
Book Reviews

Nigel D. White and Dirk Klaasen (eds). ***The UN, Human Rights and Post-conflict Situations***. Manchester: Manchester University Press, 2005.

Pp. 700. £80. ISBN 0-71906-866-5.

Alice H. Henkin (ed), ***Honoring Human Rights under International Mandates, Lessons from Bosnia, Kosovo and East Timor***, Washington, DC: The Aspen Institute, 2003. Pp. 171 \$15, ISBN 0-89843-378-9.

In July 2006, an out of the ordinary 'state' party report was examined by the United Nations Human Rights Committee. Originating in a proposal by Serbia and Montenegro,¹ representatives from the United Nations Interim Administration Mission in Kosovo (UNMIK) presented a supplementary report on the implementation of the International Covenant on Civil and Political Rights (ICCPR) throughout Kosovo.² For the first time in the history of the UN human rights treaty body system, the UN responded to its own supervisory body on how it has succeeded in ensuring the enjoyment of the universal rights drafted and proclaimed by the UN itself. Time is ripe: UNMIK has served as the de facto sovereign in Kosovo since 1999.³

This example of UNMIK coming before the Human Rights Committee is indicative of the rapid evolution of UN peace operations since the early 1990s and their relationship to international law. UNMIK and the UN Transitional Administration in East Timor (UNTAET), both

established in 1999, represent the most advanced peace operations deployed by the UN, by reason of their assumption of full legislative and executive authority. The High Representative in Bosnia, while not part of an executive mission, also possesses similar and significant powers such as the power to enact legislation and remove public officials. *Honoring Human Rights under International Mandates* [hereinafter *Honoring Human Rights*], the third volume of the Aspen Institute's by now almost classic publication series, deals with the outstanding challenges confronting these three missions in protecting and promoting human rights. Building upon the formula of its previous volumes published in 1995 and 1998,⁴ it collects the main recommendations of the Institute's third international conference held in 2001 following the launch of the Brahimi Report.⁵ It focused on four challenges identified as acute in post-conflict situations governed by international administrations: ensuring security in the immediate post-conflict situation, developing a functioning justice system, supporting civil society, and addressing past human rights abuses.⁶ While some generic problems of earlier peace operations persist, such as the slow deployment and unqualified nature of UN CIVPOL officers as well as the difficulties involved in building effective partnerships with local human rights

¹ CCPR/C/SEMO/2003/1, accounted for in CCPR/CO/81/SEMO, Human Rights Committee, 81st session, unedited version, para. 3.

² See UN Doc. CCPR/C/UNK/1, 13 March 2006.

³ Gradual handover of authority to the Provisional Institutions of Self-Government has taken place since 2002.

⁴ *Honoring Human Rights and Keeping the Peace, Lessons from El Salvador, Cambodia, and Haiti* (1995) and *Honoring Human Rights, From Peace to Justice* (1998).

⁵ *Report of the Panel on United Nations Peace Operations*, commissioned by Kofi Annan in 2000 to identify strategies on how to improve UN peace operations. See http://www.un.org/peace/reports/peace_operations.

⁶ Patrick Gavigan provides a useful overview of these challenges. 'Introduction', in *Honoring Human Rights*, at 3–16.

actors, these magnify as the role of the UN is transformed from one of *monitoring* state institutions to that of *acting* as such.

In *Honoring Human Rights*, the successes and failures of the three ‘modern protectorates’ in responding to such challenges are analysed by Claudio Cordone (Bosnia), William O’Neill (Kosovo) and Sidney Jones (East Timor). Drawing upon their experience as senior human rights experts within the respective operations, the result is a compulsory read for any scholar or practitioner with an interest in human rights protection, the responsibility of international organizations⁷ and peacekeeping. The main comparative advantage of *Honoring Human Rights* thus resides in channelling personally experienced human rights problems into the form of concrete policy recommendations.

