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'Reclaiming the Peacebuilding Agenda: Economic and Social Rights as a Legal Framework for Building Positive Peace: a Human Security Plus Approach to Peacebuilding'

ABSTRACT

This paper examines the exclusion of economic and social rights from peacebuilding. The peacebuilding process has become dominated by a liberal agenda resulting in a 'one size fits all' model of peacebuilding. As a consequence, the inclusion of human rights within the mandate of peacebuilding has also been limited to a liberal conception of human rights constituting only civil and political rights. It is argued that an alternative approach is required which refocuses the peacebuilding agenda on human security: a hybrid 'human security plus' approach to peacebuilding (or a 'inclusive' human rights approach) will ensure the protection and promotion of economic, social and cultural rights, whilst maintaining protection of civil and political rights, throughout the whole peacebuilding process, from peace agreements to post-conflict reconstruction. The result will be a reclaiming of the peacebuilding agenda in order to improve its effectiveness and provide a legal framework for building positive peace.

KEYWORDS: Economic, Social and Cultural Rights, Peacebuilding, Human Security, Transitional Justice, Positive Peace.

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1. INTRODUCTION

The concept of peacebuilding has multiple interpretations ranging from ideas of narrow and short-term programs focusing on establishing democratic institutions, the rule of law and free market economic development, to the broad and all-encompassing ideas of addressing structural violence with the aim of positive peace and human security. Because of the nature of the field and the international actors involved it has been suggested that the peacebuilding process has become dominated by a liberal agenda resulting in a 'one size fits all' model of peacebuilding which focusses on international security and containment of conflict. Furthermore, as a consequence, the inclusion of human rights within the mandate of peacebuilding has also been limited to a liberal conception of human rights¹ constituting only civil and political rights. As such the need to address the protection and promotion of economic, social and cultural rights as a means to ensure sustainable peace has been omitted or at best marginalized from the field.

¹ The term liberal is used here to define a conception of rights which is limited to classic civil liberties and freedoms, such as the right to life, freedom from torture, freedom of speech, personal liberty and property and a minimal role for the state in terms of positive human rights obligations.

In similar fashion previously there has also been a tendency to view transitional justice as narrow, legalistic and short-term² and therefore limited in scope. Although the concept of transitional justice is open to interpretation³ the overriding approach has also been one of liberalism based on the rule of law, democracy and civil and political rights.⁴ More recently there have been attempts to challenge this conception of transitional justice and to broaden its remit to include alternative visions of justice such as, social justice; justice for violations of economic and social rights and justice for economic crimes and corruption.⁵ In this way the dominant agenda of transitional justice had been challenged. However, transitional justice is only one pillar or cornerstone of peacebuilding:⁶ ‘a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy’.⁷ Its focus is on responding to grave violations of

² Waldorf, L, ‘Anticipating the Past: Transitional Justice and Socio-Economic Wrongs’ (2012) 21:2 *Social and Legal Studies* 171-186, 179.

³ For example see International Centre for Transitional Justice (ICTJ), Fact Sheet ‘What is Transitional Justice?’ (ICTJ 2009) at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>, last accessed 02/11/15; Arthur, P, ‘How Transitions Reshaped Human Rights: A Conceptual History of Transitional Justice’ (2009) 31:2 *Human Rights Quarterly* 321; Bell, C, ‘Transitional Justice, Interdisciplinarity and the state of the “Field” or “Non-Field” (2009) 3:1 *International Journal of Transitional Justice* 5-27; Teitel, R, ‘Theoretical and International Frameworks – Transitional Justice in a New Era’ (2002) 26 *Fordham International Law Journal* 893; L. Arbour, ‘Economic and Social Justice for Societies in Transition’ (2007) 40(1) *International Law and Politics* 1, 3; T. Olsen, L. Payne and A. Reiter, *Transitional Justice in Balance– Comparing Processes, Weighing Efficiency* (US Institute of Peace Press 2010) 12.

⁴ Cahill-Ripley, A, ‘Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights’, *Netherlands Quarterly Human Rights*, 32:2, June 2014, 183-213.

⁵ Editorial, (2012) 6(1) *International Journal of Transitional Justice* (IJTJ) 1-10.

⁶ Roddy Brett & Lina Malagon, ‘Overcoming the Original Sin of the “Original Condition:” How Reparations May Contribute to Emancipatory Peacebuilding’, *Hum Rights Rev* (2013) 14:257–271, p.258; Schmid, E, ‘Liberia’s Truth Commission Report: Economic, Social and Cultural Rights in Transitional Justice’ (2009) XXIV *Praxis – The Fletcher Journal of Human Security* 5-28; Laplante, L.J, ‘Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework’ (2008) 2 *The International Journal of Transitional Justice*, 331, 347; Sharp, D, ‘Addressing Economic Violence in Times of Transition: Toward A Positive-Peace Paradigm for Transitional Justice’ (2012) 35 *Fordham International Law Journal*, 780-814, 781.

⁷ International Centre for Transitional Justice (ICTJ), Fact Sheet ‘What is Transitional Justice?’ (ICTJ 2009) at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> last accessed 02/11/15

human rights that have occurred in the past but, clearly, transitional justice also has a role to play in acting as a springboard for other peacebuilding methods.

As such, what remains lacking is a critique of how economic and social rights have been dealt with (or not) within other peacebuilding measures and within the *overall* process of peacebuilding. Further, what are the consequences of this for the effectiveness of peacebuilding programmes?

This article will begin with an exploration of the definition of peacebuilding and a critical examination of the current liberal agenda. The author will subsequently analyse the implications of this approach for consideration of economic and social rights. Further the impact of this dominant liberal model upon the effectiveness of peacebuilding measures will be assessed. The second part of the article examines alternative conceptions of peacebuilding, focussing on the human security approach. Using a combination of this human security approach and economic and social rights, in section three the author will propose a new framework for peacebuilding: a hybrid ‘human security plus’ or ‘inclusive’ human rights model which includes justice mechanisms necessary for transition and peace but also encompasses additional legal and non-legal measures for building peace. The final section of the article then explores how to operationalise such an approach before drawing some conclusions. It is submitted that the proposed ‘human security plus’ approach can assist in reuniting all elements of peacebuilding – from peace agreements to post-conflict reconstruction and including transitional justice: A common concern for human security will support the emergence of a holistic and inclusive process. Such a model will offer a framework for the protection and promotion of economic and social rights within all stages of peacebuilding. Moreover, it is argued that a re-focussing of the priorities for peacebuilding on

human security rather than international security will be of benefit for all, most especially those currently marginalised in the overriding liberal idea of peacebuilding.

2. THE DOMINANCE OF THE LIBERAL PEACEBUILDING AGENDA AND THE LIBERAL CONCEPTION OF PEACE

In the search to find out why economic and social rights have been marginalised throughout the wider peacebuilding process it is necessary to define what is meant by peacebuilding⁸ and explore what the aims of peacebuilding are. Newman states that international peacebuilding in conflict prone, transitional or post-conflict society is aimed at ‘preventing the resumption or escalation of violent conflict and establishing a durable and self-sustaining peace.’⁹ He notes that peacebuilding programmes can include tasks to support development and humanitarian assistance, promote security and strengthen governance and the rule of law through activities including supporting peace processes, ‘responding to food insecurity; responding to acute health concerns; strengthening law and order; promoting and facilitating democratic practices; strengthening institutions of justice and legislation; resuming and strengthening public service delivery; promoting human rights and reconciliation; addressing land reform claims; and constitutional drafting or amendments.’¹⁰

However, many would argue that peacebuilding is usually based upon a narrow perspective of ending direct and open violence; what Galtung would term ‘negative peace’.¹¹ Moreover, many would argue that this is the limit of what peacebuilding can achieve. Critics of a

⁸ See Michael Barnett, Hunjoon Kim, Madalene O’Donnell, and Laura Sitea, ‘Peacebuilding: What Is in a Name?’ *Global Governance*, 13 (2007), 35–58 outlining the different definitions and approaches to peacebuilding.

⁹ Newman. E, ‘A Human Security Peace-Building Agenda’, *Third World Quarterly*, 32:10, 2011, 1737-1756, 1738.

¹⁰ Ibid.

¹¹ Galtung.J, ‘Violence, Peace, and Peace Research’ (1969) 6:3 *Journal of Peace Research*, 167-191.

broader conception of peacebuilding argue that concerns over development, poverty and basic needs are the concerns of policy for the state and represent long term goals as oppose to the short term goals of a peacebuilding programme.¹² Similar arguments have been made concerning transitional justice.¹³ However as Newman argues, ‘social welfare shortcomings can jeopardise overall peacebuilding objectives, obstruct the consolidation of peace and contribute to doubts about the legitimacy of peacebuilding programmes.’¹⁴ It is also the case that if basic needs are not addressed through a legal rights-based framework, they can easily become resigned to less important long-term aims rather than becoming fundamental obligations to be realised in order to aid transition to peace, to enable justice and to sustain peace.

