

Journal of Human Security Studies

Vol.4, No.1 Spring 2015

Table of Contents

Speical Issue of the 4th Annual Conference of Japanese Association of Human Security Studies, September 2014

Dignity, Human Security, and Global Governance

Craig N. Murphy, University of Massachusetts, Boston p.1

Dignity as a Cultural Contested Concept: Comments on Prof. Craig Murphy' s Keynote Address

Giorgio Shani, International Christian University p.13

Special Message from the President of the Association

Kinhide Mushakoji, Osaka University of Law and Economics p.17

* * *

The Pitfalls of the “Right to Live in Peace” : Human Security after UN General Assembly Resolution 66/290

Ryo Watanuki, International Christian University p.20

The Impact of ICC Interventions on Kenya, the Ivory Coast and Human Security – A Comparative Analysis from the Initiation of Investigations to the State Responsibility –

Hiroshige Fujii, Secretariat of the International Peace Cooperation Headquarters, Cabinet Office p.41

Field Explorer: A Digital Tool for “Studying in the Field”

Yosuke Tsuchiya, Komazawa University p.62

* * *

Review Essay

Reading and Comprehending Giorgio Shani, Religion, Identity and Human Security — A Question Posed to Human Security Studies—

Seiko Hanochi and Kinhide Mushakoji
Chubu University and Osaka University of Law and Economics p.79

Dignity, Human Security, and Global Governance

Craig N. Murphy¹

It is an honor to have been invited to address this conference. In 2010, when Maria Ivanova and I were invited to design a research degree program in global public policy at the University of Massachusetts Boston, we chose “human security” as the defining goal of the policy analysis that students would pursue. This organization is the world’s leading association for the study of human security, both because the Japanese government has generously supported research in the field, and, more significantly, because scholars from Japan, along with their collaborators from every part of the world, have been at the forefront of the development of *comprehensive* human security analysis. Therefore, this association is likely to be the seed of the first global association of human security scholars. For all these reasons, it is a signal honor to address you.

I will speak about human security, global governance, and dignity in that order, saving the most difficult topic for the end.

I first want to recall one context in which the concept of human security was developed and why it was conceived of as a comprehensive principle under which all of the work of United Nations system could be organized.

Next, I will turn to global governance. I will discuss what today’s system of global governance actually does, what it should *not* do, and what it should do if we take a comprehensive view of human security. I will argue that, in an ideal world, the system of global governance would confine itself to addressing problems that can only be solved at the global level. While global problems – including climate change, rising inequality, and recurrent global financial crises – are all human security problems, the human security agenda is much broader than that. An ideal system of global governance needs to address that agenda by advocating attention to fundamental human needs and universal human rights at all levels, and by debating the precise nature of those needs and rights.

Finally, I will turn to dignity. To be treated with dignity and respect is a fundamental human right. However, dignity is a social construct. What it means to respect this right differs from social context to social context. Moreover, respecting human dignity may, in some cultural contexts,

¹ Professor, Department of Conflict Resolution, Human Security and Global Governance, University of Massachusetts at Boston. Before taking the current position, he held various positions at Wellesley College and Brown University. He is a founding editor of the award-winning journal, *Global Governance* (1996) and served also as the President of the International Studies Association (2000-01). His most recent book, *The United Nations Development Programme: A Better Way?* (Cambridge University Press, 2006), has been translated into Japanese, 『国連開発計画（UNDP）の歴史』（明石書店、2014）.

challenge other human rights. The global governance system should be to provide a respectful space in which these issues can be debated.

Let me begin, then, with

1. The Historical Context of “Human Security”

In 1989, UNDP Administrator Bill Draper recruited the distinguished Pakistani economist Mahbub-ul-Haq to provide a new level of critical intellectual leadership for the UN’s development work. Based on his long involvement in the global debate over the ultimate purpose of the development enterprise, Haq articulated the concept of human development and launched what quickly became UNDP’s signature research program, the *Human Development Reports*. In 1994, Haq used the annual global-level *Human Development Report* to articulate the concept of human security, or, in brief, “*secure human development*.”²

As was the case with human development, the focus of human security was on what happened to the individual rather than what happened to the nation-state, the national economy, or any other entity. Human security analysis is concerned with people “in their total context of living.” It directs our attention to basic priorities such as life, health, and dignity and it considers degree to which ordinary people are able to fulfill these basic priorities.

Haq’s development of this new concept was influenced, in part, by the priorities of Gus Speth, the man who Draper successfully recommended to be his replacement at UNDP in 1993. Speth’s priorities reflected those of his boss, Secretary General Boutros Boutros Ghali. Given the end of the Cold War, UN member governments, including the most powerful, had encouraged Boutros Ghali to pursue a comprehensive reform of the United Nations system. Boutros Ghali gave Speth that job and Haq, who was still looked to for critical intellectual leadership, provided “human security” as an umbrella concept under which all the work of the UN system could be organized: the development work of UNDP, UNICEF, and the like, along with the security work of the humanitarian agencies and the peacekeepers serving under the Security Council.³

Much to Speth’s and to Boutros Ghali’s bitter disappointment, the major powers, especially the United States, prevented the rationalization and comprehensive reform that Speth designed. Haq had been realistic about the likelihood that the greatest powers would be reliable partners in this effort.

² Craig N. Murphy, *The United Nations Development Programme: A Better Way?* (Cambridge: Cambridge University Press, 2006), pp. 241-42.

³ Ibid., pp. 276-77.

After all, the most powerful governments were quite willing to marginalize the UN proper. On development issues, the United States and its closest allies supported the so-called Washington “Consensus,” which was also advocated by the IMF and the World Bank, while the development agencies of the UN-proper (the agencies that report to the Secretary General) found themselves arguing against this supposed “consensus,” as Richard Jolly – a longtime leader of UNICEF and Haq’s successor at UNDP – did in his work on structural “adjustment with a human face.” In addition, by 1994, the US was pursuing a fundamental separation between the proposed International Criminal Court, perhaps the primary institutional innovation of the era that would serve the human security agenda, and, eventually the US would be opposed to the Court altogether. Even more significantly, the greatest global governance innovation of the era, the World Trade Organization, was deliberately designed to be as separate as possible from the UN system. Moreover, the greatest powers selectively pursued seemingly global ends through regional organizations: NATO, NAFTA, ASEAN, etc. Therefore, Haq, wisely and realistically, did not permanently couple the human security agenda to the agenda for comprehensive UN reform.