In this respect, *Honoring Human Rights* can be advantageously read alongside White and Klaasen’s *The UN, Human Rights and Post-conflict Situations*, published two years later. White and Klaasen assemble theoretical discussions concerning the applicability of international human rights law to international peacekeeping personnel and related enforcement dilemmas together with field-oriented accounts of newer mission such as Afghanistan. By including human rights experts from a non-legal background, this book complements *Honoring Human Rights* in casting a more critical light on the (mis-)use of the rhetoric of multiculturalism and the institutionalization of ‘ethnic rights’ by international actors.⁸ Similar schools of thought, warning of treating ‘the individual as incapable of appropriate self-actualization without external affirmation and invert[ing] the right to

self-determination into a right of external intervention’,⁹ can be found in critical theory.¹⁰ Contextualizing efforts by external actors to protect and promote human rights in post-conflict societies in international politics is key to understanding whether or not such efforts will succeed.

Cordone’s chapter, ‘Bosnia and Herzegovina: The “Creeping Protectorate”’, in *Honoring Human Rights* elegantly draws such links between political interests at headquarters level and the ways in which these affect human rights protection in the field. Particularly striking is the institutional rift between the UN Department of Peacekeeping Operations (DPKO) and the Office of the High Commissioner for Human Rights (OHCHR). Cordone illustrates this succinctly with the example of the refusal by DPKO, first, to let the OHCHR assign legal experts to the International Police Task Force (IPTF) and, second, to allow the OHCHR’s field office in Bosnia and Herzegovina to merge with UNMIBH Human Rights Office (HRO). In this context:

DPKO even queried whether the mainstreaming of human rights across all UN activities, promoted by the Secretary-General, was meant to apply to peacekeeping missions. It argued that such missions are better suited to undertake institution building rather than monitoring, the latter being considered more politically sensitive and therefore better carried out independently of peacekeeping (at 34).

In this vein, related questions such as why the Security Council explicitly mandated UNMIK but not UNTAET to protect and promote human rights emerge.¹¹ According to Sidney

⁹ *Ibid.*, at 219.

¹⁰ Pugh, ‘Peacekeeping and Critical Theory’, 11 *International Peacekeeping* (2004) 39. See also A. J. Bellamy and P. Williams, *Peace Operations and Global Order* (2005).

¹¹ UN SC Res. 1244, para. 11(j) sets down that ‘protecting and promoting human rights’ is one of the main responsibilities of the international civil presence in Kosovo. UN SC Res. 1272, on the other hand, only contains two references to human rights integration in UNTAET: the establishment of an independent human rights

⁷ See, for instance, the ongoing consideration of the topic by the International Law Commission and the third report from 2005 by its Special Rapporteur, Mr. Giorgio Gaja: <http://untreaty.un.org/ilc/sessions/57/57docs.htm>.

⁸ For an excellent account, see Pupavac, ‘Multiculturalism and Its Discontents in SFR Yugoslavia and Bosnia: A Critique of the Multiculturalist Rights Model’, in *The UN, Human Rights and Post-conflict Situations*, at 213–239.

Jones, one reason for this omission may have been the Secretary-General's decision to have the OHCHR establish an international commission of inquiry, independently from UNTAET, which would investigate past human rights violations in East Timor. The result was a 'laudable effort that went into "mainstreaming" human rights produc[ing] an unfortunate byproduct of too many cooks'.¹² Jones touches upon the main recommendation of the Aspen Institute to the UN: a less ad hoc and more institutionalized approach to human rights field work in peace operations. To facilitate such efforts, it proposes the creation of 'a forum on human rights in field operations that could be called upon by the UN system, to operate in close cooperation with the OHCHR and other parts of the UN Secretariat'.¹³ It is encouraging to note that this recommendation has partly materialized in the ongoing project on 'Consolidating the Profession: The Human Rights Field Officer', coordinated by the Human Rights Law Centre at the University of Nottingham.¹⁴ The need for stronger participation by the High Commissioner for Human Rights in the deliberations of the Security Council and other UN decision-making fora was also recently acknowledged in the landmark report *In Larger Freedom*.¹⁵

If the main value of Cordone's and Jones' chapters lies in the reverberation of political considerations in the field, that of O'Neill is his ability to gracefully place the voices of impatient Kosovars and frustrated international staff in the challenging task of implementing UN

Resolution 1244 (1999).¹⁶ A recurring theme is that of the distance between locals and internationals in international administrations. If unaddressed, this risks undermining human rights protection. When the UN undertakes executive policing, as in Kosovo and East Timor, it is particularly important that it be a pro-active citizen-oriented force acting as a model state institution. Instead, "[t]hey stay in their vehicles and the local population says they are unapproachable," according to one OSCE human rights officer' (at 101). While improvements have been made towards community policing within UNMIK Police, such a passive approach hampers efforts to instil trust in the police force among the local population. A concrete result in Kosovo is that, in some cases, individuals have approached KFOR rather than the local Kosovo Police Service (KPS) with their grievances.¹⁷ This may have consequences for effective human rights protection in Kosovo within a long-term perspective.