The current prevailing approach to peacebuilding is based upon a liberal agenda which emphasises democracy, rule of law, free market economics and institution building¹⁵. Within transitional justice mechanisms it emphasises justice for international crimes, violations of civil and political rights and the dominance of international – led interventions based on similar liberal principles. However, many scholars and practitioners and local stakeholders have criticised this approach as paying ‘insufficient attention to basic and everyday human needs’:¹⁶ For example, Richmond argues that liberal peacebuilding has failed to ‘engage either with local cultural practices of peacemaking or with the manifold insecurities of

¹² See UN Peacebuilding Commission, pp.32-33, infra note 143, 144.

¹³ Waldorf, supra note 2.

¹⁴ Newman, supra note 9, 1737.

¹⁵ Roland Paris, ‘Peacebuilding and the Limits of Liberal Internationalism’, *International Security*, Vol. 22, No. 2. (Autumn, 1997), pp. 54-89, at 56; Oliver P. Richmond, ‘Emancipatory Forms of Human Security and Liberal Peacebuilding’, *International Journal*, Vol. 62, No. 3, What Kind of Security? Afghanistan and Beyond (Summer, 2007), pp. 458-477, at 462; Mac Ginty. R, ‘Hybrid peace: the interaction between top-down and bottom-up Peace’, *Security Dialogue*, 41 (2010) p.391-412 at 393.

¹⁶ Newman, supra note 9, 1737.

everyday life in societies emerging from conflict.’¹⁷ Brett and Malagon argue this liberal peacebuilding agenda results in interventions based upon liberal democracy and those concepts and rights that define it, i.e. a focus on civil and political rights whilst ‘Broader rights frames, including socio-economic and collective rights, have systematically been sidelined from peace settlements and from the concurrent state-building enterprises of Liberal Peace politics, as well as from accompanying TJMs [transitional justice mechanisms]’.¹⁸ This results in a ‘restricted human rights framework’.¹⁹ Post-conflict peacebuilding programmes focus on the rule of law, reform of the police and judiciary, installing democratic institutions and retraining personnel and development (outside of a rights-based framework). If economic and social concerns are addressed it tends to be as part of social policy aims, rather than through an economic and social rights based framework integral to the peacebuilding process.²⁰

This ‘limited’ human rights framework is also a result of historic debates surrounding the legal status of economic and social rights and the notion that such rights are non-justiciable. The argument that these rights are not ‘real’ or ‘legal’ rights or at best constitute secondary rights – general aims to be achieved progressively as the ideal standard,²¹ cannot be sustained

¹⁷ Richmond in Selby, J, ‘The myth of liberal peace-building’, *Conflict, Security and Development*, 13 (1), 2013, 57-86, 63; Richmond, O, ‘A Post-Liberal Peace: Eirenism and the Everyday’ *Review of International Studies*, 35(3) 557-580.

¹⁸ Brett & Malagon, supra note 6, 258. See also Richmond O, *Maintaining Order*, London: Palgrave MacMillan, 2005; Richmond O, *The transformation of peace*, London: Palgrave MacMillan, 2005.

¹⁹ Mac Ginty, supra note 15, 391-412.

²⁰ For example, in the current countries on the agenda of the UN Peacebuilding Commission only Burundi mentions human rights as a priority of the instrument of engagement. Within the Final Outcome Document of the 5th Review of the Strategic Framework, human rights and the rule of law is separated from the ‘Social and economic peacebuilding issues, Second poverty reduction strategy paper and socio-economic reintegration of vulnerable groups.’. See Peacebuilding Commission Fifth session Burundi configuration 21 April 2011, Outcome of the fifth review of the implementation of the Strategic Framework for Peacebuilding in Burundi, PBC/5/BDI/2 (26 April 2011), 5.

²¹ Arbour, supra note 3, 11; Sharp, supra note 6, 780, 797.

in light of the current evidence to the contrary: There is growing recognition of economic and social rights within international, regional and national law.²² The adoption of the Optional Protocol to the ICESCR²³ provides a long-awaited communications mechanism to the main international treaty on ESR, therefore reinforcing the justiciability of such rights.²⁴ Further there is now substantial jurisprudence within regional and national courts dealing with ESR directly or through the application of civil and political rights provisions.²⁵ The latter also highlights the indivisibility of human rights as noted in numerous instruments of international human rights law.²⁶

As such, in answer to the question posed of why economic and social rights and indeed wider economic and social issues have been marginalised within peacebuilding, one underlying reason is this liberal peacebuilding approach that dominates global responses to conflict and

²² Ssenyonjo. M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law', *The International Journal of Human Rights*, Vol.15, No.6, August 2011, 969-1012, 970; Coomans. F (ed), *Justiciability of Economic and Social Rights – Experiences from Domestic Systems*, Intersentia: Oxford, 2006; Saiz.I, 'Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis', *Journal of Human Rights Practice*, Vol.1, No.2, 2009, 277-293, 277.

²³ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008, entry into force 5 May 2013, UNTS Reg Number 1453.

²⁴ Justiciability should be distinguished from judicialism and can include review outside of the court system. See Mapulanga-Hulston. J, 'Examining the Justiciability of Economic, Social and Cultural Rights', *The International Journal of Human Rights*, Vol.6, No.4, Winter 2002, 29-48, 37.

²⁵ Ssenyonjo. M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law', *The International Journal of Human Rights*, Vol.15, No.6, August 2011, 969-1012, 970. For a comprehensive database of case law on ESCR see ESCR-Net Case-law Database

²⁶ UDHR 1948; ICESCR 1966 PREAMBLE; Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968). Para.13; Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 25 June 1993, para.5. See also Whelan. D, *Indivisible Human Rights – A History*, University of Penn Press, 2010; Donnelly. J, *Universal Human Rights in Theory and Practice*, 3rd ed, Cornell University Press, 2013, 31-40.

repression.²⁷ Within this liberal approach peacebuilding is framed as international security²⁸. The reasoning behind intervention thus becomes the maintenance of international security and stability rather than addressing the causes of the particular conflict. Whilst this approach results in much needed humanitarian assistance, resources for development and capacity building it also results in an emphasis on stability and conflict containment rather than conflict resolution.²⁹ Local demands for justice are excluded in favour of externally driven top-down processes which focus on dealing with elites and existing leaders and building state level institutions. This hampers community driven peace building with alternative or conflicting priorities and agendas for peace. Hence the peacebuilding agenda becomes externally driven – often a donor led agenda.³⁰ Furthermore, a heavy reliance on top down promotion of democracy and market based economic reforms also often ignores local priorities and local voices for peace.³¹ Market reforms can result in exacerbation of existing inequality and social grievances. Ill-timed market liberalisation including privatisation or public spending cuts in transitional societies can threaten broader peacebuilding goals, such as public service delivery.³²

As Newman identifies, whilst these methods are often successful in reducing the absolute numbers of conflicts on the ground and in terms of negative peace are successful in ending open conflict, the record of promoting positive peace – long-term sustainable peace is

²⁷ The perception that economic and social rights are ‘not real’ human rights but rather policy aims and the fact that they do not fit with the liberal ideal of human rights has ensured that ESR have not been given sufficient attention in TJ and peacebuilding processes.

²⁸ International security defined as an emphasis on a strong state through effective governance and a focus on minimising armed conflict between states rather than a focus on individual human security.

²⁹ Newman, *supra* note 9, 1741.

³⁰ *Ibid.*

³¹ Mac Ginty, *supra* note 15 at 403.

³² Newman, *supra* note 9, 1744.

questionable.³³ The consequence of such an approach is the advent of fragile peace: weak institutions, social unrest, segregation, discrimination, political volatility or stagnation and the threat of insecurity.³⁴ That is not to argue that negative peacebuilding is not necessary and it is clearly a prerequisite for more transformative peacebuilding. However it results in a fragile peace as root causes of conflict, such as economic and social rights violations remain.³⁵ Therefore, such a framework is ‘ineffective in precipitating structural transformation and preventing recurrence of conflict.’³⁶

Another problem is the ‘institutionalist’ approach to peacebuilding.³⁷ This institutionalist view assumes that with operational democratic state institutions and free market conditions the objectives of peacebuilding will be generated.³⁸ Once key institutions are formally achieved for example, citizenship, electoral democracy, free market economics, civil and political rights, ‘development will move forward and serve peace’.³⁹ However, democracy does not equal peace. In fact societies in transition to democracy are more likely to experience conflict and destabilisation. This is especially true of societies with existing divisions, social inequality and lack of human rights enjoyment.⁴⁰

³³ Ibid, 1739.

³⁴ Ibid.

³⁵ Oskar N.T. Thoms & James Ron, ‘Do Human Rights Violations Cause Internal Conflict?’, *Human Rights Quarterly*, 29 (2007) 674–705 at 676.