Most of this historical context of the concept of human security is something that all of us know, or at least that we once knew. But I believe that there is one further thing about Haq’s context that is primarily known only to those who worked in the UN or to scholars who focus on the UN with the perverse intensity of bird watchers or of British train-spotters:⁴

Bill Draper, the man who brought Haq to the UN, was one of the greatest innovators in the history of the development work of the UN-proper. Those of us on the outside typically point to his appointment of Haq and the creation of the Human Development Office as his greatest innovation, but those who work in the UN are more likely to point to his institutionalization of a strategy of having the UN development system “run on two tracks”: the established track of providing services to governments in support of their national development plans and a new, equally important, track of “advocacy.” Draper encouraged UNDP staff to argue for development strategies they believed in, things that were not necessarily the things that governments embraced. Draper made something that most UNDP staff members wanted to do, and had long done, but had felt guilty about doing, a formal part of their jobs.⁵

Haq’s work on human development and human security was, in part, aimed at articulating the values that UNDP staff had long embraced, and privately espoused. Conversely, the existence of the

⁴ This analogy comes from Michael Pugh, who admits to being such a UN scholar.

⁵ The policy of “running two tracks” was identified by a leader in UNDP’s Asia and Pacific Regional Bureau, Arthur Holcombe, “Running on Two Tracks,” (New York: UNDP Regional Bureau for Asia and the Pacific, 1992). The institutionalization of the policy under Draper is discussed in Murphy, *UNDP*, pp. 238-40.

advocacy track assured that human security analysis would continue to be valued within UNDP even if the human development paradigm were to be supported by only a few member governments.

Other UN agencies, at the same time or shortly afterward, embraced advocacy by tying their work to the values articulated in one or more of the human rights treaties. UNICEF's adoption of the Convention on the Rights of the Child is perhaps the most well known case of this. Again, due to the overlap between the human rights agenda and the human security agenda, the continuing global-level policy significance of the human security concept was further assured.

2. Global Governance

While I doubt if anyone here would argue that the concept of human security was relevant *only* at the global level, it is worthwhile to think about what the human security agenda at the global level *should* be. This is a question that Haq did *not* address even if one of motivations in coming up with the idea was to provide umbrella purpose for the post-Cold War UN system.

To think clearly about this question, it is useful to introduce another concept that was developed in the years immediately after the Cold War: "global governance."

Of course something like global governance existed long before we had the name. Global governance might be better called "globalizing governance," the ever more-inclusive international governance that has existed since the Industrial revolution. That globalizing international governance consists of the people, processes, and organizations that have governed transnational activities of all kinds.

The activities of formal, global-level, intergovernmental organizations (supplemented by activities of quasi-governmental organization such as ISO and Intelsat) give us a picture of what this globalizing international governance has done in the past and continues to do today, perhaps not a complete picture, but one that allows us to observe, directly or indirectly, all of the 10 to 20 specific processes of internationalizing governance that scholars and policy makers such as John Groom, Paul Taylor, and Anne-Marie Slaughter have identified over the years. ⁶

In a 1994 book, *International Organization and Industrial Change: Global Governance since 1850*,⁷ I argued that the successive waves of global-level organizations have all focused on fostering the inherently globalizing system of industrial capitalism.

⁶ Cf. A. J. R. Groom and Paul Taylor, eds, *Frameworks of International Cooperation* (London: Pinter Publishers, 1990), Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004).

⁷ Published in Cambridge by Polity Press.

They created ever-larger market areas for industrial goods in part by establishing rules for trade in the way that the WTO does. Perhaps more fundamentally, they did so by supporting international transportation and communication systems, by establishing international industrial standards and international protections for intellectual property, and by maintaining regimes for international money and finance.

Without these market-creating activities, the world would not have seen the successive waves of growth in the industrialized world after the initial Industrial Revolution of the cotton mills and the steam engine: We wouldn't have seen the railway age of the mid-19th century, or the end of the 19th century "second industrial revolution" led by the electrical and chemical industries, or the mid-20th century automobile and jet age, or the current information age.

In addition to these market creating activities, the people, processes, and organizations that make up global governance have also been directed toward appeasing social forces that would otherwise oppose the extension of industrial capitalism – initially, farmers and industrial workers in the first countries to industrialize. Later, various social forces within the periphery and semi-periphery of the global industrial core became equally important potential opponents. International development work, which, from the beginning, absorbed most the staff and funding of the UN system, is directed toward this end. Much of the humanitarian and peacekeeping work under the Security Council had the same focus, as Mark Zacher's classic Cold War-era empirical study points out: Most Cold War-era peacekeeping and humanitarian work was directed to conflicts between Third World allies of the most powerful countries in the capitalist core.⁸ It supplemented the big power diplomacy that managed the challenge to capitalist supremacy coming from the Soviet Union and China.

Finally, from the beginning, the political space created by the system of global(izing) governance gave a variety of transnational actors forums in which to articulate and debate universal norms, legitimate and further build an initially private system of global humanitarian organizations that they had created (for example, the Red Cross and Red Crescent societies), and highlight the injustice and unsustainability of the current relationship between humanity and the rest of the living world.

If this account of global governance is correct, then, with all due respect to Mahbub-ul-Haq, we should recognize that the global governance systems' attention to human security has only been incidental to its more enduring purpose, even if much of the work that the UN systems was doing in

⁸ Mark W. Zacher, *International Conflicts and Collective Security* (New York: Praeger, 1979).

1994 could be made to fit under that umbrella. Robert W. Cox's contemporary assessment that the UN had become a system of global "poor relief and riot control"⁹ may have been more accurate than Haq's.

The idea that human security could become the focus of global governance was only aspirational, but no less important because of that. As human rights theorist Winston Langley noted in a similar context,¹⁰ a revolutionary idea like Haq's suggestion that human security was the true agenda of UN system "cannot be assessed on whether it has succeeded or failed in having its principles implemented so far, but rather on whether the values it stands for might advance normative changes in the existing ... order."¹¹ In that sense, Haq's equation of human security with the goals of the UN system was more an argument about what should be done, not one about what had been done.

