of states. Yet as international human rights norms have become increasingly legitimate and widespread, gross violations of human rights have been defined by the Security Council as threats to international peace and security; militarily stopping ethnic cleansing has become legitimate; and the criminal punishment of the architects of war crimes, even by state leaders, has become the subject of Council consideration. In some limited respects, the Security Council has found itself involved in the work of monitoring, punishing and advocating for the fulfillment of fundamental international human rights standards.

War Against Iraq (1991) and the Emergence of Human Rights ideas in the Security Council

Human rights considerations lacked legitimacy in Security Council deliberations until 1991 when a series of decisions in the case of Iraq in 1991 allowed for the limited consideration of human rights concerns. This had the unintended consequence of legitimizing human rights norms as a subject of council debate and laid the groundwork for future humanitarian intervention. This initial deviation in Security Council practice was made possible by a dramatically changed historical and political context – the end of the Cold War and globalization – and contingencies specific to the Iraq case. The extraordinary maltreatment of the Iraqi people by Iraqi president Saddam Hussein the aftermath of his defeat by coalition forces caused an unprecedented humanitarian disaster as millions of Iraqi Kurds and Shi'as fled across Iraq's borders into neighboring Iran and Turkey (Marr 2011, 253). Because this humanitarian crisis occurred within the context of a traditional interstate war between Iraq and Kuwait, it was possible for Security Council members to consider the relationship between human rights and international security. During formal deliberations, the UNSC incorporated Secretariat briefings on Iraq's domestic human rights situation – breaking with past practice that excluded such considerations. Because the effects of Saddam Hussein's human rights violations were threatening both regional peace and security and the sovereignty of Turkey and Iran, the Security Council passed Resolution 688, which condemned Iraqi violations of human rights and demanded international access to Iraq's population and territory. The passage of Resolution 688 was a watershed moment – it was the first Security Council resolution to define domestic human rights violations as a threat to international peace and security because of its trans-border effects. In part, Resolution 688, "*condemns* the repression of the Iraqi civilian population in many parts

of Iraq, including most recently in the Kurdish-populated areas, the consequences of which threaten international peace and security in the region” (S/RES/688, 1991).

By dictating the terms of the Iraqi government’s treatment of its own population and curtailing its freedom of movement, Resolution 688 challenged the traditional meaning of sovereignty by interfering in the internal affairs of the Iraqi state and by linking minimal standards of human rights protection to the meaning of legitimate sovereign authority. This interference only became possible because Iraq’s own sovereignty had been temporarily suspended by the UN after it had violated core Charter principles. The use of military force against Iraq was unquestionably straightforward exercise of Chapter VII to reverse international aggression by Iraq against Kuwait. The cease fire imposed by the UN “was one of the most intrusive since the Second World War,” demonstrating the seriousness of Iraq’s transgression of international norms (Marr 2011, 265). Absent this context, it is highly unlikely that Iraq’s treatment of its marginalized populations would have garnered Security Council attention at all, let alone intrusive enforcement action to stop it. Widespread agreement about Iraq’s pariah status, the suspension of Iraqi sovereignty, and the impact on security of the Iraqi government’s human rights violations together created an environment in which a once impermissible practice – the linking of human rights and international security by the UNSC – became possible.

Somalia

In 1992, during deliberations on Somalia, the Security Council for the first time defined a humanitarian crisis as a threat to international peace and security on its own merits and not based on its effects on other states. The decision to use military force to respond to a humanitarian catastrophe within a failed state resulted in the enhanced legitimacy of human rights norms and led to the emergence of a new Security Council practice – humanitarian intervention. Like the

case of Iraq before it, some UNSC members, including Australia, France, India, Nigeria and Zimbabwe, argued that the ongoing violence and its impact on civilians threatened peace and stability in the entire region (S/PV.3060 1992, 9-10, 41, 44, 46). Despite this expressed concern about regional impact, however, Resolution 746 defined the continuation of the *internal* humanitarian crisis in Somalia as a threat to international peace and security, rather than its cross-border effects. “*Deeply disturbed* by the magnitude of the human suffering caused by the conflict and concerned that the continuation of the situation in Somalia constitutes a threat to international peace and security,” the resolution proclaimed (S/RES/746 1992). This same language was repeated in Resolution 751, which established United Nations peacekeeping Operation in Somalia (UNOSOM). The Security Council made no reference to interstate dimensions of the conflict, trans-border refugee flows, or the risk of regional spillover in either resolution. Instead, nontraditional conceptions of security – that international security is affected by the violation of human rights – shaped initial UNSC reaction to the conflict. For example, Special Representative of the Secretary-General of the United Nations for Somalia, Admiral Jonathon Howe, described the situation in Somalia as falling within the realm of “universal interests” – the shared world interest that nations collectively are willing to defend, including stopping the mass killing of civilians (Howe, 1995). Former U.S. assistant secretary of state for African affairs Chester Crocker similarly argued, “It is surely wise that we and others broaden our understanding of national interest to include consideration of interests related to global order (sanctity of borders, extension of the Nuclear Nonproliferation Treaty) and global standards (avoiding genocide, mass humanitarian catastrophe) (Crocker 1995, 7). Security Council decision-making in Somalia marked an important advance in the emerging idea that the

international community, in general, and the Security Council in particular, had a responsibility to respond to humanitarian crises caused by human conflict in order to end human suffering.