³⁶ Brett & Malagon, supra note 6, 258.

³⁷ Richmond, supra note 15 at 461.

³⁸ Newman, supra note 9, 1743.

³⁹ Ibid.

⁴⁰ Ibid.

Overall the liberal peacebuilding approach fails to address underlying root causes of conflict, structural violence⁴¹ and drivers of the conflict such as economic, social and cultural rights violations, inequality and discrimination and exclusion⁴². When the ‘peace dividend is not equitably spread’⁴³ the seeds of unrest remain and reconciliation is difficult.

In addition to the debate as to the aims and objectives of peacebuilding, the issue of continuity and complementarity of the various elements within the process is significant. Selby argues that ‘liberal peace-building discourse mistakenly treats “peacebuilding” as a discrete sphere of activity and object of analysis – with important implications.’⁴⁴ In this way peacebuilding becomes ‘abstracted from and privileged over other elements of war-ending and peacemaking.’⁴⁵ Both Galtung⁴⁶ and previous UN Secretary General Boutros Boutros Ghali⁴⁷ viewed peacebuilding as ‘functionally (and usually also temporally) distinct from

⁴¹ Structural violence: ‘The disparities and deaths that result from systems, institutions and policies that meet some people’s needs and rights at the expense of others constitute structural violence’. Structural violence then creates the conditions for further violence - direct violence such as uprisings, revolutions, coups, civil wars and international armed conflict (See Schrich.L, ‘Linking Human Rights and Conflict Transformation: A Peacebuilding Framework’, in Mertus.J and Helsing. J (eds) *Human Rights and Conflict – Exploring the Links between Rights, Law and Peacebuilding*, USIPP: Washington D.C, 2006, 63-95, 69).

⁴² Cahill-Ripley. A, ‘Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights’, *Netherlands Quarterly Human Rights*, 32:2, June 2014, 183-213; Office of the High Commissioner for Human Rights, Analytical study on human rights and transitional justice (United Nations 2009) A/HRC/12/18 para.59; International Council on Human Rights Policy, *Negotiating Justice? Human Rights and Peace Agreements* (International Council on Human Rights Policy 2006) 101; Agbakwa. S.C, ‘A Path Least Taken: Economic and Social Rights and the Prospects of Conflict Prevention and Peacebuilding in Africa’ (2003) 47:1 *Journal of African Law*, 38, 40; Laplante, supra note 6, 334-335.

⁴³ Newman, supra note 9,1745.

⁴⁴ Selby. J, ‘The myth of liberal peace-building’, *Conflict, Security and Development*, 13 (1), 2013, 57-86, 59.

⁴⁵ Ibid.

⁴⁶ Galtung, J, ‘Three Approaches to Peace: Peacekeeping, Peacemaking and Peacebuilding’ in Galtung and Ejlertsen, *Peace, War and Defence: Essays in Peace Research*, Vol.2, Copenhagen, 1979, 282-304.

⁴⁷ Boutros-Ghali, ‘An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peacekeeping’ Report of the UN Secretary General UN Doc. A/47/277-S24111, 17 June, 1992, paras.21, 20.

processes of war-ending.’⁴⁸ As a consequence peacebuilding is overwhelmingly viewed as a post-conflict activity and becomes disjointed with other elements of the conflict transformation process such as peace agreements, negotiations and transitional justice mechanisms. In depth discussion and analysis of the contents of peace agreements and the subsequent obligations for peacebuilding programmes are largely ignored or ‘viewed as contextual or subordinate to the logic of the liberal peace-building project.’⁴⁹ As Selby argues it is not sensible to exclude such analysis from international peace negotiations as such interventions typically involve many several international actors.⁵⁰ Moreover, these actors also help to give peace agreements legitimacy (irrespective of the terms and content) and the granting of legitimacy is a crucial precondition for those parties involved to gain access to resources and finance.⁵¹

Thus, it is submitted that peacebuilding should be viewed as the overall process which encompasses all war ending and peacemaking processes including negotiations, peace agreements, legal developments such as bills of rights and other constitutional provisions, transitional justice mechanisms, post-conflict reconstruction and institution building, capacity building programmes and reconciliation initiatives. In this way peacebuilding would reflect more closely the obligations and aims of the peace agreements and transitional justice mechanisms and enhance continuity. It would minimise the disengagement of local stakeholders and those parties involved in the conflict as it would be inclusive of local approaches to peacebuilding as well as international and national approaches. As Selby notes

⁴⁸ Selby, *supra* note 44, 64.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.* 72.

⁵¹ *Ibid.*, 72; 76.

peacebuilding should be viewed as ‘war-ending processes in the round’ including those that are internationalised and those that are not.⁵²

3. AN ALTERNATIVE TO THE LIBERAL MODEL: THE HUMAN SECURITY APPROACH TO PEACEBUILDING

An alternative approach to peacebuilding is offered by Schirch;

‘Peacebuilding prevents, reduces, transforms, and helps people to recover from violence in all forms, while at the same time empowering peoples to foster relationships at all levels to create structural justice...Peacebuilding pursues a just peace...[which] recognises that justice pursued violently contributes to further injustice and human rights violations, and that peace without justice is unlikely to be sustainable or to meet peoples basic needs. Just peace⁵³ exists where a sustainable set of structures and processes allows people to meet their basic human needs and protects their human rights with an absence of either direct or structural violence. Peacebuilding recognises the importance of efforts to reduce direct violence while pursuing a deeper transformation of structures, paradigms, cultures and values over a longer time frame.’⁵⁴

⁵² Ibid, 81.

⁵³ For definitions of the concept of ‘just peace’ as different form positive peace see Yaacov Bar-Siman-Tov, ‘Just Peace - Linking Justice to Peace’, JAD-PbP Working Paper No. 5, Just and Durable Peace by Piece Project 217488 (funded by the Seventh Framework Programme of the European Commission), Lund University: Sweden, October 2009, p.4.

⁵⁴ Schirch.L, ‘Linking Human Rights and Conflict Transformation – A Peacebuilding Framework’ in Mertus.J and Helsing.J (eds) *Human Rights and Conflict – Exploring the Links Between Rights, Law and Peacebuilding*, United States Institute of Peace Press: Washington, 2006, 63-95, 64.

This approach to peacebuilding is a more ambitious vision of peacebuilding as transformative in nature rather than transitional. Similar alternative definitions of peacebuilding are offered by Lambourne who defines peacebuilding as ‘strategies designed to promote a secure and stable lasting peace in which the basic human needs of the population are met and violent conflicts do not recur’ and including both positive and negative peace.⁵⁵

This is not to argue that liberal peacebuilding is without value. Rather a reevaluation is required of what liberal peacebuilding actually is and what it should be. One response to the challenges and problems raised by liberal peacebuilding is the utilisation of the concept of human security as the primary objective of peacebuilding. As Newman notes, ‘Human insecurity – deprivation, alienation and exclusion- is a direct threat to peacebuilding processes and objectives, since these undermine the legitimacy of peacebuilding and fuel the underlying sources of conflict.’⁵⁶ As such tackling human insecurity by focussing on measures to realise human security as a priority for peacebuilding programmes would help to ensure sustainable peace.⁵⁷

In defining a human security approach the author firmly defines human security as an emancipatory model focused on meeting basic human needs and local empowerment.⁵⁸ This human security approach to peacebuilding has evolved from basic human needs theory within

⁵⁵ Wendy Lambourne, ‘Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation’, *Peace, Conflict and Development* – Issue Four, April 2004, 2.

⁵⁶ Newman, *supra* note 9,1740.

⁵⁷ *Ibid*,1737.

⁵⁸ Richmond. *supra* note 15.

the field of conflict transformation.⁵⁹ Championed by John Burton in 1979,⁶⁰ the idea that there exist basic human needs ‘whose fulfilment is a necessary condition of human life and development’⁶¹ is a compelling and enduring theory that has been examined and adopted by various fields of study including philosophy,⁶² social psychology⁶³ and problem solving approaches within conflict resolution. Despite a lack of consensus as to the content and the universality of these basic human needs⁶⁴ the concept has been central to a key predecessor to the contemporary conception of human security and human rights: international development theory. During the 1970s to the mid-1980s, progressive thinking around development led to the idea that development should not be defined in a pure economic sense but rather should be more broadly conceptualised as encompassing human development based on fulfilment of ‘fundamental human needs.’⁶⁵ Non-satisfaction of such needs could lead to ‘poverties of subsistence, of protection, [...] of participation, of identity.’⁶⁶ This relationship between basic human needs, poverty and human development was adopted and characterised by both the UN and the ILO.⁶⁷ However, it was soon to be marginalised again owing to the rise of neo-liberalism and a return to economic orthodoxy in the 1980s.⁶⁸ As Avruch and Mitchell note, ‘The era of structural adjustment as conditions for the IMF and World Bank loans, and neo-liberal monetarist policies generally, buried the discourse of basic human needs in approaches to development.’⁶⁹ Despite this marginalisation it is true today that the idea of basic human needs in some form continues to be central to the work of those within development and

⁵⁹ See Burton. J (ed) *Conflict: Human Needs Theory*, London: Macmillan Press, 1990.