To think clearly and even more comprehensively about what global governance should do it may be best to start by considering things it currently does that it need not do. One of my professors, the late Andrew M. Scott, used to argue that what has, in fact, been the main function of global governance – supporting the globalization of industrial capitalism – is precisely one of those things it should *not* be doing.¹² After all, the main moral justification for this market-promoting activity is the benefit to individuals from the economic growth that would come from the ever-wider operation of the principle of comparative advantage, but we actually don't need that growth. The first *Human Development Report* had proven that. Looked at globally, we had more than enough income for all people to enjoy high human development. The real problem is distribution.

Moreover, Scott argued, ever-greater market integration has some terrible downsides. For example:

1. We simply do not know how to regulate a hyper-integrated global financial system and periodic financial crises are an inevitable result.
2. A globally-integrated capitalist economy produces inequalities that undermine democracy and the rule of law that were essential for high levels of human development and, while we might know how to reverse that effect through regulation – Thomas Piketty's recent call for a global progressive tax on wealth is something that Scott would

⁹ Robert W. Cox, "Critical Political Economy," in Björn Hettne, ed., *International Political Economy: Understanding Global Disorder* (London: Zed Books), p. 41.

¹⁰ Writing about the New International Economic Order.

¹¹ Winston Langley, "What Happened to the New International Economic Order," *Socialist Review* 20(3, July-September 1990): 264.

¹² Andrew M. Scott, *The Dynamics of Interdependence* (Chapel Hill: University of North Carolina Press, 1982).

have applauded – the political impediments to establishing such regulation are all but impossible to overcome.

3. Most significantly, our increasing globalized industrial economy creates global environmental problems at a much faster rate than we are able to solve them.

While I have always been uncomfortable with the radicalism of Professor Scott's analysis, I agree with him that global governance should be focused on problems that emerge at a global level and that we certainly do not have global problems of "too little trade," "too little economic integration," or "too little economic growth." Yes, for people in countries with limited markets, some degree of international economic integration is needed to achieve the economies of scale that would allow incomes high enough to support high levels of human development, but establishing that level of integration (where it does not already exist) would not require the maintenance and deepening of an unregulated and increasingly impossible to regulate global market system.

Moreover, the kind of global problems for which we need global governance include those environmental problems that are inherently global: the pollution of the atmosphere and its consequences, loss of biodiversity. Global health problems related to infectious disease are similar. And there are the financial crises and problems of increasing inequality that grow out of the already global economy.

There are probably others, as well. In a recent paper on the continuing significance of the work of the late Susan Strange,¹³ I argue that there are ten such problems. I take my definition of "global problems" and much of the list from Kishore Mahbubani who has cunningly argued, "Mao Zedong was right. We should always focus on the primary, not secondary, contradictions. And right now, our primary global contradiction is painfully obvious: the biggest challenges of governance are global in origin, but all the politics that respond to them are local."¹⁴

There are other recent lists that largely overlap with Mahbubani's and mine. Compilers of such lists include for US Secretary of State Madeline Albright, former World Bank Vice President for Europe Jean-Francois Rischard, former UNDP Administrators Kemal Dervis and Mark Malloch Brown (separately), the Global Economic Forum's Global Redesign Initiative, and some leaders associated with the World Social Forum.¹⁵

¹³ Craig N. Murphy, 'The Westfailure System' Fifteen Years On: Global Problems, What Makes Them Difficult to Solve, and the Role of IPE," Center for Governance and Sustainability, John W. McCormack Graduate School of Global and Policy Studies, University of Massachusetts Boston, January 2014.

¹⁴ Kishore Mahbubani, 'The Problem with Presidents,' *Newsweek*, 30 August 2010.

¹⁵ Madeline K. Albright, *Memo to the President Elect* (New York: Harper Collins, 2008), Jean-Francois Rischard, *High Noon: Twenty Global Problems: Twenty Years to Solve Them* (New York: Basic Books), Mark Malloch Brown, *The Unfinished Global Revolution* (New York: Penguin, 2011), Kemal Dervis and Ceren Ozer, *A Better Globalization: Legitimacy, Governance, and Reform* (Washington, DC: Center for Global

Here are the first nine global problems on my own list:

1. Global environmental problems,
2. Pandemics,
3. International financial crises,
4. Increasing global-level economic inequality,
5. The weakening of democracy at all levels,
6. The nexus of international organized crime, illegal drugs, and terrorism,
7. The unregulated global arms trade,
8. The humanitarian consequences of dictators, warlords, and governments that do not, or cannot, protect the lives of those who are under their control, and
9. “Over”-militarization: the over-reliance on the military to solve economic and social as well as security problems.

Here I do not have time to defend this particular list. I offer it only as an illustration that such a list of problems that demand governance at a global level can be created, that people with quite different perspectives have created them, and that, whoever creates them, such lists tend to overlap a great deal.

The list-makers tend to agree that global governance should be limited to such a relatively narrow set of problems largely in order to help preserve democratic values that are also inherent in the human security perspective. If secure human development involves maximizing the opportunity for people to have equal involvement in the critical decisions that affect their lives, then we want to have decisions about governance take place at the lowest level possible, that is to say, at the level at which each problem emerges. This is, of course, the basic argument for subsidiarity.

When I make this argument to my students, both undergraduate and graduate, many disagree. They say that the central purpose of institutions of global governance should be to secure universal human rights, fulfill fundamental human needs, and protect the natural environment everywhere.

I respect their point of view, but ask them to consider employing the distinction developed by Bill Draper between the service providing activities of agencies global governance and their advocacy roles. I agree with these students that global governance needs to focus on a tenth problem

Development, 2005), and on the Global Redesign Initiative and critical views from the Social Forum see Harris Gleckman, “Readers’ Guide: Global Redesign Initiative, Center for Governance and Sustainability, John W. McCormack Graduate School of Global and Policy Studies, University of Massachusetts Boston, <http://www.umb.edu/gri>.

of

10. Debating and advocating for respect of universal human rights, fulfillment of basic human needs, and protection of the rest of the living world

Nevertheless, because the impediments to *assuring* those rights and that respect are, in most cases, ones that emerge at other levels, this should not be a problem addressed at the global level.

