# Conflicts and the Politics of Human Rights Invocations

## Thomas Diez and Emily Pia

Michelle Parlevliet's *Rethinking Conflict Transformation from a Human Rights Perspective* undoubtedly is an important contribution to the literature on the relationship between human rights and conflict transformation. Her insistence on this relationship as being complementary – but also, one may add, complex – is needed to bring this debate forward. This is all the more the case as Parlevliet can build on her long-standing expertise as both practitioner and academic. Indeed, her article is exemplary in its combination of theoretical reflection and insights into the practice of conflict transformation and human rights advocacy.

One of the core contributions of Parlevliet's piece lies in what one may call her holistic approach. She rightly recognizes that the importance of human rights does not end in claiming legal changes, but involves changes in and attention to "structures and institutions", "relationships" and the "process" of conflict transformation. Her iceberg model may look simplistic in its rather crude division between human rights violations as symptoms and causes, but it does illustrate very nicely the need to embed the invocation of human rights in a broader context. This is an aspect that we have emphasised in our own work (see e.g. Pia/Diez 2007, 2009) and it may go a long way in understanding why references to human rights in conflicts can sometimes have a conflict-intensifying and sometimes a conflict-diminishing or positively conflict-transforming effect.

Yet it is exactly here that we think that there is also a weakness in Parlevliet's argumentation, although we should hasten to add that this is a weakness that results from the way that she constructs her argument rather than from any substantive issues. The problem, in our view, is that Parlevliet defines human rights as rules, structures and institutions, relationships, and process (in this volume, 22). Even on a superficial level, this seems odd. No doubt all these things are *related to* human rights, but they are not *the same as* human rights. When Parlevliet writes, for instance, of "human rights as structures and institutions", she wants "to examine the structures in society that

govern issues of power, resources, identity and security, and that determine access to and decision-making over such assets" (22). While we do not dispute that such structures have an important impact on the realization of human rights, in particular when it comes to second- or third-generation rights, we do find that incorporating them into the definition of human rights reduces the analytical purchase of the concept and risks losing sight of the need to investigate the effects of human rights articulations as legal norms in conflicts.

Therefore, it seems to us that Parlevliet's choice to integrate these other factors into the definition of human rights makes her overlook or not fully appreciate the problems of invoking human rights as a legal norm. In the following, we would like to suggest three issues that in our view warrant further discussion. First, we argue that invocations of human rights by their very nature articulate an existential threat with a view to legitimising urgent counter-action in the absence of change. This explains their conflict-intensifying potential and alerts us to the political dimension of such invocations. Second, we discuss the extent to which politics is excluded if human rights are seen as purely legal norms. Third, we argue that different kinds of human rights articulations can have different effects on conflicts, and that therefore the articulations themselves matter more than Parlevliet seems to suggest.

## 1. The Nature of Human Rights as Securitising

Parlevliet acknowledges that human rights can have a conflict-intensifying effect at least in the short to medium term (27). She links this effect rightly to the challenge that the invocation of human rights poses to the dominant power relations (29) and speaks in this context of "conflict sensitivity". Her argument is, and again we agree, that considerations of such sensitivity must not lead to ignoring injustices (30). We will discuss the possibilities of human rights articulations in such circumstances further in our third section, but want first to elaborate on why we think the invocation of human rights has this conflict-intensifying effect, even though human rights and (positive) conflict transformation are usually seen to correlate positively.

The problem, in our view, lies with the rhetorical structure of human rights invocations.[1] They are by definition related to a threat to the very existence of an individual or group. As long as this existence is not seen as being threatened, there is no need to invoke human rights. Existence in this context does not necessarily refer to issues of life and death – the freedom of movement or expression can be seen as core aspects of what it means to be human, and as such their restrictions count as existential threats as much as direct threats to one's life do.

In the literature on Security Studies, such references to an existential threat are called "securitisations". An issue is "securitised", in the words of Buzan, Wæver and de Wilde (1998, 23-24), if it "is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure". There is of course considerable dispute over what 'emergency measures' and 'actions outside the normal bounds of political procedure' may mean. Yet in the context of human rights and conflicts, successful securitisations, i.e. human rights invocations that are persuasive enough in society to have political effects, seem to have two particularly important consequences, which one could see as two extremes of what such extraordinary measures may be.