⁶⁰ Burton. J, *Deviance, Terrorism and War: The Process of Solving Unsolved Social and Political Problems*, Oxford: Martin Robertson, 1979.

⁶¹ Avruch.K And Mitchell.C, *Conflict Resolution and Human Needs – Linking Theory and Practice*, Oxford: Routledge, 2013, 5.

⁶² Aristotle differentiated between human ‘needs’ and ‘wants’. See Ibid, 5.

⁶³ Most famously, Maslow’s hierarchy of needs. Ibid, 6.

⁶⁴ See Avruch and Mitchell, supra note 61, 230-235.

⁶⁵ Max-Neef in Avruch and Mitchell, supra note 61, 9.

⁶⁶ Ibid.

⁶⁷ Jolly *et al* in Avruch and Mitchell, supra note 61, 9.

⁶⁸ Ibid.

⁶⁹ Ibid, 10.

conflict transformation and additionally in the field of international human rights. ‘The core idea of basic human needs is strongly reflected in discourses on human rights and human security.’⁷⁰ Looking forward even in 1990, Bay noted the conjoinment of [basic human] needs to rights as ‘needs based rights: both universal and demanding of recognition and satisfaction.’⁷¹ Furthermore, the UN now has a dedicated unit for Human Security.⁷² Based upon a framework that aims to provide ‘protection and empowerment’, the UN Human Security Unit states that human security ‘promotes people-centred, comprehensive, context-specific, and prevention-oriented measures that seek to reduce the likelihood of conflicts, help overcome the obstacles to development and promote human rights for all.’⁷³ Moreover, as a framework, [...it] has been applied to complex situations of human insecurity, such as: transition to peace and sustainable development in fragile and conflict-affected communities.’⁷⁴ Clearly there have been developments regarding the adoption of human security as an approach to peacebuilding and development. It is also the case however that, ‘the manner in which human security might be applied to contemporary challenges both theoretical and practical remains underexplored.’⁷⁵

4. A NEW APPROACH: HUMAN SECURITY ‘PLUS’ – AN ‘INCLUSIVE HUMAN RIGHTS’ APPROACH TO PEACEBUILDING

⁷⁰ Ibid, 233.

⁷¹ Ibid.

⁷² See UN Trust Fund for Human Security, Human Security Unit, <http://www.unocha.org/humansecurity/human-security-unit/human-security-approach> Last accessed 19/02/15

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Newman, supra note 9, 1748. Notable articles on the subject include, Richmond. O, ‘Human security and its subjects’, *International Journal*, (68) Winter, 2012-13, 205; Richmond supra note 15.

One way in which such an approach can be applied to peacebuilding is through the application and consideration of economic and social rights as integral to peacebuilding. A human rights approach to peacebuilding (similar to a conflict transformation approach) works to improve human security for all people.⁷⁶ Some of the human needs identified by Burton (and others), such as safety and security of the person, welfare or sufficiency needs, freedom needs⁷⁷ and distributive justice in relation to resources, can be easily translated into human rights, in particular basic rights⁷⁸ and consequently economic, social and cultural rights as enshrined in international law.⁷⁹ Schirch argues that ‘the idea of human security bridges the concepts of human rights and human needs.’⁸⁰ It is submitted however that the concept of economic and social rights (alongside civil and political rights) transforms human needs and human security into rights, whereby human security becomes a matter of legal entitlements.

‘Human security suggests that public policy must be directed above all at enhancing the personal security, welfare and dignity of individuals and communities’.⁸¹ A rights-based approach to peacebuilding draws parallels with a human security approach, but there are significant differences: A human rights approach, in particular an economic and social rights model would share these aims but with the added value of enshrining such aims within the law. Fulfilment of basic needs and the dignity of the human person would become a matter of legal entitlement rather than policy aims to be aspired to. ‘Needs’ language suggests that the

⁷⁶ Schirch, supra note 54, 65.

⁷⁷ See Galtung, J, ‘International Development in Human Perspective’ Chapter 15 in Burton, J (ed) *Conflict: Human Needs Theory*, London: Macmillan Press, 1990, 301-335, 304.

⁷⁸ See Shue, H, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Second Edition), Princeton University Press, 1996.

⁷⁹ The link between Shue’s basic rights to security, subsistence and liberty, and ESR is clear when the substantive content of ICESCR and other international human rights law provisions are examined.

⁸⁰ Schirch, supra note 54, 65.

⁸¹ Newman, supra note 9, 1749.

individuals can be to blame for not being able to satisfy those needs themselves.⁸² It also makes them dependent on charitable help to meet those needs.⁸³ Rights language on the other hand is empowering ‘bringing with it legal tools to enforce and protect’.⁸⁴ In this way an economic and social rights framework takes the human security approach to peacebuilding a step further. Moreover, it can be applied within the prevailing liberal peacebuilding agenda that currently exists (by utilising existing international law and domestic provisions where applicable but prioritising economic and social rights rather than side-lining or ignoring them in favour of civil and political rights provisions). Newman similarly notes that a human security approach to peacebuilding while problematising and exposing the flaws of the liberal peacebuilding agenda ‘can be applied within this same context.’⁸⁵ However, the human rights based approach has added value as it transforms the human security framework into an approach to peacebuilding founded on and consistent with substantive legal human rights protections.

There are certain problems however with converting a human security approach to a rights based approach: One perceived advantage of the human security approach is that it may be acceptable to those who object to the language or binding nature of rights. Parlevliet has argued that at times needs language is preferable to rights language as it may facilitate dialogue and bring people to the table – opposing sides in a conflict may be happier to listen to the opposing sides ‘needs’ rather than hearing how they have violated their rights.⁸⁶ However, this problem could be overcome if economic and social rights are presented as a

⁸² Schirch, *supra* note 54, 89.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Newman, *supra* note 9, 1753.

⁸⁶ Parlevliet, in Schirch, *supra* note 54, 89; Parlevliet, M, ‘Bridging the Divide: Exploring the Relationship between Human Rights and Conflict Management’ *Track Two*, 11(1) March 2002, 8-52.

win-win sum for all parties to the conflict and favouring none. The basic and fundamental nature of such rights may help in achieving a consensus between parties, for example everyone needs adequate food and water. Also the focus at this point in time should be on future protection and promotion of rights rather than on attributing blame for past violations. These violations can be dealt within a transitional justice mechanism. If rights are presented as ‘needs’ it is crucial that once these initial discussions have taken place and progress is made that such needs are translated into rights to ensure future protection and promotion for all involved. This is even more crucial in terms of economic and social rights as rights language when used previously in peacebuilding efforts has been limited to civil and political rights discussions ignoring basic human rights /needs.⁸⁷

One further challenge is that framing this approach as a ‘human rights based approach’ to peacebuilding may be interpreted as maintaining the status quo; that is falling into the liberal agenda and interpretation of human rights with a predominant focus on civil and political rights only– rather than an approach which clearly challenges this agenda and views human rights as indivisible and interdependent.⁸⁸ It is evident that if a peacebuilding programme is to address the idea of human security as its priority then a holistic approach must be taken to protecting human rights: human security cannot be realised through the realisation of civil and political rights alone (even if one believes that civil and political rights can be realised without economic and social rights) but requires addressing *all* human rights. ‘Economic,

⁸⁷ Chinkin. C, ‘*The Protection Of Economic, Social And Cultural Rights Post-Conflict,*’ Paper for the UN Women’s Rights and Gender Unit (WRGU), 2008, 1-57,.8
http://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf last accessed 05/11/15

⁸⁸ Supra note 26; Whilst this indivisibility of rights has been part of the human rights rhetoric for some time in reality states have been slow to afford equal emphasis and acknowledgement to ESR. However, this is changing: In the area of transitional justice the concept of interdependence and indivisibility of human rights and the justiciability of ESR are finally being recognised. See Cahill-Ripley, supra note 42.

social and cultural rights may be implicit in or constitute the basis for, the realisation of civil and political rights and vice versa.’⁸⁹ In a peacebuilding context for example, people will be unlikely to engage with democratic institutions and post-conflict politics if they still have a grievance that their social housing is inadequate or that access to such housing is denied due to continuing discrimination as a result of the conflict. Therefore, in order for these people to effectively realise their civil and political rights (for example the right to vote, the right to participate in public affairs) the government must also assist them in realising their economic and social rights (the right to an adequate standard of living, the right to social security, the right to health). Significantly, without ‘operationalising’ this indivisibility of rights the underlying sources of unrest and violent conflict can remain.