Bosnia-Herzegovina

The discourse used by Security Council members during formal meetings about the Bosnian war (1992-1995) demonstrates that their responses to the conflict were shaped by both core values including human rights and core security interests. For many permanent members of the Council, the war in Bosnia threatened fundamental norms – of equality, human rights, and justice – but did not threaten economic or military security interests. Over time, however, the incongruence between the professed values of European states and international institutions like the UN and their responses to the Bosnian conflict fundamentally threatened their international standing and legitimacy respectively. Threats to values became threats to interests. Throughout the conflict, human rights norms shaped and transformed understandings of international peace and security and state sovereignty in the Security Council. In the case of Bosnia, the interaction of national interests and human rights norms influenced Security Council decision making. Consideration of international human rights law and international humanitarian law led the Council to create the first ad hoc international criminal tribunal to prosecute leaders for war crimes since Nuremberg – the International Criminal Tribunal for the former Yugoslavia in 1993 – and eventually paved the way for humanitarian intervention to stop ethnic massacres in 1995.

Security Council members unanimously condemned the practice of ethnic cleansing in a series of presidential statements and Security Council resolutions (S/PV.3101 August 1992; S/RES/771 1992; S/RES/798 1992; S/RES/808 1993; S/RES/827 1993). Security Council members indicated by the passage of these resolutions that the protection of human rights and respect for international humanitarian law were intricately linked to the maintenance of

international peace and security. For example, in explaining its support for Resolutions 770 authorizing sanctions against Serbia and Montenegro and 771 condemning ethnic cleansing, the representative from Hungary argued, “The adoption of these two resolutions is another example, in our opinion, of the strong commitment of the Security Council to human rights and humanitarian issues. To act urgently is not only a moral obligation of the Council: it is indispensable for the preservation of the credibility of the United Nations. Only a credible Organization and a credible Security Council can perform their basic functions – maintaining international peace and security” (S/PV.3106, 32). Cape Verde argued that the grave violations occurring in Bosnia were crimes committed against all of the international community and not just the Bosnians because “they violate our very decency and human dignity” (S/PV.3082, 56). Venezuela defended its vote in favor of sanctions “for reasons that are basically humanitarian,” asserting explicitly, “respect for the norms and principles of international law is a prerequisite for peace and security in the world. Any State that violates them must be condemned” (S/PV.3082, 27). But not all Council members agreed that human rights considerations had a place in Security Council decision making. India, China and Zimbabwe purposefully denied the linkage between human rights and international security and questioned their relevance to Security Council deliberations (S/PV.3106). Notably, however, while China expressed its reservations about human rights considerations in formal meetings and abstained from voting on resolutions that linked human rights and humanitarian law to Chapter VII of the Charter, it did not veto them.

Rwanda

The Security Council response to the genocide in Rwanda is best known for its fundamental failure and the cynical protection of national interests above international human

rights concerns (see Barnett 2002, Dallaire 2003, Power 2002). For example, permanent members rescued their own nationals within days of the start of systematic slaughter but refused to use their troops to reinforce the UN peacekeeping mission on the ground or provide protection to Rwandan civilians. Humanitarian intervention to stop the killing was not authorized for Rwanda. Yet despite these failures, UNSC members also formally condemned violations of international humanitarian and human rights law, created an independent commission of experts to investigate atrocities, and established the International Criminal Tribunal for Rwanda to prosecute the perpetrators. Council members also were criticized by their domestic populations and other UN member states for failing to fulfill their human rights responsibilities by not stopping the genocide.

In total, 8 states cosponsored Resolution 935 establishing the Independent Commission to study human rights violations, including Argentina, the Czech Republic, France, New Zealand, Spain, the UK, and the U.S. The council passed it unanimously. Combined, members cited five international human rights treaties and the entire body of international humanitarian law as justification for its passage (S/PV.3400).³ In November 1994, the U.S. and New Zealand cosponsored a resolution creating an international criminal tribunal to prosecute individuals guilty of international human rights and humanitarian law violations. Argentina, France, the Russian Federation, Spain and the UK endorsed the resolution. The ICTR was justified as necessary because “the gravity of the human rights violations committed in Rwanda extended far beyond that country,” concerning the international community as a whole (S/PV.3452, 6). The Tribunal was intended to send “a clear message that the international community is not prepared to leave unpunished the grave crimes committed in Rwanda” including violations of the

³ The Universal Declaration of Human Rights, the International Covenant on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of Genocide, the Convention Against Torture, and the Convention on the Rights of the Child.

fundamental rules of war, international human rights standards, and the Genocide Convention (S/PV.3452, 8). Even China, which abstained, declared publicly its condemnation of violations of international humanitarian law and genocide, publicly underscoring Council consensus on the importance of human rights to Security Council decision-making at that time.