On one end, increasing levels of securitisation both in terms of societal spread and emergency measures are an indication of greater conflict intensity (see Diez et al. 2006, 566-568).

This is because securitisations might reinforce conflict identities and legitimise violence towards the other conflict party. The invocation of human rights as a securitising act thus may justify breaking the law, and even violence. If there is a sense that one's human rights are constantly violated or under threat, the invocation of those rights will act as a threat itself, and will legitimise further action that may well leave the bounds of what would otherwise be acceptable within the normal procedures of the political system. As we will discuss in our third argument below, we would expect this kind of legitimisation of further action and even violence in a conflict situation to be more likely to occur if the invoked human rights are linked to a specific group and articulated as exclusive rights.

On the other end of the spectrum, the constitutional guarantee of human rights is also an "extraordinary measure" that removes human rights from the daily play of politics onto a "higher plane". Such a guarantee is as much a reaction to the invocation of a threat as violence is, but it marks agreement rather than continued dispute. While violence is thus directed at a coexisting, threatening 'other', constitutional guarantees refer to the *past* as the threatening other – the past in which human rights had been violated, which therefore had to be removed from politics. The underlying human rights articulation is therefore not "you are violating my rights, I demand that you stop doing so as I will otherwise have to resort to further action", but "our society has in the past been characterized by human rights violations, we have overcome this and need to ensure that such violations do not take place again." Such a notion of "temporal securitisations", referring to the 'past as other' are not unusual and in the literature have mostly been discussed in relation to European integration, in which the tragedy of two world wars plays a central role (see Diez 2004; Hansen 2006, 59-61; Wæver 1996). They also exist in the historical narratives of state identities from Germany (against the injustices of Nazi Germany) to South Africa (the apartheid regime).

Understood in such a way, the securitising nature of human rights invocations does not make them conflict-intensifying *per se*. Yet as long as there is a conflict situation, it seems highly unlikely that the invocation of human rights as such will lead to the other party accepting human rights, and thus to constitutional guarantees. These will need a broader conflict resolution process, in the context of which core notions of identities and interests in the conflict are challenged and transformed. This kind of process is a political process in the sense that identities and interests need to be socially negotiated.

We suppose that Parlevliet will agree with us on the need for such a wider political process, but her broad definition of human rights in our view is not well-tuned to capture the logic of human rights invocations as we have developed them in this section. This logic becomes compounded by phrasing human rights within a legal context, for it is within such a legal context that truth claims ("this is our right") about identities and threats are put beyond the realm of political contestability. In that sense, we agree with Parlevliet that reducing human rights to *legal norms* is problematic. Our next argument will therefore take up the notion of politics once more, and question the effects of invoking human rights as legal norms.

## 2. The Exclusion of Politics

The human rights discourse has become one of the most significant political ideologies of the second half of the twentieth century, "the acceptable voice – indeed virtually the *only* voice – of morality in international relations" (Robinson 1998, 59). The human rights institutions in the United Nations have increased in size and scope; the international Covenants have turned human rights into binding international law, the establishment of a permanent International Criminal Court, regional

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human rights mechanisms like the African Human Rights Court and the Association of Southeast Asian Nations have all advanced the efforts for the protection of human rights, and myriads of human rights NGOs continue to lobby states, international organisations and the international public for mobilisations against human rights violators (Schmitz/Sikkink 2002).

It is ironic that the use of the discourse by so many diverse groups ignores the interrelatedness of politics and human rights. Indeed, the problem of reducing human rights to legal norms, as identified by Parlevliet (in this volume, 16) is not merely one of incomplete analysis. It is in itself a political act that lends credibility and authority to those that speak in the name of human rights, and at the same time puts their claims beyond political contestation in the name of an indisputable universal truth. This move has significant consequences for the role of human rights in conflicts.

On the one hand, the language of human rights has been appropriated by a plethora of actors to support and legitimise their multifarious aims and objectives within a conflict environment – not all of them with conflict resolution in mind. Human rights articulations in conflict constitute a discourse that has been characterized by high malleability and international appeal, lending legitimacy and authority to its interlocutors for dispute and power contestation in the political arena, and therefore for the continued securitisation of conflicts. For example, wars in the former Yugoslavia were fought in the name of human rights. Croats used the discourse of human rights in their campaigns against Serbs in Croatia and against the Muslims in Bosnia. Likewise, conservative Serbian intellectuals and officials claimed that Serbs were the victims of 'genocide' and that their rights as Serbs were being violated in the rest of Yugoslavia.