In light of the previous misleading use of human rights rhetoric in peacebuilding⁹⁰ it may be preferable therefore to deem this new peacebuilding agenda as ‘Human Security Plus’ noting the emphasis on economic and social rights as a priority for human security and a prerequisite for the realisation of civil and political rights necessary for the liberal peacebuilding ideals of democracy and rule of law. The inclusion of economic and social rights within a human security plus approach to peacebuilding will help to undermine such disingenuous use of human rights language and challenge the dominance of the liberal peacebuilding agenda (and the limitation of human rights to that of civil and political rights). This in turn will assist in making peacebuilding more holistic, effective, more truthful and transparent.

⁸⁹ Mapulanga-Hulston, J, ‘Examining the Justiciability of Economic, Social and Cultural Rights’, *The International Journal of Human Rights*, Vol.6, No.4, Winter 2002, 29-48, 32.

⁹⁰ Schirch, supra note 54, 91.

Such an alternative approach to peacebuilding would also entail greater emphasis on local engagement which can make peacebuilding more legitimate.⁹¹ This is also true of transitional justice programmes where the importance of local and grassroots mechanisms for justice is well noted.⁹² Further, the human security concept of peacebuilding seeks to provide citizens with the agency required to bring about positive change in society and in their own individual lives.⁹³ Local participation in peacebuilding initiatives is crucial to the success of peacebuilding programmes and finding a balance between international assistance and external control and local mechanisms and control of peacebuilding programmes (inclusive of transitional justice) is a challenge. The existing framework for economic and social rights can be helpful as the principles underlying implementation of human rights include participation, transparency and accountability⁹⁴. Intervention based upon these principles can facilitate conditions conducive to enhancing local involvement. Moreover there is evidence (Northern Ireland, Bosnia, East Timor, Sierra Leone) that in transitional and volatile societies significant numbers of the population ‘will seek to disrupt the peacebuilding process if they feel excluded or alienated from the process and if their immediate human needs are not met’.⁹⁵ They may even turn to organised crime for self-sustainability.⁹⁶

⁹¹ Newman, supra note 9,1737.

⁹² For example see McEvoy. K, and McGregor.L, (eds), *Transitional Justice From Below: Grassroots Activism and the Struggle for Change* (Hart 2008).

⁹³ Newman, supra note 9,1750.

⁹⁴ Sengupta.A, The Human Right to Development’ in Andreassen.B.A and Marks.S, *Development as a Human Rights – Legal, Political and Economic Dimensions* (2nd ed), Oxford: Intersentia, 13- 44, at 16; NESRI – National Economic and Social Rights Initiative, Human Rights, What are the Basic Principles of the Human Rights Framework? At <https://www.nesri.org/programs/what-are-the-basic-principles-of-the-human-rights-framework> last accessed 24 Nov 2015.

⁹⁵ Collier.P *et al*, ‘World Bank Conflict Prevention and Reconstruction Unit, Breaking the Conflict Trap: Civil War and Development Policy’, World Bank, 2003; [Newman](#), infra note 9, 1752.

⁹⁶ Collier.P *et al*, ‘World Bank Conflict Prevention and Reconstruction Unit, Breaking the Conflict Trap: Civil War and Development Policy’, World Bank, 2003.

A human security approach places emphasis on addressing the root causes of conflict and resolving them rather than focussing on negative peace and containment.⁹⁷ This means such an approach can address structural violence, inequality and discrimination and exclusion. It also allows root cause analysis and therefore helps in identifying early warning indicators and long term goals for peacebuilding programmes rather than short term aims. Similarly, a human security plus approach would utilise economic and social rights as a framework to address these issues through identifying the rights violations that have taken place and providing legal protections against such violations based upon principles of equality, non-discrimination and special protections for vulnerable groups. This is not to argue that stability and security are irrelevant concerns but rather that meeting basic human needs including public service delivery, employment opportunities and poverty alleviation are also prioritised.⁹⁸ Indeed, making these a priority will contribute to stability and security through emancipation.⁹⁹

It is significant that Newman also argues that a key element in the human security approach is addressing past grievances.¹⁰⁰ He argues that ‘peacebuilding must [...] restore or build trust within a broader context of inclusive development and social integration. [...] a human security approach to peacebuilding implies a process of “trustbuilding”.’¹⁰¹ Note here the parallels with the aims of transitional justice: in particular restorative justice. Similarly, O’Flaherty argues that the protection and promotion of human rights within post-conflict/transitional societies requires both prospective actions and those that deal with the

⁹⁷ Newman, supra note 9, 1750.

⁹⁸ Ibid, 1751.

⁹⁹ Richmond, supra note 15, 475.

¹⁰⁰ Newman supra note 9, 1751.

¹⁰¹ Ibid.

past.¹⁰² He argues that peacemaking efforts should include measures to put in place human rights protections – ‘systems and institutions capable of delivering long-term future results’¹⁰³ as well as those that address the past, for example ‘by means of a process of transitional justice’.¹⁰⁴ O’Flaherty acknowledges the clear link between transitional justice and peacebuilding noting that past human rights violations need to be addressed otherwise there is a risk of ‘undermining efforts to establish sustainable human rights protection systems’.¹⁰⁵ Consequently, it is clear that an emphasis on human security would not only assist in the process of peacebuilding as conceived of as a post-conflict distinct activity but also as a way to ‘re-connect’ the disjuncture between transitional justice and wider peacebuilding¹⁰⁶ therefore supporting an integral and complementary process with common aims and objectives: truth; reconciliation; peace and justice.¹⁰⁷ The alleged dichotomy between peace and justice is not a new one.¹⁰⁸ However, it is possible to envisage a process whereby peace and justice are mutually reinforcing and one way to transcend this dichotomy is to utilise a human security focussed approach to peacebuilding. Peace becomes the broader aim within which transitional justice is situated.

¹⁰² Michael O’Flaherty, ‘Future Protection of Human Rights in Post- Conflict Societies: The Role of the United Nations’ *Human Rights Law Review*, 3 (2003) 53-76, 53-56.

¹⁰³ *Ibid*, 53.

¹⁰⁴ *Ibid*, 55.

¹⁰⁵ *Ibid*.

¹⁰⁶ Pamina Firchow & Roger Mac Ginty, ‘Reparations and Peacebuilding: Issues and Controversies’, *Human Rights Revue* (2013) 14:231–239, at 232.

¹⁰⁷ Sharp.D, ‘Bridging the Gap; the United Nations Peacebuilding Commission and the Challenges of Integrating DDR and Transitional Justice’ in Chandra Sriram, Garcia-Godos Jemima, Johanna Herman, Olga Martin-Ortega (eds.) *Transitional Justice And Peacebuilding On The Ground; Victims And Ex- Combatants* (Routledge,2013), 23 (older version, 8) See also Gerhard Thallinger, ‘The UN Peacebuilding Commission and Transitional Justice’, *German Law Journal*, vol. 8, no. 7 (2007), 696.

¹⁰⁸ Hurst Hannum, ‘Peace versus Justice: Creating Rights as well as Order out of Chaos’ *International Peacekeeping*, 2006, 13(4), 582; N. Roht-Arriaza and J. Mariezcurrena (eds), *Transitional Justice in the 21st century – Beyond Truth versus Justice*,(Cambridge University Press, 2006; I. Zartman and V. Kremeniuk (eds), *Peace Versus Justice: Negotiating Forward- and Backward-looking Outcomes*, Rowman and Littlefield, 2005; Ellen L. Lutz, Eileen F. Babbitt, and Hurst Hannum, ‘Human Rights and Conflict Resolution from the Practitioners’ Perspectives’, *The Fletcher Forum of World Affairs* (2003) 27(1), 173; C. Lekha Sriram and S. Pillay (eds) *Peace Versus Justice?: The Dilemmas of Transitional Justice in Africa*, (James Currey Publishers, 2010).

There will be those who argue that such an approach to peacebuilding is unrealistic, idealistic. However Newman argues a human security approach to peacebuilding 'is not a woolly idea'.¹⁰⁹ It is certainly arguable that, 'Given the costs of protracted international involvement in post-conflict societies, an approach that improves project deliverables and helps to avoid an interminable international involvement is politically essential.'¹¹⁰ Schrich argues that one problem with a needs-based analysis is distinguishing between 'legitimate grievances and illegitimate greed'.¹¹¹ However a rights-based approach would provide a framework for determining whether grievances are legitimate. The existing violations approach and the concept of a minimum threshold within the legal framework for economic and social rights¹¹² would act as a basis on which to assess claims. Also clearly people's perceptions of their deprivation of needs will vary¹¹³ but utilising a human rights approach ensures all people are dealt with on the basis of equality and non-discrimination. A Human Security Plus approach to peacebuilding can provide legal standards and frameworks for policy, clear obligations, measurable objectives and guidelines for the management of resources. As such it is argued that such an approach is likewise not 'woolly': rather it is practical and achievable. However, in order to operationalise such an approach there are

¹⁰⁹ Newman, supra note 9, 1752.