However, there are essential links between the global and local. To illustrate, I turn to the topic of this particular conference,

3. Human Dignity

We are all aware of the *arguments* that there is no agreement on some set of fundamental human rights or even basic human needs: that the international conventions on human rights are simply a reflection of Western philosophical traditions, that they were imposed by the Western victors in the Second World War before decolonization and without any serious consideration of other traditions, and that the ideas of basic human needs that have found their way into the concept of human security come from an equally partial and suspect Western tradition.

I have even made that last argument myself, although I concluded that this particular parochialism has not undermined most human security analysis.

The argument about the non-universality of human rights is more objectionable. There are some simple facts that should make us at question that assertion: The inclusion of human rights in the UN Charter and the development of the Universal Declaration were largely projects of Chinese and other East Asian participants in the wartime and post-Second World War conferences due to their sense of the tragedy of the rejection of Japanese and Ethiopian human rights language at the Versailles Conference at the end of World War I. The main authors of the actual declaration included Charles Malik of Lebanon, China's CHANG Peng-chun, and the rarely acknowledged Emile Saint-Lôt of Haiti. Even more significant is the research that finds a "moral foundation for world culture" in the "myth" (in the Gramscian sense) "of the unity of mankind" found in all "axial age" philosophical and religious traditions. Much of the rhetoric of human rights and human needs may come from the West, but it is not inherently Western.¹⁶

¹⁶ Donald Puchala's Academic Council on the UN System 1995 John W. Holmes Memorial Lecture, "The Ethics of Globalism," provides an excellent introduction to many of these themes,

Moreover, as Partha Dasgupta has pointed out, it is perfectly possible to reframe rights-based or capabilities-approach philosophical arguments in utilitarian or other philosophical terms.¹⁷ Relatedly, Amartya Sen, using the work of Cass Sunstein, has pointed to the productively clever way in which Haq left the human development idea and its philosophical foundations open.¹⁸ However, delving into these topics may be too much philosophical trainspotting for our purposes at this conference.

Nonetheless, even if there are universal human rights and basic human needs, some rights demand fundamentally different forms of respect in different cultural contexts. The universal right and need to have our dignity respected manifests itself in different ways simply because what constitutes dignity is socially constructed (but of course, no less real for that reason) and its affirmation most often comes from social interaction.

Yes, there are some things about dignity that are universal: Destitution and torture are always affronts to human dignity, as is the refusal to acknowledge those who are poor, disfigured, or otherwise outcaste. Canadian human rights scholar Rhoda Howard-Hassmann reminds us, “The Babylonia Talmud teaches that to give a coin to a poor person constitutes six blessings; to comfort him with words constitutes eleven; to do both constitutes seventeen, the numerical equivalent of the good.”¹⁹

Yet, many affronts to dignity are more complex and culturally specific, in fact, many are culturally “loaded”: They are sensitive and potentially embarrassing.

An example is needed, but due to the fact that these cases are often so culturally loaded – so sensitive and potentially embarrassing – I will try to limit the embarrassment of the example to myself, but let me apologize ahead of time for any embarrassment it might cause anyone who is listening.

I was born in the United States in the 1950s when almost every infant boy was circumcised. There was some accepted medical argument about why this was good, but the main argument that parents accepted was that it would be an affront to dignity for their sons to be different from other boys. When I was 12 and 13 – a time in life when socially constructed dignity seems inordinately important! – I lived in Norway where the practice was different. At my international school the boys from the USA were like the boy from Israel and the boy from Egypt, but different from almost all of

http://acuns.org/wp-content/uploads/2012/09/WebPagePuchala_EthicsOfGlobalism.pdf.

¹⁷ Partha Dasgupta, *An Inquiry into Well-being and Destitution* (Oxford: Oxford University Press, 1995).

¹⁸ Amartya Sen, “A Decade of Human Development,” *Journal of Human Development* 1(1, 2000): 22.

¹⁹ Rhoda E. Howard-Hassmann, “The Yellow Sweatshirt: Human Dignity and Economic Human Rights in Advanced Industrial Democracies,” in *Human Rights in the United States: Beyond Exceptionalism*, Hareen Hertel and Kathryn Libal, eds (New York: Cambridge University Press, 2011), pp. 41-42.

our Norwegian friends. Despite typical Norwegian reticence and the strong training in intercultural sensitivity that the school offered, I soon learned from one of my Norwegian friends that his parents believed we different boys were victims of serious violations of our human rights and his parents worried and talked about what they should do or could do to about this. Eventually, the Israeli, the Egyptian, and I had an earnest conversation with this Norwegian friend – especially about how those of us who were circumcised would be treated in our own societies if our parents had followed the Norwegian practice.

There are many things that may seem like violations of universal human rights that, looked at from within a specific context, are means of assuring human dignity. Many of them happen only to children or other “minors.” But some dignity enhancing cultural practices affect everyone. Again, in my own country, many people – some research suggests that *most* people – actually believe that an effective welfare state and any attempts to limit the growth of inequality threaten the autonomy and equal opportunity that are the *sine qua non* of human dignity. In contrast, most thoughtful scholars of human rights and human security, including Professor Howard-Hassmann, believe the exact opposite. I was quoting, above, from an article in which she argues that case.

Perhaps by becoming aware of arguments like Howard-Hassmann’s, US citizens can be convinced to change our views. In fact, if we take the ideas of basic, not socially constructed, human needs and universal human rights seriously it is essential that we be confronted about the possible contradiction between the ways we pursue human dignity and the demands of other human needs and rights. Certainly, some of this confrontation should be part of the advocacy work of the organizations and people involved in global governance.

There are examples of very effective advocacy work of this sort. Ten years ago UNDP ran a series of workshops among religious leaders throughout the Arab world to debate what the ethical response should be to the HIV/AIDS epidemic that had not yet arrived in Southwest Asia and North Africa, but that certainly would. The resulting principles proved more effective in helping contain the epidemic, and were significantly more humane, than the immediate responses of many religious leaders in Europe and the Americas where the epidemic arrived earlier. And, significantly, as a result of these dialogues both Catholic and evangelical Protestant leaders in the Arab world advocated very different policies than colleagues in the Europe and the Americas had. (It was not, as some might think, just a question of Muslim leaders being more thoughtful and humane than Christians.)²⁰ Similarly, the local NGO, Tostan, supported by UNICEF, has contributed to major cultural change

²⁰ Murphy, *UNDP*, pp. 325-28.

throughout Francophone West Africa and the Gambia by facilitating community dialogues about female genital cutting, which was, until quite recently, widely considered a dignity-enhancing practice throughout the region.²¹ Note that in both the Tostan and UNDP-Arab religious leaders cases, the advocacy involved was simply creating the space in which the communities could debate their practices with some awareness of the “universal” norms. They were not being told what to do. Nor were being “sold” on the “universal” norm. They were simply encouraged to reflect on their own practice in light of the norm and of the experience of other communities.