On the other hand, human rights are portrayed as non-political, non-negotiable moral absolutes. Yet what is expressed as universal morality in the international legal order does not take into account that the concept emerged and developed in a specific history and tradition, namely the Enlightenment and liberal political philosophy. Several scholars have pointed to the limitations of such an apolitical human rights discourse. Evans (2001) questions the relationship between human rights and democracy and argues that the cause of human rights violations lies in the structures of the global political economy. Globalisation and its agents (multinational corporations, international financial institutions) support a very thin understanding of human rights without responsibilities. Similarly for wa Matua (2000), human rights express the basic Western liberal values and are being exported throughout the world, and especially the non-Western world. Although it is important to understand the contradictions that shape the human rights language of moral intervention, it is equally important to engage with its dynamic character for the accommodation of difference.

The human rights discourse is available to an unlimited range of actors as a means to pursue their political objectives. It has been constructed and articulated within the demands of social movements for equality and justice. It has been shaped by the struggles against authoritarianism, racial discrimination and colonisation as well as by mobilisation for the rights of workers, women, ethnic minorities and indigenous people. When it comes to being used by conflict resolution and human rights practitioners, its political character must be taken into account. Thus, conflict resolution and human rights practitioners should be better off to acknowledge the fact that the human rights discourse is far from being a universal and ahistorical doctrine, and to conceptualize it as an instrument for articulating the needs of the marginalised and the excluded, which is both political and legal in character.

# 3. The Effect of Different Kinds of Human Rights Articulations

Human rights and conflict transformation are seen as being inextricably intertwined and complementary. Human rights have been perceived as the cornerstone for the development of a stable environment in post-conflict societies, and most peace agreements include human rights in order to transform war-shattered states. In our view, human rights cannot be used as a panacea to overcome conflict. Moreover, the concept of human rights has never been uniform. It is therefore not the invocation of human rights *per se* that is problematic, but how they are invoked. This takes two forms: the first one has to do with the reference point of the human right being invoked, namely the individual or the group; the second one has to do with the inclusivity of a human right, i.e. whether or not it is related to only one conflict party and thus reinforcing antagonisms. The articulation of human rights is more likely to have a de-securitising effect, in the sense of moving issues off the security agenda and back into the realm of public political discourse through no longer articulating them as existential threats legitimising extraordinary measures (see Williams 2003, 523), if they refer to the individual and if they are characterized by inclusivity (Pia/Diez 2009).

In relation to conflicts, the first distinction between individual and collective rights is very important in that collective rights make reference to and therefore inscribe particular group identities. They refer to the right of the collective as a whole and cannot be reduced to individual rights (Sanders 1991; Dinstein 1976). For example, there is a difference between the invocation of the right to speak the Kurdish language and the right of the Kurdish culture to exist. In this example, both rights are intertwined in that the collective right to culture presupposes the individual right to speak one's mother tongue. Yet collective and individual rights can also clash with each other, especially when the collective rights are invoked to protect cultural practices that infringe on individual freedoms. The underlying problem here is that the claim for collective rights may be seen as a reassertion of the traditional community over the individual (Howard 1992). At the same time, collective rights seem pertinent for the survival of cultures, especially in a globalised era where local and regional expressions of identity have been curtailed. It is clear that collective rights cannot be reduced to individual rights. Nevertheless, activists have the option to pursue their aims by either invoking individual or collective rights. In the Kurdish example, demanding the right to speak one's language may not be sufficient to guarantee the survival of group culture in the eyes of those who are predominantly interested in such survival, yet such a right is a precondition of and first step towards the articulation of Kurdish identity, without presupposing its undisputed existence.

Thus, the Human Rights Association (IHD) in Turkey initially focused its activities on demonstrating the state's responsibility in the persistence of violence in the region as a result of the continuing violations of the human rights of Kurds. But the criticisms and the negative political climate have led the IHD to move towards a more multicultural discourse, promoting the rights of all Turkey's citizens. In this way, it has managed to provide a common platform for the better co-ordination of human rights activities and a more receptive environment for these demands (Tocci/Kaliber 2008). On the other hand, the Mesopotamia Culture Centre in Turkey, which exclusively advocates Kurdish collective rights, is perceived as an actor that promotes a hidden separatist agenda.