Certainly the Rwanda case raises important questions about the authenticity of humanitarian justifications and appeals to human rights. This skepticism is warranted; yet these very criticisms demonstrate the increasing influence of human rights norms on the members of the UNSC, who are compelled to appeal to human rights norms to justify their behavior whether they sincerely value them or not.

Kosovo

Security Council debates about whether or not to intervene to stop ethnic cleansing in Kosovo laid bare the tension between Council members about the relationship among human rights, state sovereignty and international security. At stake was nothing less than determining the limits of both state authority and state control over population and territory. In an era of increasing state commitment to human rights principles, Council members struggled to identify where the rights of the state and its duties to its population begin and end. Immediately, divisions on the cause and character of the conflict arose between the permanent members of the Council. Russia and China defended Serbian sovereignty rights and its authority to defend its rule whereas France, the UK and the U.S. argued that sovereignty could not be used to justify ethnic cleansing and violations of fundamental human rights. With the UNSC stymied by inaction, the North Atlantic Treaty Organization (NATO) launched a humanitarian intervention without Council authorization. In a series of emergency meetings to discuss NATO's illegal use of force, NATO members on the Council defended their actions in human rights terms. The U.S.

argued, “We and our allies have begun military action only with the greatest reluctance. But we believe that such action is necessary to respond to Belgrade’s brutal persecution of Kosovar Albanians, violations of international law, and excessive and indiscriminate use of force...” (S/PV.3988, 4). According to this argument, Belgrade’s systematic policy of undermining international agreements and its violation of international human rights law and the laws of war provided adequate legal justification for humanitarian intervention. Canada underscored its humanitarian motives, “We cannot simply stand by while innocents are murdered, an entire population is displaced, villages are burned and looted, and a population is denied its basic rights merely because the people concerned do not belong to the ‘right’ ethnic group (S/PV.3988, 6). The UK argued that humanitarian intervention was undertaken on the basis of “overwhelming humanitarian necessity” and France asserted that both peace in Europe and human rights were at stake (S/PV.3988, 8-9, 11). Argentina defended NATO’s action arguing that there was a humanitarian obligation to end the violence in Kosovo based on solid legal foundations, despite NATO’s decision to circumvent Council authority.

Argentina also wishes to stress that the fulfillment of the legal norms of international humanitarian law and human rights is a response to universally recognized and accepted values and commitments. The obligation to protect and ensure respect for these rights falls to everyone and cannot be debated. The obligation is all the more urgent given that it has been alleged, witnessed and proven that, in that region, extremely serious international crimes have been committed, including acts of genocide, some of which are being tried in a special tribunal established by this Council (S/PV.3988, 7-8).

A resolution to censure NATO for its illegal breach of Charter principles was put up to vote in the Security Council and failed 3 to 12 because most Council members perceived the use of

military force in defense of human rights in Kosovo to be legitimate. Through deliberately acting inappropriately (intervening without Security Council authorization), NATO members attempted to redefine the standards of appropriate military action. NATO humanitarian intervention reflected growing support for the idea that it is morally acceptable to use force to prevent or end humanitarian crises and gross human rights violations. An emerging standard of what was morally right, however, was in tension with existing norms of what was legally permissible (Economides 2007: 231). The NATO action prompted a worldwide debate about the meaning and responsibilities of sovereignty in an international society gripped by the power of ideas about human rights and the rule of law. With the Security Council deeply divided and relations among permanent members tarnished, the debate about the meaning of sovereignty and the legitimacy of humanitarian intervention moved outside the UN and was taken up by a newly established International Commission on Intervention and State Sovereignty (ICISS).

In 2001, the ICISS released its groundbreaking report, *The Responsibility to Protect*, in which it defended a conceptualization of sovereignty includes state responsibility for the protection of human rights. The Commission argued that sovereignty implied dual responsibility. Externally, states must respect the sovereignty of other states but internally, states must respect the rights and fundamental dignity of its citizens (ICISS 2001: 7-8). Acceptance of sovereignty as responsibility means that when a state is unable or unwilling to protect its population, the state's responsibility to protect must be filled by the international community and specifically by the UNSC (ICISS 2001: xi). A slightly modified version of the responsibility to protect was endorsed by UN members in the 2005 World Summit Outcome Document. Subsequently, the Council formally endorsed the responsibility to protect in Resolution 1674 (2006) and Resolution 1894 (2009) on the protection of civilians in armed combat and in Council

Resolutions on the situation in Darfur in 2006 and in Libya, Côte D'Ivoire, South Sudan and the Middle East in 2011.⁴

ICC Referrals in Darfur and Libya

Ideas about human rights and international humanitarian law shaped Council decision making about Darfur and led to important innovations in Security Council practice, despite the absence of humanitarian intervention. In September 2004, the Council signaled its concern with human rights when it authorized an Independent Commission of Inquiry to investigate allegations of international humanitarian law and human rights violations in Darfur (S/RES/1564). Later, the UNSC made a historic decision when it exercised its right to refer cases to the International Criminal Court by passing Resolution 1593, giving the ICC jurisdiction over Darfur. During the debate on the resolution and in subsequent ICC briefings to the Council, many Council Members directly linked the peaceful settlement of the Darfur conflict with the pursuit of justice and human rights protection with the maintenance of international peace and security.