These examples of something that global governance should be doing to foster human dignity may not seem central to a conference on human security where the focus must be on the most basic priorities such as life and basic health and the affronts to human dignity that appear at that level. Nevertheless, I encourage you not to ignore the cultural specificity of many of the bases of human dignity and the complex, practical work that is needed to intertwine the pursuit of human dignity and the assurance of human security.

To go back to 1994 and to the context in which the concept of human security was developed: In retrospect, perhaps, despite what he often said, Haq’s goal was not to give the UN system an umbrella agenda to help make sense of its role in the world after the Cold War. Perhaps it was just to remind everyone of the agenda that global governance, and governance at all other levels, should have in addition to the agenda of pursuing greater wealth and power (at least for some) that was so prevalent in those days of the Uruguay Round and the Washington Consensus. It is clear, in retrospect, that, in Winston Langley’s words, the values for which the early advocates of human security stood *have* advanced normative changes in the existing international political-economic order: the values that at least the UN system, its advocates, and those who study global governance consider and pursue are certainly more complex and perhaps more compassionate than they were two decades ago. That is the work that we will continue at this conference.

²¹ Karen Monkman, Rebecca Miles, and Peter Eastman, “The Transformatory Potential of a Village Empowerment Program: The Tostan Replication In Mali,” *Women’s Studies International Forum* 30(6, 2007): 451-64.

Dignity as a Cultural Contested Concept: Comments on Prof. Craig Murphy's Keynote Address

Giorgio Shani¹

It is a great honor to have been invited to comment on Prof. Murphy's excellent keynote address. Prof. Murphy throughout his career has played a pivotal role in championing critical approaches to International Political Economy and opening up space, particularly during his tenure as President of the ISA, for scholars to engage critically with International Relations. In keeping with its author's legacy, this paper has opened up a variety of different ways to think critically about Human Security. Following Prof. Murphy's colleague Prof. Robert Cox, I use the term critical in a double sense to denote not only the questioning of assumptions which has become *de rigeur* in International Relations today but also the commitment to the possibility of emancipation which is immanent in every social order.

Twenty years ago, Human Security posed a powerful – yet immanent- challenge to the orthodoxy of the national security paradigm and neo-liberal governmentality. When the term was introduced in 1994 in the United Nations Development Program *Human Development Report*, authored by Mahbub ul Haq, it was indicative of an attempt to posit an alternative vision of international relations to that of George Bush Sr.'s 'New World Order' of unipolarity and free markets, one more in keeping with the spirit of the UN charter. 'For too long,' the authors of the Report stated, 'the concept of security has been shaped by the potential for conflict between states'.² In contrast with conventional understandings of security informed by the 'national security paradigm' which equated security with external threats to state boundaries, human security signified safety from 'the constant threats of hunger, disease, crime and repression.' It, furthermore, connoted 'protection from sudden and hurtful disruptions in the pattern of our everyday lives – whether in our homes, in our jobs, in our communities, and in our environment'.³ This appeared to place the concept of human security in opposition to the prevailing economic wisdom at the time which saw 'shock therapy' as the only viable way for newly emerging economies to integrate themselves into a global economy run on capitalist lines.

However, Human Security today is no longer critical. In part, this is because, as Prof. Murphy points out, many of its assumption have now become part of the global mainstream. However,

¹ Director, Social Science Research Institute, International Christian University, Japan

² United Nations Development Program 1994, 3.

³ *Ibid.*, 3.

‘mainstreaming’ Human Security has come at a considerable cost to its commitment to emancipation. Despite its recent adoption by the United Nations General Assembly in September 2012⁴ and its institutionalization through the United Nations system through the Trust Fund for Human Security, Human Security has hitherto failed to contest the hegemony of the ‘national security paradigm’ within the theory and practice of international relations. Widely discredited following its inability to provide security from the existential threats caused by hunger, poverty, disease, repression, environmental disasters and terrorism, the ‘national security paradigm’ continues to provide the dominant framework for ascertaining and dealing with security threats. Human security, on the other hand, continues to be ensconced in a liberal straightjacket that reduces the human to a bundle of needs and wants, to be protected and empowered from a range of existential threats- from physical violence to hunger, disease and illiteracy- by the state and the ‘international community’ of territorialized states. In its present instantiation, it lends itself to co-option and incorporation into the ‘national security paradigm’ which divides humanity into self-contained units with different interests and capabilities, thus naturalizing war, poverty and conflict; and a neo-liberal world order with which it shares fundamental ontological premises.

However, the ideal of human security—a world free from fear and want— remains a relevant yet distant aspiration for the majority of humanity, particularly in the light of the global financial and unfolding environmental crises. The problem for human security, in short, is that it continues to be articulated in terms unintelligible to the majority of the subjects in whose name it speaks: humanity. Humanity, as I argued in my recent book *Religion, Identity and Human Security* (Routledge 2014), cannot be assumed *a priori* but must be understood from *within* different cultural traditions.

It is here that Prof. Murphy’s discussion of human dignity provides us with concrete examples of how to further the Human Security agenda in a culturally diverse world. Dignity for Prof. Murphy is not the secularized *dignitatis humanae* of the Catholic Church which derives from *imago dei*, the belief that man is made in the image of God and therefore all human beings have a natural right to be treated equally but is *socially constructed* and therefore *culturally nuanced* (in contrast with the purported universality of Human Rights). Prof. Murphy cites the examples of the UNDP which ran a series of workshops among religious leaders throughout the Arab world to discuss the ethical response to the HIV/AIDS pandemic. The responses helped not only to curtail the impact of the pandemic but, it is implied, helped preserve the *dignity* of the sufferers themselves in spite of the prevailing tendency to either treat them as a security threat (in ‘secular’ terms) or blame the

⁴ United Nations General Assembly, 2012.

affliction on their proclivity for sin (in orthodox religious traditions). Similarly, Prof. Murphy cites the example of the local NGO, Tostan, supported by UNICEF, which has contributed to major cultural change throughout Francophone West Africa and Gambia by facilitating ‘community dialogues’ about Female Genital Mutilation (FGM), which Prof. Murphy correctly points out was considered a dignity enhancing practice in that region.