¹¹⁰ Ibid.

¹¹¹ Schrich, supra note 54, 70.

¹¹² The concept of the minimum threshold or minimum core is used in ESR to define the minimum level below which the substantive content must not fall. See UN CESCR, *General Comment 3, The nature of States parties obligations (Art. 2, para. 1 of the Covenant)*, 14/12/90; Maastricht Guidelines on Violations of Economic, Social and Cultural Rights 1997; Katharine G. Young, 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content', *The Yale Journal Of International Law*, Vol. 33, 2008, 113-175; Bilchitz. D, 'Developing the Minimum Core Approach to Socio-Economic Rights'. Paper given at the Association of Human Rights Institutes Annual Conference, Essex University, UK, 19-21 September 2003; Bilchitz. D, *Poverty and Fundamental Rights – The Justification and Enforcement of Socio-Economic Rights*, Oxford: Oxford University Press, 2007, 178-234.

¹¹³ Schrich, supra note 54, 70.

several integrated steps that need to be taken as component parts of such a peacebuilding programme which will be explored in the following section.

5. OPERATIONALISING THE HUMAN SECURITY PLUS APPROACH TO PEACEBUILDING

The existing framework for economic, social and cultural rights can be used as a normative structure for supporting a holistic model of peacebuilding, both by ensuring a focus on human security and through ensuring the protection and promotion of economic and social rights. O’Flaherty outlines a tripartite programme for the protection of human rights in the context of peacebuilding encompassing, normative measures, programmatic efforts and enforcement and accountability mechanisms.¹¹⁴ To operationalise such an approach to peacebuilding this system could be adapted to include economic and social rights as a priority. For example, normative measures would include ratification of ICESCR¹¹⁵ and other relevant international human rights law and incorporation of these norms into the domestic legal systems, either through constitutional or national law (as detailed below). Programming would include taking a rights based approach to peacebuilding programmes; humanitarian assistance, reconciliation, development and reconstruction, rehabilitation and capacity building. It would also entail facilitation of a participatory process involving local approaches to peacebuilding and human rights, as well as transparency and accountability. This would necessarily entail human rights education and training. Enforcement and accountability measures would include *inter alia* the establishment of a national human rights institution and adoption of international implementation mechanisms such as the Optional Protocol to the ICESCR.¹¹⁶

¹¹⁴ O’Flaherty, *supra* note 102, 54.

¹¹⁵ International Covenant on Economic, Social and Cultural Rights 1966, entry into force 3 January 1976, UNTS 993.

¹¹⁶ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights *supra* note 23.

As regards specific normative measures, if we thus conceive of peacebuilding as a process including all war-ending mechanisms we must first start with concentrating on peace agreements and the cessation of immediate violence. In terms of quasi-legal / legal mechanisms the first steps for parties in negotiations to end a conflict is some form of peace agreement.¹¹⁷ This may initially be interim provisions to be followed up by further permanent agreements, such as peace accords, bills of rights and eventually new or revised state constitutions. The essence of any peace agreement is concerned with human rights in the sense that peace agreements aim to end violent conflict and human rights abuses.¹¹⁸ However, they may often contain explicit human rights provisions, mainly for civil, political rights but sometimes also for economic, social and cultural rights,¹¹⁹ as well as provisions which deal with minority rights, self-determination and power-sharing¹²⁰.

Bell identifies three stages of peace agreements with different human rights requirements: Human rights are usually limited in pre-negotiation agreements to provisions that limit the conflict and prevent further grave violations and to investigation of alleged violations. In framework agreements the human rights agenda is set: The legal dimension is outlined, such as provision for a bill of rights and corresponding institutions such as national human rights institutions, reform of institutions –such as the judiciary and police and partial transitional justice mechanisms .e.g. prisoner release. Finally, implementation agreements (which

¹¹⁷ Although there has been some debate as to when transition to peace begins e.g. is it when some or all violence ends or when an official ceasefire begins or post-conflict, once all parties take steps to engage in transforming from a process of violence, to one of peace?

¹¹⁸ Bell, C, *Peace Agreements and Human Rights*, Oxford: OUP, 2000, 33.

¹¹⁹ If provisions for economic and social rights are included they are often weak. See the International Council on Human Rights, International Council on Human Rights Policy, *Negotiating Justice? Human Rights and Peace Agreements*, International Council on Human Rights Policy, 2006, 101.

¹²⁰ Bell, supra note 118, 33.

implement the framework agreement and /or add further obligations), take forward the human rights commitments of the framework agreement, operationalise the national human rights institutions and involve civil society in developing human rights. In addition, it may include the establishment and operation of transitional justice mechanisms (unified) such as truth commissions or tribunals.¹²¹

In encompassing economic and social rights into this typology of agreements, it may be that at the level of an initial framework agreement economic and social rights need only be included as part of a broad human rights statement, that emphasizes respect for economic and social rights and establishes them as an integral part of the future bill of rights or constitution of the state.¹²² Then at implementation stage, the national human rights institutions or body charged with drafting a bill of rights or Constitution can elaborate the provision to include specific economic and social rights.¹²³ One useful initiative has been offered by The International Council on Human Rights, who have drafted comprehensive guidelines for how best to incorporate human rights within peace agreements. These include assessing economic and social rights violations of a structural and ongoing nature.¹²⁴

It is important however to remember the limitations of peace agreements, Firstly, peace agreements are not always enshrined as law and therefore if the protections and provisions

¹²¹ Ibid, 296. See also International Council on Human Rights, supra note 119, 15.

¹²² This allows for agreement and for further development of specifics at a later date when parties may be more willing to compromise and negotiate.

¹²³ For example, El Salvador Caracas Agreement, 21 May 1990 and Agreement on Human Rights, 26 July 1990, which provide for social and labour rights; Constitutional Commission of Eritrea July 1996 Bill Of Rights which includes ESC rights; Guatemala Agreement on the identity and rights of indigenous peoples 31 March 1995 and Agreement on socio-economic aspects and the agrarian situation 6 May 1996 which deal with ESC rights and right to participation.

¹²⁴ International Council on Human Rights, supra note 119, 47.

are not adhered to in some cases there is no legal remedy.¹²⁵ Further, as Bell notes, ‘Human rights rhetoric only takes hold in a framework agreement if it serves the interests of both sides for it to do so’¹²⁶. There is a danger that the ‘language of human rights’ is used within peace agreements but little substance changes.¹²⁷ As such, in order for peace agreements to be implemented it is imperative that they are followed up by bills of rights and other constitutional guarantees, particularly for economic and social rights.¹²⁸ ‘Many countries emerging from major conflicts suffer a relapse into conflict within five years of signing a peace agreement’.¹²⁹ Therefore there is a need to ensure continuity between the agreement itself, further constitutional codification and other programmatic peacebuilding measures.

In addition, normative measures should be taken at international level. The peacebuilding process should provide for parties to sign and ratify international human rights law treaties. This can be initiated during preliminary negotiations, as part of a peace agreement or indeed can be incorporated into a bill of rights or other constitutional law provision at a later stage.

For these legal guarantees to be implemented effectively, a parallel process of institution building and development of infrastructure is necessary. There is a need to determine the

¹²⁵ Bell, *supra* note 118, 304.

¹²⁶ *Ibid*, 297.

¹²⁷ *Ibid*, 102, 298.

¹²⁸ For a full list of peace agreements and the issues they cover see Bell and O'Rourke, ‘The Transitional Justice Peace Agreements Database’, 2010, University of Ulster, INCORE and Transitional Justice Unit, Belfast, 2010, <http://www.peaceagreements.ulster.ac.uk/> Last accessed 24 Feb 2015. For detailed examples of states that have included economic and social rights within their Bills of Rights and other constitutional guarantees as well as transitional justice mechanisms see University of Notre Dame Peace Matrix <https://peaceaccords.nd.edu/> Last accessed 24 Feb 2015.

¹²⁹ UN Peacebuilding Support Office, Frequently Asked Questions, <http://www.un.org/en/peacebuilding/pbso/faq.shtml#q1> Last accessed 17 April 2014.

practical steps to be taken to operationalise these legal provisions – a functioning infrastructure with the capacity to deliver services in order to implement these rights is crucial, as is the provision of specialist institutions to protect and promote all human rights including economic and social rights. In order to challenge the supremacy of civil and political rights within the current liberal agenda, a refocussing of priorities is required in terms of development, institution building and reform and control of these processes.