Similarly, Security Council members justified their passage of Resolution 1970 referring the situation in Libya to the International Criminal Court on the basis of human rights principles. During the deliberations accompanying the passage of Resolution 1970, the Secretary-General and UNSC members made nearly twenty explicit references to the importance of international law and particularly international humanitarian and human rights law, spoke out against impunity, and demanded that perpetrators of violations be brought to justice in court (S/PV.6491). In referring the situation to the ICC for investigation, Resolution 1970 specifically

⁴ UN Security Council, "Resolution 1970," 26 February 2011; UN Security Council, "Resolution 1973,m" 17 March 2011; UN Security Council, "Resolution 1975," 30 March 2011; UN Security Council, "1996," 8 July 2011; UN Security Council, "Resolution 2014," 21 October 2011; and UN Security Council, "Resolution 2016," 27 October 2011.

condemns, “serious violations of human rights and international humanitarian law that are being committed in the Libyan Arab Jamahiriya,” considers that widespread and systematic attacks against civilians may amount to crimes against humanity, and demands that Libyan authorities fully respect human rights and international humanitarian law (S/RE/1970).

Security Council members also justified the passage of Resolution 1973 which authorized the use of all necessary measures to protect civilians in Libya on human rights grounds. As examples, Brazil, Lebanon, Nigeria and Portugal characterized the violence perpetrated against civilians by Libyan authorities as crimes that stemmed from authorities’ “disrespect for obligations under international humanitarian law and human rights law” (S/PV.6498: 6, 9).

Portugal has consistently condemned the indiscriminate violence against civilians and the gross and systematic violations of human rights and of humanitarian law perpetrated by a regime that has lost all of its credibility and legitimacy vis-à-vis its own population and the international community (S/PV.6498: 8).

The preamble of Resolution 1973 characterized the violence as “gross and systematic violations of human rights, including arbitrary detentions, forced disappearances, and torture and summary executions.” The resolution describes these attacks as widespread and systematic in character, possibly amounting to “crimes against humanity.” The passage of Resolutions 1970 and 1973 marked a significant evolution in the Security Council’s response to mass atrocities. Within weeks of the outbreak of violence, UNSC members referred the human rights violations in Libya to the ICC for investigation and enforced stringent sanctions against Libyan authorities and subsequently authorized humanitarian intervention to prevent civilian massacres.

As these examples show, human rights norms have changed sovereignty norms such that it has become possible for the Council to define gross human rights violations as a threat to

international peace and security and to punish its authors through military and judicial measures. In some respects, the Security Council has begun to contribute to limited human rights protection: 1) through the selective use of humanitarian intervention; 2) with the creation of international tribunals and referral of cases to the International Criminal Court; and 3) by criticizing violations of international humanitarian and human rights law in Presidential Statements and Security Council Resolutions and advocating for their fulfillment. Through these acts the Security Council is engaged in a form of advocacy – it monitors and punishes human rights violations and calls for the fulfillment of human rights. These changes in Security Council practices signals that state observance of minimal human rights standards is an increasingly significant component of state responsibility within international society.

Part II: The Security Council, the Rule of Law and development of UN Standards

Demands for Criminal Accountability for Mass Atrocities in Sierra Leone

The venture of the United Nations Security Council into the realm of international criminal law has been described by David Malone (2008) as “groundbreaking.” While rule of law and justice issues are now part of mainstream Council discussion and action (Security Council Report 2010), international criminal law only first entered into Security Council discourse as a legitimate subject in the 1990s. The emergence of justice issues in the Council was part of a wider dynamic that coincided with the end of the Cold War rivalry that historically divided the Security Council: the increasing legitimacy of human rights norms and a changing understanding of international security in which the observance of human rights and the development of international law were integral to its realization. As mentioned above, human rights concerns first became an appropriate topic for Security Council discussion in the context of the 1991 Gulf War; but human rights were only relevant in cases where violations of human

rights were deemed to threaten international peace and security. In general, these are gross human rights violations rising to the level of ethnic cleansing or genocide, war crimes and crimes against humanity. By the mid-1990s humanitarian intervention to stop such grave crimes had become a possible, if infrequently exercised, course of Security Council action (Walling 2013). It was in the aftermath of UN failures to stop mass atrocities in Bosnia-Herzegovina and Rwanda that the Security Council authorized the creation of the first ad hoc international criminal tribunals since Nuremberg to prosecute alleged perpetrators of war crimes, crimes against humanity, genocide and violations of fundamental human rights. The Security Council justified the creation of the tribunals as necessary for ensuring that violations of international law were halted and effectively redressed; and for the restoration and maintenance of peace and security (S/RES/827; S/RES/955).