O'Neill also tackles the most daunting barriers to effective human rights protection facing a 'modern trusteeship': the legal chaos stemming from a combination of uncertainty as to the applicability of laws; the lack of competent local judges and prosecutors; the failure of UNMIK and KFOR to respect basic rules of law principles by not imposing martial law in the initial stage of emergency; how to ensure effective joint law enforcement strategies between international civilian police and military peacekeepers. These challenges in themselves give rise to further questions. When the UN recruits international judges and prosecutors,¹⁸ how

institution (para. 8) and the importance of including personnel with appropriate training in international human rights law in UNTAET (para. 15).

¹² Jones, 'East Timor: The Troubled Path to Independence', in *Honoring Human Rights*, 115, at 144.

¹³ 'Recommendations', in *Honoring Human Rights*, at 17.

¹⁴ See <http://www.humanrightspersonals.org>.

¹⁵ *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, A/59/2005, 21 March 2005, para. 144.

¹⁶ O'Neill, 'Kosovo: Unexpected Barriers to Building Peace and Security', in *Honoring Human Rights*, at 75.

¹⁷ Interview with KFOR, December 2005, Katarina Månsson.

¹⁸ UNMIK broke new ground in peacekeeping practices by employing international judges and prosecutors to serve in an existing judicial system (the IJP programme). See M. E. Hartmann, *International Judges and Prosecutors in Kosovo, A New Model for Post-Conflict Peacekeeping*, Special Report 112, October 2003, United States Institute of Peace, <http://www.usip.org>.

(if) is their knowledge in international human rights law assessed? Should there be a requirement of pre-training in human rights for international judges and prosecutors serving in post-conflict judicial systems? If international civilian police officers receive such training, why should not the same apply to judges and prosecutors?

Common for Kosovo, East Timor and Bosnia and earlier operations is the lack of consistency as to the institutionalization of a focal point for human rights. As UNMIK's first and only Senior Adviser on Human Rights to the Special Representative of the UN Secretary-General (SRSG), it would have been most interesting had O'Neill outlined his views as to why this position was discontinued and never reinstated. What are the advantages versus disadvantages of such positions compared with other mechanisms such as human rights units/offices? Is the Inter-Pillar Working Group on Human Rights (IPWGHR)¹⁹ an appropriate replacement as the main mechanism to ensure that UNMIK Regulations comply with international human rights law?

Considering the number of questions that remain unanswered, the Aspen Institute should seriously consider a fourth publication on human rights in peace operations. In the meantime, the volume edited by White and Klaasen sheds further light on several of the questions put forth by Cordone, O'Neill and Sydney. Encompassing 19 chapters organized under six headings,²⁰ *The UN, Human Rights and Post-conflict Situations* provides perhaps the most comprehensive account to date of the UN's efforts to protect and promote

human rights in societies emerging from conflict. By exploring not only International Territorial Administrations (ITA), to use Ralph Wilde's terminology of international administrations in Kosovo, East Timor, Bosnia and elsewhere,²¹ but peace efforts generally, the book reminds us of the importance of not forming a linear definition of conflicts and the UN's response to them. A rigid compartmentalization of UN efforts with regard to conflict prevention, peacekeeping and peacebuilding, the book suggests, will render 'the search for human rights solutions . . . similarly linear and limited'.²² The processes towards sustainable and just peace are interlinked and there is no set human rights formula applicable for one particular 'peace phase'. While it is undisputed that international administrations present extraordinary legal complexities, exemplified by the functional duality of the Office of the High Representative (OHR) in Bosnia²³ and the lack of judicial review of UNMIK Regulations,²⁴ all international

¹⁹ Composed of the Heads of the four UNMIK Pillars and other senior staff of UNMIK, the IPWGHR was established in mid-2002 to 'ensure that human rights concerns are an integral part in the formulation of UNMIK policies and legislation'. *Review of the Work of the IPWGHR, October 2003–June 2005*, at 1.