Turning to the male equivalent of FGM, Prof. Murphy bravely and painfully (not least for him) makes the case for similarly regarding circumcision to have been ‘a dignity enhancing practice’ in the context of 1950s America but *not* 1960s Norway. While I have some sympathy for his argument having been subjected to the same fate in Chicago in the 1970s, I would like to draw a distinction between the importance of this rite for US parents who accepted the argument that ‘it would be an affront to dignity for their sons to be different from other boys’ and to his Israeli and Egyptian friends. Although not a central doctrinal tenet of faith, circumcision for Jews and Muslims is a cultural practice which provides them with a sense of *ontological* security; a sense of meaning which comes from belonging to a community. Circumcision is a marker of the *identity* of that community, particularly in a minority or Diaspora setting such as 1960s Norway. In short, it may be considered the equivalent of the *hijab* or *burqa* (and even Turban) in contemporary Europe. Like Prof. Murphy’s well-meaning friends, European states such as France consider the *hijab* and especially the *Burqa* to be an affront to dignity; here the dignity of women. Their response has been to ban it, thus preserving the *dignity* of the woman at the expense of her *Muslim* identity. By banning the *hijab* in public schools and the *burqa* altogether, the French (amongst others) metaphorically strip Muslim women of the security of belonging to a community bound by culture and faith, a community of meaning, and therefore of their *dignity* as Muslims. As I have argued in the book, the banning of head-coverings reduces Muslim women to what Giorgio Agamben termed ‘bare life’. This differed from the Aristotlean term *bios* which denoted a qualified life: a life with *dignity*, endowed with meaning.

The *hijab* cannot be compared to headscarves which fashionable teenage French girls may wear at school since the latter can be removed without reducing them to ‘bare life’ (i.e. without cost to their *ontological* security). Being forced to remove headscarves (which most choose not to wear) is felt by many Muslim schoolgirls to be an affront to *their* dignity to an even greater extent than being informed that circumcision is an abuse of their fundamental human rights is for their brothers. Unlike their Jewish and Muslim counterparts, secular and Christian parents in the US had a choice on whether their sons would be circumcised. Not being circumcised may have been considered an affront to their dignity as *boys* growing up in the US in the 1950s but could not jeopardize their

dignity as Americans. Some cultural practices, in short those related to religion and identity, are more important to 'human security' than others.

By drawing our attention to these examples in his keynote address, Prof. Murphy underlines the importance of *culture* not as primordial attachments but as frameworks of meaning through which the individual can gain dignity. In so doing, Prof. Murphy opens up the possibility of Human Security regaining its *critical* edge in a 'post-secular,' multicultural world.

President's Message from Peace Boat¹

Dear Guests and Colleagues of the Association:

I send you this video-message from Peace Boat, and express both my regret to be unable to attend the Fourth Annual Conference of the Japan Association for Human Security Studies and my hope that I can put in an international context the activities of the Association regarding Disaster Response, the main theme of this Sendai Conference.

Before doing so, I must express the gratitude of the Association for the guests, international and local. I wish to thank first Dr. Volodymir Tykhyy, Senior Research Fellow of the Academy of Science of Ukraine. His precious testimony from Chernobyl will enrich our discussion on the Great East Japan Earthquake accompanied by the explosion of the Fukushima Daiichi Nuclear Plant. I wish also to express our gratitude toward Dr. Craig N. Murphy, Co-Director of the Center on Governance and Sustainability at the John W. McCormack Graduate School of Global and Policy studies of the University of Massachusetts, Boston. His Keynote Speech on Human Security and Dignity will undoubtedly enable us to put our discussion on Disaster Response in the context of Human Security Studies, by enabling us to understand disaster as it affects the most important core value of human security, Human Dignity.

I wish to express our appreciation towards the participation of the local communities affected by the Great Earthquake, the Tsunami and the Nuclear Explosion. This Fourth Annual Conference is held in Sendai, thanks to the Tohoku University, the efforts of Professor Dinil Pushpalal and of all his colleagues and students. All participants, Japanese and foreigners, have come to learn from the direct witnesses of the victims of the Great East Japan Earthquake. The keynote Reports by Mr. Jin Sato, Mayor of Minami Sanriku and Mr. Tamotsu Baba, Mayor of Namie will provide us with the complex interactions of diverse natural and man-made factors which constituted the situation of acute human insecurity affecting the human dignity of all the citizens of the local communities including the Minami Sanriku and Namie cities. The salvage talk event by Mr. Munemasa Takahashi, and the photographs made available by the Tohoku Chiikizukuri Kyokai will expose all the participants to the realities human security researchers have to take into consideration in facing natural and man-made disasters.

I realize now how much I am missing, by not attending this Sendai Conference, being cruising

¹ *Peace Boat*, an NGO, established in 1983 with the explicit purpose of promoting worldwide peace, has engaged in a wide range of activities from anti-landmine campaigns, anti-nuclear power plants, to promotion of disaster relief. The organization is best known for promoting international exchange among the youths across the world.

on Peace Boat from Belem crossing the Atlantic Ocean and the Mediterranean Sea. Nevertheless, I can assure you that there is a worldwide network of people who share the same concern about disaster prevention, mitigation, preparedness and response minimizing the losses. The international community is preparing the UN World Conference on Disaster Risk Reduction in March 2015 in Sendai. I hope that this Conference of our Association will open up channels of dialogue and cooperation between Disaster Risk Minimization and Human Security Studies. I was happy to be on board of Peace Boat when the Mayor of Belem came on board to confirm officially the participation of the City of Belem in the network of cities for disaster response organized by Peace Boat. This trans-oceanic NGO develops a Disaster Relief Volunteer Training Program, and is an Organizing Partner of the Sendai UN Conference of March 2015.