The behavior of the Security Council was shaped in part by the increasing robustness of the justice norm itself – the idea that the most basic violations of human rights cannot be legitimate acts of state but are crimes committed by individuals who should be prosecuted through formal judicial proceedings (Sikkink 2011: 13). Yet individuals also have been at the center of institutionalizing the justice norm in the United Nations. The creation of the ad-hoc tribunals would not have been possible without the strong advocacy of individuals like Former US Ambassador to the United Nations Madeleine Albright and Klaus Kinkel, then foreign minister of Germany who argued that remedial action was necessary in Bosnia and Rwanda for both moral and practical reasons of maintaining UN legitimacy and credibility (Malone 2008: 732). Former Secretary-General Kofi Annan, another norm entrepreneur, used his bully pulpit to advance a vision of international security that incorporates respect for human rights, fosters development, promotes justice and strengthens the rule of law. What follows are two examples

that illustrate how the increasing resort to human rights trials and increasing activism at the United Nations have led to the formal institutionalization of international standards on the prosecution of human rights violations and limitations on the use of amnesties for transitional states.

Evidence of the growing influence of the justice norm on United Nations policy was evidenced at the signing of the Lomé Peace Agreement in July 1999 which sought to end the decade old civil war between the Government of Sierra Leone and the leaders of the Revolutionary United Front (RUF). During the civil war, domestic and international human rights organizations had meticulously documented human rights violations in preparation for eventual accountability. In the lead up to the negotiations human rights activists made a sustained effort to keep alive the discussion of the establishment of some sort of formal accountability and reconciliation mechanism despite repeated government offers of amnesty to rebels for disarmament (O’Flaherty 2004: 49). Similarly, the senior UN observer to the peace talks, Francis Okelo, the Special Representative to the Secretary General, pressed Sierra Leone President Kabbah to deny amnesty to the most serious rights violators. Despite these pressures, the peace agreement negotiated between the two sides included a general amnesty for crimes committed during Sierra Leone’s civil war which covered the principal architects.

Dissatisfied with the amnesty, then Secretary-General Kofi Annan instructed Okelo to dissociate the UN from it. Reflecting growing consensus within the UN Secretariat that durable peace cannot be built upon impunity and that leaders who orchestrate war crimes and crimes against humanity are not immune from criminal accountability, Okelo appended a handwritten disclaimer: “the United Nations holds the understanding that the amnesty and pardon in Article IX of the agreement shall not apply to international crimes of genocide, crimes against humanity,

war crimes and other serious violations of international humanitarian law” (Schabas 2004:149).⁵ Annan stressed that the domestic amnesty agreed to by the Government of Sierra Leone would not prevent the United Nations from holding alleged perpetrators criminally accountable for international crimes including genocide, war crimes and crimes against humanity.

Even with the Special Representative’s exclusion of international crimes from the amnesty, some Security Council members including Gambia and the Netherlands expressed discontent with the inclusion of any amnesty provision, seeing it as inconsistent with the principles of justice espoused by the Council in its previous statements and resolutions (S/PV.4035, 11 August 1999). The Security Council in its June 1998 Presidential Statement on Sierra Leone (S/PRST/1998/18) had stressed the obligation of States to prosecute perpetrators of grave breaches of international humanitarian law and its February 1999 Presidential Statement (S/PRST/199/6) affirmed the need to bring to justice individuals who cause violence against civilians during armed conflicts.⁶ Security Council Resolution 1231, which passed three months prior to the amnesty in March 1999, had authorized the appropriate authorities to investigate allegations of human rights violations in Sierra Leone for the purposes of future prosecution.

A year after the Lomé Peace Accord, the Security Council unanimously passed Resolution 1315 (2000) which established a special court for Sierra Leone that would have jurisdiction over persons bearing the greatest responsibility for crimes against humanity, war crimes and other serious violations of international law during the country’s civil war. The preamble of Resolution 1315 noted the Special-Representative’s appended note to the Lomé Peace Accord barring amnesty for grave international crimes. When the cases of Morris Kallon,

⁵ Schabas explains that the statement by the Special Representative of the Secretary General does not appear in the text of the agreement published by the United Nations (U.N. Doc. S/1999/777). The statement was appended in handwriting on the official copy of the Lomé Accord.

⁶ Though not all Security Council members defended individual criminal accountability on the record, presidential statements are consensus documents that have the unanimous approval of the Council.

former rebel military commander in the Revolutionary United Front, and Brima Bazzy Kamara, commander of the soldiers of the Sierra Leonean Armed Forces Revolutionary Council came before the Court, the two defendants filed a motion questioning the legality of the repeal of the amnesty agreed upon by the parties to the conflict. The Appeals Chamber of the Special Court for Sierra Leone ruled that while sovereign states have the right to confer amnesties in their domestic jurisdiction they do not have the right to deprive other states of exercising universal jurisdiction over international crimes (Schabas 2004: 162). The Appeals Chamber argued, “It stands to reason that a state cannot sweep such crimes into oblivion and forgetfulness which other states have jurisdiction to prosecute by reason of the fact that the obligation to protect human dignity is a peremptory norm and has assumed the nature of obligation *erga omnes*” (Schabas 2004: 161).⁷ So while negotiating a domestic amnesty was a sovereign right of the government of Sierra Leone, it was not within its authority to prevent other states from exercising their universal rights to prosecute violators of international crimes, even when they occurred in Sierra Leone.