²⁰ These are as follows: Legal Principles, Different Models of Protection, The Politics of Protection, Peace Agreements and Justice, Specific Situations and Future Protection.

²¹ Wilde makes a distinction between *partial* ITA, as exemplified by the Office of the High Representative in Bosnia and Herzegovina, and *plenary* ITA, represented by the UN administrations in Kosovo and East Timor. Wilde, 'International Territorial Administration and Human Rights', in *The UN, Human Rights and Post-conflict Situations*, at 149.

²² Bell, 'Peace Agreements and Human Rights: Implications for the UN', in *The UN, Human Rights and Post-conflict Situations*, at 246.

²³ Wilde, *supra* note 20, at 169. The Constitutional Court of Bosnia and Herzegovina ruled that the enactment of a particular law by the High Representative gave rise to a 'situation of functional duality: an authority of one legal system intervenes in another legal system, thus making its functions dual'. Wilde explains: 'On the one hand, they are the acts of OHR, which has international legal personality. On the other hand, they are also governmental acts within Bosnia and Herzegovina and, as such, are the acts of the State of Bosnia and Herzegovina'. *Ibid.*, at 167–170.

²⁴ Brand, 'Effective Human Rights Protection when the UN "Becomes the State": Lessons from UNMIK', in *The UN, Human Rights and Post-conflict Situations*, at 363.

endeavours to protect human rights in 'post'-conflict situations share certain common ontological dilemmas. It is particularly the analyses along these lines which best complement *Honoring Human Rights*.

One such challenge is to implement human rights standards in a culture-sensitive manner without jeopardizing the universality of international human rights law. Fear among international experts that an 'indigenisation' of human rights norms may 'endanger ritualised international norms and standards' has undermined efforts to strengthen local human rights capacity.²⁵ Line deplores, in this light, the failure of the UN Verification Mission in Guatemala (MINUGUA) to promote local ownership of human rights protection by de facto substituting the functions of the local Office of the Human Rights Ombuds-person.²⁶ Hughes describes a similar situation in post-UNTAC Cambodia where the opened activities of the OHCHR's Cambodia office have come to represent the necessary counterweight to the Cambodian state in the absence of capable local organizations. This represents a 'failure to infuse human rights into Cambodian political culture as a dynamic force for reform, and a reassertion of international control over the struggle for rights'.²⁷ Hughes refers to the potential of asserting human rights as a powerful local ideational basis for political action and reform within a local cultural framework as the 'transculturation of human rights'.²⁸ Be it a UN interim administration or a consensual human rights mission such as MINUGUA, this transculturation of promoting local ownership for human rights protection thus remains a key challenge

for peace operations. This is linked to what is also referred to in the book as the 'challenge of change management':²⁹ how trade-offs required at an early stage of the (peace) process are fashioned so as not to preclude more robust human rights measures later.³⁰

It is not surprising that these more critical voices of international human rights protection efforts stem from non-legal scholars and practitioners.³¹ They represent an indispensable contribution towards a more holistic understanding of the difficulties confronting the UN in promoting human rights in post-conflict societies. Both the *practice* and *theory* of human rights and peace operations would benefit from a stronger merger between the legal expertise of international lawyers and the constructive critique of power and state-society relationships advanced by non-lawyers. *The UN, Human Rights and Post-conflict Situations* constitutes a rare and welcome initial contribution to scholarly work in this regard. While it is normal that the book, as its title suggests, focuses on the UN per se, an even stronger interdisciplinary approach may have further explored the underlying political dynamics that determine the human rights field activities of the UN. As is highlighted in the book, 'institutions do not replace politics, but enact them'.³²

The publication would have benefited, therefore, from more constructive recommendations as to how UN member states can enhance the activities of the Organization in protecting and promoting human rights. This

²⁵ Hughes, 'Human Rights Out of Context (Or, Translating the Universal Declaration into Khmer)', in *The UN, Human Rights and Post-conflict Situations*, at 203.

²⁶ Line, 'Managing for Sustainable Human Rights Protection: International Missions in the Peace Processes of Bosnia and Herzegovina and Guatemala', in *The UN, Human Rights and Post-conflict Situations*, at 106.