As a state does not exist in isolation but rather exists within the global international community of states, the influence of external actors upon transitional or post-conflict reconstruction in particular regarding resources is inevitable and often significant. Because of the limited state resources that are available in a state that is in transition or post-conflict, the role of international actors in institution building, development and reconstruction is crucial. However, international assistance is usually accompanied by various international agendas and specific conditions set by the organisation(s) or state(s) offering their assistance. Notable in the current climate are the policies of the international financial institutions such as the IMF and World Bank. ‘International institutions such as the World Bank and the International Monetary Fund often push for market-driven reforms which may not take adequate account of the post-agreement need for large-scale public spending.’¹³⁰ Even bilateral development partners ‘frequently operate outside a human-rights based framework or with an idiosyncratic one which reflects the donor’s particular interests and priorities’.¹³¹ Thus many peace processes involve transition not just from violence to peace, but also to liberal democracy

¹³⁰ International Council on Human Rights Policy, *supra* note 119, 101.

¹³¹ O’Flaherty, ‘*supra* note 102, 60. These agendas can also result in a de-prioritisation of ESR and thus continuation of violations and/or threats to lasting peace. See Skaar.E and Wiebelhaus-Brahm.E, ‘The Drivers of Transitional Justice: An Analytical Framework for Assessing the Role of Actors’, *Nordic Journal of Human Rights*, Vol. 31 (2), 2013, 127-148.

which often involves economic transition to a liberalised economic model,¹³² whether this is necessarily a good thing or not, and regardless of local priorities for peace and development. The foremost concern within this liberal model is economic development of the state, based upon quantitative statistics as a measure of progress. Whilst quantitative data is useful and has a role to play in overall development of a post-conflict state, quantitative statistics can obscure serious problems *inter alia* inequality and /or discrimination on the grounds of gender, ethnicity or race, or rural/urban discrepancies. Moreover the prevailing model tends to focus on institution building and institutional reform as an end goal in itself,¹³³ rather than seeing the end goal as the effective functioning of these organisations and their ability to deliver their mandate including the protection and promotion of *all* human rights.

A human security plus approach to transitional or post-conflict development would use economic and social rights as a tool with which to ensure that that basic needs and services are prioritised as a challenge to economic free market development, which may not benefit the existing marginalised or poor in the state. It would prioritise access to basic needs and services for individuals as well as addressing existing and underlying discrimination and inequalities (which may have triggered or worsened conflict). From this human security perspective the benchmark is whether the state can exercise its primary function of social protection, distribute justice, meet welfare and educational needs and undertake public service delivery.¹³⁴ A human security plus approach to development and institution building would measure this process through the benchmark of a state's compliance with its duty to respect, protect and fulfil the economic, social and cultural rights of citizens. Economic and social rights indicators can be used for monitoring realisation of basic rights of individuals

¹³² International Council on Human Rights Policy, *supra* note 119,101.

¹³³ Richmond, *supra* note 15; Newman, *supra* note 9, 1750.

¹³⁴ As would the human security approach advocated by Newman, *supra* note 9, 1750.

and can highlight problems through use of disaggregated data and qualitative data such as testimonies based upon a violations approach.¹³⁵

Of course, development of a transitional or post-conflict state will involve difficult discussions regarding budgets and recognition of the limitations of fragile states. The problem of meeting the immediate needs of the population in a society in transition from conflict to peace, is often compounded by weak state infrastructure, lack of finance and corruption. Although determining priorities will depend to a certain extent on the particular conflict in question, for every state it will be a question of balancing resources and of considering existing capabilities. However, it is imperative that where appropriate, priority is given to building the institutional infrastructure and capability to realise economic and social rights: for example, to realise the right to health a functioning healthcare system is required. This will often entail rebuilding physical infrastructure which has been destroyed or damaged in conflict as well as providing training in order to supply professional employees, all of which requires funding and resources which could be in short-supply. Existing mechanisms and provisions within the international framework for economic and social rights can be useful. If an inclusive rights based approach is taken to this process, the legal obligation to use maximum available resources¹³⁶ and seek (and provide) international assistance under

¹³⁵ Cahill-Ripley. A, *The Human Right to Water and its Application in the Occupied Palestinian Territories*, Oxford: Routledge, 2011, 141; Chapman. A, 'A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights', *Human Rights Quarterly*, 18.1, 1996, 23-66.

¹³⁶ On the concept of maximum available resources see Skogly. S.I, 'The requirement of using the "maximum of available resources" for human rights realisation: A question of quality as well as quantity?' *Human Rights Law Review*, 12 (3), 2012, 393-420.

Art 2 of the ICESCR¹³⁷ could be helpful in acquiring aid and development assistance as part of peacebuilding programmes (rather than seeing it purely as a development/aid exercise).¹³⁸ Moreover, a qualitative as well as quantitative approach should be taken to generating maximum available resources¹³⁹ and determining priorities for resource allocation, in these situations of resources scarcity. Skogly argues that much can be achieved without necessarily increasing financial means.¹⁴⁰ Consequently, it may be that redistribution of existing resources¹⁴¹ and more effective use of resources could be more appropriate rather than seeking further international assistance.

Additionally, the expertise and standards of the UN Committee on Economic, Social and Cultural Rights¹⁴² could be utilised by those involved in transitional and post-conflict development programmes to assist them in dealing with balancing resources and prioritising areas for development. For example the concept of a minimum threshold could be applied in order that newly emerging states with limited resources could realise economic and social rights within their means.¹⁴³ The UN CESCR could set state specific benchmarks (which

¹³⁷ UN International Covenant on Economic, Social and Cultural Rights 1966, Article 2.1: ‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’.

¹³⁸ See UN Committee on Economic, Social and Cultural Rights (CESCR), supra note 112, paras 10,13; The Limburg Principles On The Implementation Of The International Covenant On Economic, Social And Cultural Rights, E/CN.4/1987/17, principles 25-28.

¹³⁹ Skogly, supra note 136, 405).

¹⁴⁰ Ibid.

¹⁴¹ This is also significant in a transitional context as conflicts can be fuelled by uneven distribution of resources.

¹⁴² Hereafter UN CESCR

¹⁴³ See UN CESCR General Comment 3, supra note 112, para.10. See also Bilchitz. D, *Poverty and Fundamental Rights -The Justification and Enforcement of Socio-Economic Rights*, Oxford: OUP, 2007, 183-235; Young. K, ‘The Minimum Core of Economic and Social Rights: A Concept in Search of Content’, *Yale Journal of International Law*, Vol.33, 2008, 113-175.

take into account the transitional circumstances of the state) to help the state(s) work progressively to realise the full scope of economic and social rights.

It is also important that local communities who are involved in the conflict are also included in discussions about resources and priorities for post-conflict development and capacity building. There is an ‘empowering element where individuals and communities take an active role in the enhancement and creation of resources, rather than resources being apportioned to passive recipients’.¹⁴⁴

Finally in terms of programmatic efforts the role of specialised international organisations such as the agencies of the UN requires consideration. These bodies will often have been involved during the conflict, as peacekeepers, peacemakers and negotiators and in relation to humanitarian assistance. However, it is also apparent that many of these international agencies involved in peacebuilding, including specialised organs of the United Nations lack ‘a concrete approach to using their existing resources for the implementation of human rights’.¹⁴⁵ Schrich argues that an ‘agenda for coordinated action’ is required to optimise the rights-based approach to peacebuilding.¹⁴⁶ It is not evident how the work of specialised UN agencies is coordinated in relation to peacebuilding efforts, for example how does the UN Human Security Unit or the UN OHCHR inform or overlap with the UN Peacebuilding Commission? Moreover, generally conflict transformation and peacebuilding groups are often working in isolation from human rights and transitional justice actors. Consequently, exchange training and increasing dialogue between professionals in all fields is crucial, as is the training of international, local and national NGOs and government officials. In the field

¹⁴⁴ Skogly, *supra* note 136, 400.

¹⁴⁵ *Ibid*, 419.

¹⁴⁶ Schrich, *supra* note 54, 87-88.

of humanitarian assistance for example, if such assistance has been rights-based this is extremely helpful as ‘the groundwork for future rights-based reconstruction and rehabilitation [is already laid], both by building up relevant local human and institutional capacities and by establishing rights-based programming frameworks.’¹⁴⁷

Further, there is evidence to suggest that even the specific peacebuilding agency of the UN: the UN Peacebuilding Commission requires improvement in terms of incorporating economic and social rights and a focus on human security within their remit. The Commission has previously actively discouraged engagement with human rights (read civil and political rights) as a measure of peace, never mind consideration of economic and social rights. In 2010 the UN Peacebuilding Support Office stated that ‘[...] addressing root causes of conflict are normally long-term processes that cannot easily be measured during the time frame of most peace operations.’¹⁴⁸ As such, ‘Peace consolidation benchmarks should not reflect broader aspirations for development, poverty reduction, and human rights if these are not directly relevant to the aforementioned objective’.¹⁴⁹ However by 2012 the Peacebuilding Commission had altered their position noting that

‘In the context of peacebuilding, a human rights-based approach offers a normative framework for stabilisation and development – one that is operationally directed to promoting and protecting human rights. It offers a tool to analyse the inequalities which lie at the heart of conflicts and redress discriminatory practices and unjust distributions of power that impede progress towards sustainable peace. Under a

¹⁴⁷ O’Flaherty, ‘supra note 102, 57.