Institutionalization of Accountability Norms for Violations of Fundamental Human Rights

Efforts by the United Nations Secretariat to formally institutionalize the justice norm and its corollary – the proscription of amnesty for genocide, war crimes and crimes against humanity – in the standard operating procedures of the United Nations occurred over the decade of the 2000s. The office of the Secretary-General under both Kofi Annan (1997-2006) and Ban Ki-moon (2007-present) was central to this development. For example, coverage of rule of law issues in reports of the Secretary-General expanded between 2003 and 2010 from an already notable 80% to roughly 90% (Security Council Report 2011: 17). The growing strength and

⁷ Prosecutor v. Morris Kallon and Brima Bazzy Kamara, Special Court for Sierra Leone, SCSL-2004-15-AD72(E) and SCSL-2004-16-AK72(E) Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, Appeals Chamber, 13 March 2004.

influence of the justice norm is also reflected in its presence as a recurring subject on the agenda of the Security Council – an organ historically concerned with traditional peace and security issues and not justice and rule of law issues. An analysis of Security Council resolutions by Security Council Report demonstrates that 89% of thematic resolutions and 74% of country-specific situation resolutions between 2003 and 2010 contained rule of law elements (Security Council Report 2011: 15). Indeed, the Secretariat and Security Council along with the General Assembly and Office of the High Commissioner for Human Rights (OHCHR) have adopted a coordinated position and uniform standards with regards to violations of international humanitarian and human rights law – that the architects of grave international crimes must be held criminally accountable for them and that amnesties designed to protect government leaders from prosecution for these crimes are illegitimate and possibly illegal under international law.⁸

In September 2003, the 15 members of the Security Council, an additional 25 members of the General Assembly and several members of the UN Secretariat met to discuss the UN's role with regard to justice and the rule of law. In total, the formal positions of 62 states were represented during the meeting which was deemed so important that Security Council members met at the Ministerial level.⁹ Opening the debate, Secretary General Kofi Annan recognized that in post-conflict situations, states must strike a balance between justice and reconciliation. He noted however that in striking that balance, members of the United Nations were obligated to adhere to international standards – the standards derived from the Charter of the United Nations as well as the principles of international humanitarian law, international human rights law,

⁸ S/PV.4833, 24 September 2003; S/PV.4835, 30 September 2003; s/2004/616, 23 August 2004; A/RES/60/147, 21 March 2006; S/PRST/2006/28, 22 June 2006; Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Prosecution Initiatives* (United Nations, 2006); and Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Amnesties* (United Nations, 2009)

⁹ Though the representatives of only 40 states attended the actual meeting, 22 additional states formally affiliated themselves with the statement of the European Union.

international refugee law and international criminal law (S/PV.4833, 24 September 2003: 3). Arguing that “justice is the handmaiden of true peace,” Annan stated unequivocally that “there should be no amnesties for war crimes, genocide, crimes against humanity or other serious violations of international human rights and humanitarian law” (S/PV.4833, 24 September 2003:3). In total, 44 of the 62 states (70%) agreed that there should be no impunity for genocide, war crimes and crimes against humanity and that responsibility for such violations should focus on the top of the chain of command.¹⁰ These states expressed support for the idea that there is an international obligation to end such violations and to punish those responsible for them. The UK’s foreign secretary, Jack Straw, the convener of the meetings, boldly stated, “No one – no Head of Government or State – is above the law” (S/PV.4833, 24 September 2003: 23). Only 4 states (Pakistan, San Marino, Uruguay and the USA) argued that the demands of peace should trump the pursuit of justice when the two come into conflict, urging domestic flexibility with regards to human rights prosecutions (S/PV.4833, 24 September 2003; S/PV.4835, 30 September 2003). Notably, several post-transition states emphasized that no single one-size fits all approach is possible with regards to transitional justice, but even the majority of post-conflict states argued that peace and justice were inextricably intertwined (S/PV.4833; S/PV.4835).¹¹

By tracking the statements of Security Council members and participating members of the General Assembly, it is evident that there was a regional dynamic at play. The vast majority of states that self-selected to participate in the meeting were from Europe or the Americas and

¹⁰ The states who stated or formally associated themselves with this position during the September 2003 debates include: Angola, Argentina, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, Cypress, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Pakistan, Philippines, Poland, Portugal, Romania, the Russian Federation, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

¹¹ See in particular the statements by Argentina, Brazil, Uruguay and South Korea. Note that Argentina and South Korea made statements against impunity for grave crimes but also argued for a pragmatic approach to amnesty and truth commissions or what South Korea described as an approach of “sufficient justice” S/PV.4835, 30 September 2003.