This is why I wish to use this occasion to tell you that the Association for Human Security Studies is not alone in studying human insecurity reduction. We are part of a worldwide community, which shares with us a common concern about disasters, natural and man-made. We must be aware of this fact, and be ready to cooperate with anybody sharing our common concern.

We all work with the communities and the peoples affected by this particular kind of human insecurity. As will be discussed by Professor Murphy, we are particularly concerned about the human dignity of the victims of disasters. We are not dealing with disaster as an “objective” problem, which may just require a technical solution. We are members of an “epistemic community” concerned with human insecurity in connection with the dignity of the victims of different types of human insecurity. I use this term, the dignity of victims, with caution, because of the tendency of treating the victims of human rights violation as passive objects of insecurity and not as active agents.

There is, indeed, a way to look at “victims” as active agents of change, as is stated in the 1922 “Levelers’ Declaration” of the Buraku-min, the Untouchables of Japan. They were the “victims “ of discrimination based on their family status related to the different types of work of “purification”(kiyome). They were constantly touching “impure” things such as dead animal carcass. Their work was to purify them by treating their skin into tanned leather and boiling their bones to produce organic glues indispensable in the production of wood-made utensils and appliances. So, the Declaration called the Buraku-min “martyrs of industrial development”. They are proud of being the victims of discrimination, because this enables them to realize better than anybody else how dark and cold the present world is. This is why they claim to know, better than the discriminating majority, the need to build a warmer society full of light without shadows.

In a more general manner, all the victims of the March 11, 2011 Great East Japan Earthquake

and Tsunami, including the hibakushas of the Fukushima Daiichi Nuclear Explosion, are more capable of grasping the true nature of the human insecurity affecting their personal dignity. We, the researchers of Human Security studies, have to learn from them the realities we call Human (In)Security. We can define this concept only on the basis of the testimonies of the victims themselves. To use an expression of Antonio Gramsci, the Human Security Studies Association is a community of Organic Intellectuals expressing the experience of the victims of Human Insecurity, including natural and man-made disasters.

The victims of human insecurity are in vulnerable positions and are in general not educated enough to formulate with scientific precisions their problems. Intellectuals, such as those specialized in human security studies, who are organically attached to them must express their tacit expectations and demands. Our Association represents this community of organic intellectuals. With this remark in mind, I wish to express my interest in the emergence of a new generation of such organic multidisciplinary intellectuals. Their research reports crossing disciplinary as well as national borders, especially those written by Asian graduate students on the different problems of human insecurity in their local communities, will enable our epistemic community to accumulate knowledge indispensable to build a world where human security prevails. Such a collective memory will be shared by all the victims of human insecurity across cultural borders. In this hope I close my video message by thanking all the younger participants, especially those who present their research reports, in the name of our epistemic community known as the Japan Association of Human Security Studies.

Kinhide Mushakoji

President of Japanese Association for Human Security Studies

September 6, 2014

The Pitfalls of the “Right to Live in Peace”: Human Security after UN General Assembly Resolution 66/290

Ryo Watanuki¹

Abstract

This paper examines the interrelationship between the right to live in peace and human security. Since the definition of human security was finally settled by GA Resolution 66/290 in 2012, it becomes clear that human security is distinguished from coercive measurements in the name of protection. The right to live in peace in the Constitution of Japan has been understood as the declaration of demilitarisation as a form of human rights. Given that, the right to live in peace identifies the interconnection between human rights and peace, and some writers argue that human security and the right to live in peace complement each other by offering policy frameworks and legal rights. By reviewing the works of constitutional lawyers and political theorists on the right to live in peace, this paper seeks to identify its possible implications towards human security after the settlement of internationally agreed defection on it. As a conclusion, this paper will argue that the anti-hegemonic character of the right to live in peace results in the failure of identifying the scope of human security, which has a potential to theorise protection and the empowerment of people under the struggle of constituting their sovereignty. This also implies that critical insights on human security needs to provide immanent critiques in order to develop the concept of human security after GA Resolution 66/290.

Keywords:

GA Resolution 66/290; The Right to Live in Peace; Constitution of Japan; De-militarisation; Critical Human Security

1. Introduction

The development of human security in last two decades exemplifies the increasing demands for providing security for individuals and the limitation of national security paradigm.² According to Pauline Kerr, human security ‘challenges the state-centric approach to security by suggesting’ that people threatened by political violence can be ‘as insecure as those threatened by conflicts between states.’³ However, the relationship between human security and the use of force has been at stake. The ‘narrow’ approach of human security argues that the primary object of human security is to eliminate threats to individuals namely ‘freedom from fear.’ Contrary, the ‘broad’ approach of human security claims the multi-dimensional character of security and expands the scope of security

¹ Research Institute Assistance, Social Science Research Institute, International Christian University.

² See Shani 2007, 1-2.

³ Kerr 2010, 123

discourse to ‘freedom from want.’ Finally, on 10 September 2012, the UN General Assembly issued Resolution 66/290 and succeeded in settling an international agreement upon the definition of human security. It provides that human security is ‘an approach to assist Member States in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood and dignity of their people.’⁴ It also clarifies that human security does not entail any coercive measurement through military forces; thus it is ‘distant from the responsibility to protect and its implementation.’ In short, the General Assembly formulates human security based on ‘the interlinkages between peace, development and human rights’ and the full implementation of ‘the purposes and principles’ of the UN Charter.⁵

Concerning theoretical perspectives, human security sheds lights on the relationship between development and international security, peace and human rights. In particular, it has a definite impact on international law. Gerd Oberleitner points out that human security counsels reforming international institutions comprehensively, such as the United Nations, based on ‘a value-based approach to security with a focus on the individual.’⁶ Human security recognises individuals as ‘ultimate beneficiary’, and is understood as ‘a natural step in further moving international law beyond being concerned with national security’.⁷ Wolfgang Benedek argues that human security has a clear interdependency with the international legal framework of human rights.⁸ Since it has a potential to broad ‘our conception of peace and security’, Benedek suggests that human security ‘redefine[s] and refine[s] our approach to the realisation of all human rights for all’.⁹ Ramesh Thakur claims that ‘the conceptual vocabulary of human security’ provides ‘a policy template’ for international organisations to pursue a ‘pluralistic coexistence’ between national and human security.¹⁰ Overall, these advocators look upon human security as ‘a response to new opportunities’ with which state security is complemented, and human rights are enhanced.¹¹

By contrast, critiques caution that human security reduces the protection of individual to a policy goal but that it proposes some new types of threats that ‘are not remediable either by states or the international system.’¹² Rhoda Howard-Hassmann criticises that most academic writings on human security pay little attention to the fundamental difference between human security and

⁴ UNGA Resolution 66/290 2012.