The second dimension to human rights articulation is the difference between inclusive and exclusive articulations. In relation to individual rights, it is rather difficult to discern how this is possible, as individual rights are by definition universal and therefore inclusive. Yet such rights are often, and especially in conflicts, only invoked for individuals that belong to a particular group, and thus can be called "group rights". Here we have cases where individual rights are claimed on

behalf of members of a group because of discrimination or other forms of disadvantage. Once more, activists can choose to articulate rights in a universal manner or to invoke them merely on behalf of the members of the group for which they speak.

For example KAMER, a Kurdish women's rights organisation, has adopted a more neutral and universal language of human rights and left behind the prevalent discourse of many Kurdish human rights organisations that were interested exclusively in the protection of Kurdish rights as supported by the Kurdish nationalist movement (Tocci/Kaliber 2008). Thus, KAMER works for improving conditions for all women in Turkey by avoiding the use of a securitising discourse that reintroduces binary oppositions. On the other hand the main objective of Turkiye Kamu-Sen, a confederation of trade unions and public employees, is to promote the rights only of its members. Turning the usual perception of the Kurdish-Turkish conflict on its head, it has focused on the human rights of Turks and adamantly denied the collective dimension of the Kurdish question (Tocci/Kaliber 2008). In this case, the rejection of a Kurdish culture and identity generates further misunderstandings and discrimination for the Kurds.

It appears that inclusive articulations of human rights tend to have a de-securitising effect. For example, the Turkish business association (TÜSIAD) has included the Kurdish question in their efforts to promote democratisation and further reforms in Turkey. Thus, this civil society organisation tries to cultivate a friendlier and more inclusive environment for business and EU accession prospects and ultimately contributes to peacebuilding (Tocci/Kaliber 2008). Of course, even for an inclusive articulation to have an effect, many contextual factors must come to the fore, especially the timing of the articulation. Likewise, we suggest that there is no simple correlation between human rights and conflicts. The way that human rights are articulated should always be problematised and analysed, in order to have a better understanding of their relation.

# 4. Conclusion

The arguments we put forward in this paper do not question the substance of Michelle Parlevliet's excellent paper. Rather, we see them as an extension that emphasises the discursive logic of human rights articulations and its consequences for conflict transformation. Within such a framework, we have pointed to the inherently securitising logic of human rights articulations and the consequential danger of intensifying conflict. As a way forward, we argued that human rights articulations should turn to the past rather than contemporary foes as their 'other', emphasising a shared responsibility. This would create a reflexive identity, an identity that acknowledges its own failings and that includes both sides of a conflict, while providing the legitimising basis for an institutional framework that makes human rights violations less likely in the future. Clearly, this means that those who articulate human rights must take that leap and not use history to reproduce present conflicts. This may be a lot to ask, yet it may also be a litmus test to see which civil society organisations are really interested in human rights, rather than the reproduction of conflict identities.

Secondly, we argued that the articulation of human rights as purely legal concepts not only renders the nature of human rights incomplete but also restricts the debate about their role in conflicts by turning them into an apolitical, technical and universally valid concept. Ironically, such an apolitical concept, as we discussed in our second step, can be used to reproduce conflict. Thus, the role that human rights articulations play in protracted conflicts such as Cyprus is rather problematic (see Demetriou/Gürel 2008, 10-11): here it is exactly the reference to their legal nature, combined with their use in the name of identity claims on both sides, that makes human rights a core part of

the conflict rather than a means for conflict transformation. We have therefore argued in favour of an openly political notion of human rights that aims at protecting and integrating those that are marginalised into a broader societal framework. And finally, we developed a four-fold categorization of human rights articulations along two axes: individual/collective and inclusive/exclusive. We argued that in most cases, actors in conflict societies can articulate human rights in more than one way, and that it is inclusive articulations that are more likely to lead to conflict transformation.

To reiterate, we did not want to suggest that human rights cannot make a contribution to conflict transformation. Nor did we want to argue that it is always wrong to invoke human rights even if this leads to an intensification of conflict at least in the short to medium term. Our arguments do however point to the highly ambiguous role of human rights articulations in conflict, and they serve as a warning both to actors in conflict and analysts that there are different ways of making human rights claims, with different consequences for the future of conflict societies.

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