nearly 75% of the total participants in the debate were from the European region who almost unanimously supported the adoption of international standards mandating individual criminal accountability for perpetrators of grave international crimes and the proscription of amnesties for these same crimes.¹²

In his subsequent report to the Security Council on “the rule of law and transitional justice in conflict and post-conflict societies”, Secretary-General Kofi Annan suggested that UN norms and standards include the following:

- United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights;
- The United Nations will permit carefully crafted amnesties by states but they can never be permitted to excuse genocide, war crimes, crimes against humanity or gross violations of human rights; and
- Security Council Resolutions and mandates must reject any endorsement of amnesty for genocide, war crimes or crimes against humanity, including those relating to ethnic, gender and sexually based international crimes and ensure that no such amnesty previously granted is a bar to prosecution before any United Nations-created or assisted court (S/2004/616, 23 August 2004: 11-21).

These normative standards were formally endorsed by the General Assembly and the Security Council respectively. In March 2006, The General Assembly adopted Resolution 60/147 which detailed states’ obligations in the aftermath of gross violations of international human rights law and serious violations of international humanitarian law. The Resolution stresses that states have an obligation to respect, ensure respect for and implement international human rights law and international humanitarian law. States’ obligations include the duty to “investigate effectively, promptly, thoroughly and impartially,” to prosecute alleged perpetrators, and to protect victims’ right to effective remedy including access to both truth and justice. No statutes of limitations may apply to grave violations under international law (A/RES/60147, 21 March 2006: 1-6). The

¹² Data for this analysis was drawn from S/PV.4833, 24 September 2003 and S/PV.4835, 30 September 2003.

Security Council also unanimously endorsed the justice norm in a subsequent presidential statement.

The Security Council emphasizes the responsibility of States to comply with their obligations to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law...The Council intends to continue forcefully to fight impunity with appropriate means and draws attention to the full range of justice and reconciliation mechanisms to be considered, including national, international and ‘mixed’ criminal courts and tribunals and truth and reconciliation commissions (S/PRST/2006/28, 22 June 2006).

These endorsements by the Security Council though suggestive in nature are notable. Even more so because the Council also “emphasized the responsibility of States to comply with their relevant obligations to end impunity and to prosecute those responsible for war crimes, genocide, crimes against humanity and serious violations of international humanitarian law” in Resolution 1674 (2006) – a binding Security Council Resolution on civilians in armed conflict.

As these two examples illustrate, ideas about human rights have led not only to a responsibility for the Security Council to protect civilians from mass atrocity but also into a perceived responsibility to aid the prosecution of perpetrators of war crimes, crimes against humanity and genocide.

Conclusion: the UN Security Council and Human Rights Advocacy?

Civil society actors including human rights NGOs have become important players in world politics. Organizations like Human Rights Watch and Amnesty International help to set the international political agenda with regards to human rights. These organizations identify and define what constitutes a violation of the standards for humane treatment agreed upon by the

international community. These NGOs not only enforce current standards of acceptable behavior, they help define new human rights norms (Clark 2001). They have a discernible impact upon the actions of states (Cohen 2005, Keck and Sikkink 1999) and institutions like the United Nations (Weschler 2004). Human rights activists working with NGOs have played a critical role in the evolution of international human rights norms and practices (Lauren 2003:289). Substantial research has shown that human rights NGOs have put new human rights issues on the international agenda, helped to create important international human rights documents and treaties, monitored the human rights records of states and pushed for greater levels of implementation of human rights standards (Cingranelli and Richards 2001:225). As the above examples illustrate, even the Security Council takes seriously the relevance of human rights to its work. (See also Weschler 2004:55).

The growing legitimacy of human rights norms, in large part as a result of a powerful and effective international human rights movement, means that states can no longer use sovereignty as a shield to prevent outside actors from scrutinizing and judging their human rights practices (Roth, 225). Nongovernmental organizations, through their effective fact-finding and advocacy, build pressure on governments to fulfill their human rights obligations. Indeed, advocacy has become the core method of human rights promotion and change. Human rights advocacy includes the promotion of causes, principles ideas and norms and advocating for policy changes done for the purpose of the development, implementation and enforcement of human rights norms (Keck and Sikkink 7-9). According to Carroll Bogert, associate director of Human Rights Watch, publicity, or what human rights organizations call “naming and shaming” has been an important tool of the international human rights movement since its very beginning (Bogert 2011: 175-6). Human Rights Watch describes its advocacy efforts as entailing detailed