¹⁴⁸ United Nations Peacebuilding Support Office, *Monitoring Peace Consolidation United Nations Practitioners’ Guide to Benchmarking*, (United Nations In cooperation with the Fafo Institute for Applied International Studies and the Norwegian Peacebuilding Centre (NOREF), 2010, 7.

¹⁴⁹ Ibid.

human rights-based approach, the plans, policies and processes for recovery and development are anchored in a system of rights and corresponding obligations established by international law. This helps promote the sustainability of peacebuilding work, empowering people, especially the most marginalised, to participate in policy formulation and hold the State accountable.’¹⁵⁰

Moreover, they argue that ‘cross-cutting issues’ such as human rights should be mainstreamed through programming as this ‘can multiply peacebuilding outcomes’.¹⁵¹ This interesting development in policy and mandate seems promising. Yet it is notable that no definition of human rights is given. Within the publication no reference to economic, social and cultural rights is found within the main text of the document. Rather the reference to socio-economic rights is to be found in an appendix where it is noted that

‘Economic, social and cultural rights [...] have clear ties with both effective public administration and the delivery of services. Gross violations of these rights have been among the root causes of conflicts, and failure to address systematic discrimination and inequities can undermine recovery from conflict.’¹⁵²

The report continues to detail the rights to food, education and health and concludes that ‘Individually and together these rights contribute to peacebuilding.’¹⁵³ Although this report appears to indicate some progress from the Peacebuilding Commission’s previous

¹⁵⁰ United Nations Peacebuilding Support Office, *Peace Dividends and Beyond: Contributions of Administrative and Social Services to Peacebuilding* (United Nations Peacebuilding Support Office 2012, 94.

¹⁵¹ Ibid, 6.

¹⁵² Ibid, 94.

¹⁵³ Ibid, 95.

position regarding human rights, it seems at odds with itself as despite arguing that human rights should be incorporated into mainstream programming the discussion of economic and social rights is omitted from any major discussion within the main report.

Most recently in 2014, the Peacebuilding Commission recognised that peacebuilding needs should be based upon an analysis of the root causes and drivers of conflict, including structural causes and they identify socio-economic inequalities as one contributing factor.¹⁵⁴ They also identify the most frequent peacebuilding needs as including *inter alia* support to the provision of basic services, such as water and sanitation, health and primary education.¹⁵⁵ Yet these are not framed as economic and social rights in their mainstream programmes. Based upon an overall survey of documentation by the Peacebuilding Commission with the exception of the paragraphs noted above, human rights are referred to in the context of civil and political rights and rule of law only. It is evident therefore that economic and social rights are not mainstreamed in the work of the UN Peacebuilding Commission. Although Sharp argues that one must be wary of overreach he also points out that it would be difficult to interpret the mandate of the Peacebuilding Commission in such a way as to exclude the mainstreaming of human rights concerns and transitional justice initiatives.¹⁵⁶ It is submitted that these must necessarily include economic and social rights concerns as well as those relating to civil and political rights. Consequently, in order to pursue a human security plus

¹⁵⁴ UN Peacebuilding Support Office, Frequently Asked Questions <http://www.un.org/en/peacebuilding/pbso/faq.shtml#q1> Last accessed 17 April 2014.

¹⁵⁵ Ibid.

¹⁵⁶ Sharp, D., 'Bridging the Gap; the United Nations Peacebuilding Commission and the Challenges of Integrating DDR and Transitional Justice' in Chandra Sriram, Garcia-Godos Jemima, Johanna Herman, Olga Martin-Ortega (eds.) *Transitional Justice And Peacebuilding On The Ground; Victims And Ex--Combatants*, Oxford: Routledge, 2013, 23. For a critical view of linking transitional justice and peacebuilding and the danger of overreach and dilution see Waldorf, L., 'Linking DDR and Transitional Justice,' in Ana Cutter Patel, Pablo de Greiff, Lars Waldorf (eds.), *Disarming the Past, Transitional Justice and Ex-Combatants*, New York: International Center for Transitional Justice, 2009, 18.

approach to peacebuilding much more needs to be done to incorporate economic and social rights into the work of the UN Peacebuilding Commission and related bodies.

In relation to enforcement and accountability, parties to the conflict must be willing to act constructively to establish and support new institutions to monitor and implement economic and social rights. The establishment of a national human rights institution is crucial to this task.¹⁵⁷ A national human rights institution has the role of establishing domestic human rights provisions for the state and/ or has a mandate to monitor and implement established human rights on the ground. It would also *inter alia* gather the required data to comply with international enforcement tools such as treaty monitoring and special procedures. It should be noted that states in conflict or post-conflict often have a problem with capacity to submit timely reports to such bodies,¹⁵⁸ which makes the establishment of a national human rights institution even more of an imperative. However as O’Flaherty notes ‘It is important that their establishment does not distract from either the primary responsibility of the state to promote and protect human rights or the enforcement responsibilities of the judicial system.’¹⁵⁹ This is especially important with economic, social and cultural rights as they have for so long been seen as non-justiciable.

As noted previously, the ratification of universal (under the UN) and regional human rights treaties is a crucial element of the accountability and enforcement of the human security plus framework for peacebuilding. This is an important step that can be taken by the parties is to ensure they can benefit from and be accountable under various international human rights law

¹⁵⁷ O’Flaherty, supra note 102, 55.

¹⁵⁸ Ibid, 67.

¹⁵⁹ Ibid, 55.

treaties. This can also involve in some cases becoming a member state of the UN and therefore becoming subject to universal review of human rights (including economic and social rights) through UN Charter based mechanisms for the protection of human rights.¹⁶⁰

Overall, the new government or interim administration will play a key role in operationalising a human security plus approach to peacebuilding through implementation of all stages of the framework – normative measures, programmatic (practical and policy) measures and enforcement and accountability mechanisms. That the general public and those involved in the conflict see a unified position is crucial for the new administration to gain the trust of those previously in conflict with one another. By enshrining economic and social rights within the new constitution or similar legal guarantees and publicising the legal reforms they have agreed upon, the new government is demonstrating the beginnings of transition from conflict to peace and providing protections and minimum standards to allow people to feel safe and secure and to begin the process of reconciliation. In addition though, political will must be matched with concrete measures of institution building, reconstruction and funding for infrastructure and establishment of monitoring and accountability mechanisms so the economic and social rights guarantees do not become rhetoric alone.

¹⁶⁰ Such as the Universal Periodic Review and Special Procedures of the Human Rights Council.

**6. CONCLUSION: RECLAIMING THE PEACEBUILDING AGENDA:
ECONOMIC AND SOCIAL RIGHTS AS A FRAMEWORK FOR BUILDING
POSITIVE PEACE**

To conclude, this article has challenged the assumption that the liberal agenda for peace is effective and necessarily the best model for promoting peace in every transitional or post-conflict situation. It argues for a reconsideration of the priorities for peacebuilding overall, with a move away from the dominance of free market liberal economics and civil and political rights to a model for peacebuilding which prioritises human security and basic human needs through the realisation of *all* human rights as indivisible. It does however advocate a special emphasis on economic and social rights to redress the imbalance caused by the deliberate omission of such rights from the liberal peacebuilding agenda.

It specifically argues that peacebuilding should be viewed as all war-ending and peacemaking processes. Accordingly the model proposed will help to reconnect the disjuncture between elements of peacebuilding, from peace agreements to post-conflict peacebuilding processes, thus optimising the protection and promotion of economic, social and cultural rights throughout the peacebuilding process. Further it is submitted that to operationalise such an approach specific normative, programmatic and enforceability and accountability measures are required in order to refocus priorities on realising economic and social rights.

Significantly the existing legal mechanisms for protection and promotion of economic and social rights can support peacebuilding measures. They can also address issues traditionally excluded from peacebuilding such as structural violence and exclusion of marginalised or

disadvantaged groups. As Schirch notes, ‘The field of peacebuilding as a whole needs to create a long-term coordinated plan for addressing structural violence. The global community is lacking the will rather than the means to address issues of structural violence’.¹⁶¹ Ensuring the inclusion of economic and social rights within peacebuilding is one way to address human insecurity and structural violence within the current system and can be acted upon now. This is an ambitious aim and one which will find opposition from the dominant liberal system of governance. However, through the use of the human security plus approach the peacebuilding agenda can be reclaimed, thus making peacebuilding more effective and responsive to people’s needs and making a significant contribution to delivering sustainable positive peace.

END

¹⁶¹ Schirch, *supra* note 54, 91.