²⁷ Hughes, *supra* note 25, at 200.

²⁸ *Ibid.*, at 194.

²⁹ Bell, *supra* note 22, at 248.

³⁰ See also Verdirame, 'UN Accountability for Human Rights Violations in Post-conflict Situations', in *The UN, Human Rights and Post-conflict Situations*, at 107.

³¹ See also Niland's chapter, 'Rights, rhetoric and Reality: A Snapshot from Afghanistan', in *The UN, Human Rights and Post-conflict Situations*, at 322, and Pupavac, *supra* note 8, at 213–239.

³² Martti Koskeniemi, quoted by Cryer, 'Post-conflict Accountability: A Matter of Judgment, Practice or Principle', in *The UN, Human Rights and Post-conflict Situations*, at 268.

may be the platform for a second conference on the UN, human rights and post-conflict situations, resulting in a second publication by White and Klaasen. White's constructive suggestion that the political organs of the UN *formally* recognize the applicability of international human rights standards to UN activities would constitute a step in the right direction.³³ Member states would then perhaps more forcefully provide the means and resources to ensure that at least the core set of rights, customary human rights,³⁴ are always applied, respected, ensured and fulfilled.

Irish Centre for Katarina Månsson
Human Rights,
National University of Ireland, Galway
Email: k.mansson@nuigalway.ie
doi: 10.1093/ejil/chl038

Mac Darrow. ***Between Light and Shadow, The World Bank, The International Monetary Fund and International Human Rights Law.***

Oxford: Hart Publishing, 2003. Pp. 376. Hbk £42; pbk £25. ISBN 1-84113-390-6.

Bahram Ghazi. ***The IMF, The World Bank Group and the Question of Human Rights.*** Ardsley, NY:

Transnational Publishers, 2005. Pp. 468. \$135. ISBN 1-57105-185-6.

The World Bank and the International Monetary Fund (IMF) have a long and controversial relationship with human rights. The objectives of the Bretton Woods organizations as well as early development discussions were largely, if not entirely, based on a limited understanding

of development as economic development. This approach has been shown to be untenable in a variety of settings, with detrimental effects ranging from ecological to human disasters. One need only recall the Polonoroeste resettlement project in Brazil, or the sadly famous dam projects in India sponsored by the World Bank. Public outrage against such momentous failures prompted an extensive output of academic literature, which recorded and criticized the negligence of the World Bank and the IMF with respect to human rights concerns. With *Mortgaging the Earth*, for instance, Bruce Rich provided a bleak and deeply disturbing account of particularly tragic cases.¹ The debate is, thus, not new.²

Recently, however, the framework for development cooperation and its objectives has experienced a substantial transformation. Nowadays, a wider range of human rights concerns is integrated into development cooperation, so much so that they are sometimes incorporated into a 'human rights-based approach to development'. At the same time, the mandates of international financial institutions remain virtually unchanged, and their position with regard to human rights norms continues to be controversial. A question that still needs to be addressed is how to translate human rights into concrete and binding obligations to limit the activities of international financial institutions. This very question is the subject matter of the two books

¹ B. Rich, *Mortgaging the Earth* (1994).

² See, e.g., Conklin and Davidson, 'The IMF and Economic and Social Human Rights: A Case Study of Argentina, 1958-1985', 8 *HRQ* (1986) 227; Cahn, 'Challenging the New Imperial Authority: The World Bank and the Democratization of Development', 6 *Harvard Human Rights Journal* (1993) 159; Bradlow and Grossman, 'Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF', 17 *HRQ* (1995) 411; E. Denters, *Law and Policy of IMF Conditionality* (1996); Handl, 'The Legal Mandate of Multilateral Development Banks as Agents for Change toward Sustainable Development', 92 *AJIL* (1998) 642 and S. Skogly, *Human Rights Obligations of the World Bank and the IMF* (2001).

³³ White, 'Towards a Strategy for Human Rights Protection in Post-conflict Situations', in *The UN, Human Rights and Post-conflict Situations*, at 463.

³⁴ Right to life, right to personal security, basic principles of due process, freedom from arbitrary arrest and detention, freedom from torture, freedom from slavery and racial discrimination as well as fundamental economic rights that are implicit in the right to life. White, *ibid.*, at 463.