recommendations for relevant policy makers about how to end abuse and to press for these policy options to be adopted (Bogert, 6 of chapter). In short, international human rights movement, with NGOs at the center, develops and applies international standards of human rights and deploys its information strategically to alter the policy agendas of both rights observing and rights abusing states (see Roth, 228-9). Organizations like Amnesty International and Human Rights Watch expose the authors of human rights crimes and subject them to public condemnation (Roth, 229). In light of this description of human rights advocacy, Security Council practice with regards to states like Sierra Leone and Sudan is not dissimilar. Council deliberations condemn violations of gross violations of human rights and international humanitarian law and criticize their perpetrators. Through its presidential statements and resolutions (the latter which are legally binding decisions), the Security Council defines international human rights standards and demands member compliance with those standards. By creating international commissions of inquiry, the Security Council has monitored state compliance with human rights standards and it has punished deviations from those standards through humanitarian intervention and international prosecution in international courts and tribunals. Does it make sense to consider Security Council practice as it relates to human rights a form of human rights advocacy? What are the implications for the international human rights movement and the fulfillment of human rights in general, if states, the primary violators of human rights and the principle targets of human right advocacy, became centrally engaged in human rights advocacy practices? Does this development represent the strengthening or the dilution of the international human rights regime? These are important and vexing questions that warrant investigation by human rights scholars and practitioners.

Bibliography

- Barnett, Michael. *Eyewitness to a Genocide: The United Nations and Rwanda*. Ithaca: Cornell University Press, 2002.
- Bogert, Caroll. "Human Rights Advocacy in Global Governance: A Case Study of Human Rights Watch," in *The New Dynamics of Multilateralism: Diplomacy, International Organizations and Global Governance*, edited by James Muldron, Jr. Boulder: Boulder University Press, 2011, 169-182.
- Clark, Ann Marie. *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms*. Princeton: Princeton University Press, 2001.
- Crocker, Chester A. "The Lessons of Somalia: Not Everything Went Wrong." *Foreign Affairs* May/June (1995): 7.
- Dallaire, Romeo. *Shake Hands With The Devil: The Failure of Humanity in Rwanda*. Toronto: Random House Canada, 2003.
- Economides, Spyros. "Kosovo." In *United Nations Interventionism, 1991-2004*, edited by Mats Berdal and Spyros Economides. 217-45. Cambridge: Cambridge University Press, 2007.
- Howe, Jonathon. "The United States and the United Nations in Somalia: The Limits of Involvement," *The Washington Quarterly* 18:3 (1995).
- Keck, Margaret and Kathryn Sikkink. *Activists Beyond Borders: Advocacy Networks in International Politics* Cornell: Cornell University Press, 1998.
- Lauren, Paul Gordon. *The Evolution of International Human Rights: Visions Seen*. Philadelphia: University of Pennsylvania Press, 2003.
- Malone, David M. "International Criminal Justice: Just an Expensive Mirage?" *International Journal* (Summer 2008): 731.
- Marr, Phebe. *The Modern History of Iraq*. Boulder, CO: Westview Press, 2011.
- Power, Samantha. *A Problem from Hell: America and the Age of Genocide*. New York: Basic Books, 2002.
- Roth, Kenneth. "Human Rights Organizations: A New Force for Social Change." In *Realizing Human Rights: Moving from Inspiration to Impact*, edited by Samantha Power and Graham Allison. New York: St. Martin's Press, 2000.
- Schabas, William A. "Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone." *University of California Davis, Journal of International Law and Policy* 11: 145-169.
- Sikkink, Kathryn. *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*. New York: W.W. Norton & Company, 2011.
- Thakur, Ramesh. "Intervention, Sovereignty and the Responsibility to Protect: Experiences from the ICISS." *Security Dialogue*. 33, no. 3 (2002): 323-40.
- Walling, Carrie Booth. "The History and Politics of Ethnic Cleansing." *International Journal of Human Rights*. 4, nos. 3/4 (2001): 47-66.
- Weschler, Joanna. "Human Rights," in *The UN Security Council: From the Cold War to the 21st Century*. edited by David M. Malone. Boulder. Lynne Rienner Publishers, 2004, 55-68.
- U.N. Security Council, 46th Year. 3060th Session Meeting Record. 17 March 1992 (S/PV.3060).
- U.N. Security Council, 46th Year. 3082nd Session Meeting Record. 30 May 1992 (S/PV.3082).
- U.N. Security Council, 46th Year. "Resolution 688," 5 April 1991 (S/RES/688). Official Record.
- U.N. Security Council, 46th Year. "Resolution 746," 17 March 1992 (S/RES/746). Official Record.

U.N. Security Council, 47th Year. 3105th Session Meeting Record. 11 August 1992,
(S/PV.3105).

U.N. Security Council, 48th Year. 3400th Session Meeting Record, 1 July 1994 (S/PV.3400).

U.N. Security Council, 48th year. 3452nd Session Meeting Record. 8 November 1994.
(S/PV.3452)

U.N. Security Council 52nd Year. ‘Statement by the President of the Security Council,’ 12
February 1999 (S/PRST/1999/6). Official Record.

U.N. Security Council, 53rd Year. 3988th Session Meeting Record. 24 March 1999 (S/PV.3988).
Official Record.

U.N. Security Council, 66th Year. 6491st Session Meeting Record. 26 February 2011
(S/RES/1970) Official Record.

U.N. Security Council, 66th Year. 6498th Session Meeting Record, 17 March 2011 (S/PV.6498).
Official Record.