⁵ Ibid.

⁶ Oberleitner 2005, 198.

⁷ Ibid., 198.

⁸ Bedenk 2008, 16.

⁹ Ibid., 17.

¹⁰ Thakur 2006, 90.

¹¹ Commission on Human Security 2003, 2.

¹² Howard-Hassmann 2012, 111

international human rights law. She claims that international human rights law recognises ‘threats to human well-being’ to be ‘inherently political’ whereas human security aims at de-politicising ‘standard threats to human well-being.’¹³ Regarding ‘civil and political rights’ as a core of international human rights law, Howard-Hassmann cautions against possible bypassing, misinterpretations, and neglect of the protection of ‘individuals’ capacities to claim their human rights from the state.’¹⁴ Critical human security studies argue that human security has a danger to reinforce national security paradigm in the name of protection. They consider that a ‘theoretical weakness’ of human security arises from its ‘problem-solving’ and ‘uncritical’ character, thus pose questions about the basic assumptions of human security.¹⁵ They reveal that uncritical human security is a ‘double-edged sword.’¹⁶ On one side, human security succeeds in shifting the primary subject of security from national defence to protection of individuals. On the other side, it leads to the securitisation of a society with a ‘state-oriented technology of intervention’ where ‘the ultimate responsibility for securing humans is passed back to the state.’¹⁷ Unlike Howard-Hassmann, critical human security tackles ‘a normative commitment to desecuritization’ and seek to ‘lessen the power of oppressive structures over human life.’¹⁸

While they contribute to disclose the limitation of human security, these critical insights contradict each other. Howard-Hassman claims that threats to individuals are ‘inherently political’ whereas critical human security assumes that issues of human security come from ‘securitization’ which is an ‘extreme form of politicization.’¹⁹ Neither Resolution 66/290 nor advocates of human security succeed in providing theoretical responses to ‘securitization’ and its implication towards individuals. In response to this deadlock, some Japanese writers suggest that human security is complementary to ‘the right to live in peace’ and propose to consider threats to peace as matters of human rights.²⁰ ‘The right to live in peace’ is a concept that appeared first in debates about the Constitution of Japan. Advocators claim that ‘the right to live in peace’ has been discussed over the half century, and these accumulations of debates are suggestive to human security that shares the same philosophical background namely ‘Four Freedoms’ of Roosevelt. Nevertheless, the constitutional debates of ‘the right to live in peace’ are dependent heavily on the constitutional pacifism of Japan. Moreover, neither human security nor ‘the right to live in peace’ provides

¹³ Ibid.

¹⁴ Ibid., 108; 111.

¹⁵ Newman 2010, 92.

¹⁶ Shani 2007, 6-7

¹⁷ Duffield 2008, 121

¹⁸ Shani and Pasha 2007, 197-198.

¹⁹ Howard-Hassmann 2012, 111; Shani and Pasha 2—7, 198.

²⁰ Okubo 2007, 32; Musahnokoji 2003, 104-105; Urabe 2004, 66-67; Taya 2001, 96; 99-101.

immanent justification why it is necessary to consider these conceptions as human rights. Some international lawyers recognise that ‘peace’ hardly becomes a positive legal right. Hideo Yamagata, for example, argued that advocates of human security and ‘the right to live in peace’ focused too much on their conceptual novelty but avoided examining the appropriateness of traditional human rights.²¹ Still, he narrowed his insight focusing on the relationship between human security and ‘humanitarian intervention.’ In short, the relationship between human rights and peace remains to be unsolved, and this makes it necessary to theorise ‘the right to live in peace’ within a framework of modern legal order based on states.

For this purpose, this paper examines ‘the right to live in peace’ with regard to modern legal principles in order to analyse how it is suggestive to human security after Resolution 66/290. It has two purposes. First, it seeks to reveal the limitation of ‘the right to live in peace,’ which is usually dismissed from constitutional debates in Japan. Second, it aims at introducing ‘the right to live in peace’ into international debates on human security on behalf of providing legal implication to the theoretical impasse over ‘securitization.’ To this end, the first section overviews constitutional debates about ‘the right to live in peace’ in order to clarify its conceptual varieties. The second section discusses the relationship between ‘the right to live in peace’ and human security in reference to the debates of constitutional lawyers and political theorists in Japan. Finally, the last section enquires the scope of ‘the right to live in peace’ in order to assess its fundamental problems critically. As a conclusion, this paper argues that ‘the right to live in peace’ neglects the presupposition of modern legal order, namely, the tension between an individual as a subject of human rights and an individual as a member of a Constitution. Since it attempts to solve this tension by neglecting it, ‘the right to live in peace’ falls into its dogmatism, which obscures the subject of human rights. In fact, this danger is the implication that human security can learn from ‘the right to live in peace.’

II. Constitutional Debates on ‘the Right to Live in Peace’

The first legal case that referred to ‘the right to live in peace’ was the first instance of *Naganuma* Case which concerned the legality of deforestation of national protection forest in order to construct a missile base of the Japan Self-Defense Forces. The Chief Justice of Sapporo district court, Shigeo Fukushima, identified that the Self-Defense Forces was illegal and judged that the construction of a military base violated ‘the right to live in peace.’ Most constitutional scholars

²¹ Yamagata 2004, 36-38.

acclaimed the judgement as a case that followed ‘the spirits of the Constitution’ namely pacifism.²² From a legal point of view, the Supreme Court negated any legal interest based on ‘the right to live in peace,’ and it turned over the judgement of the first instance. Nevertheless, most scholars have continued discussing the legal character over ‘the right to live in peace’ and it has remained to be the subject of constitutional debates in Japan. Advocators claim that the Preamble of the Constitution, Article 13 and Article 9 are the bases of ‘the right to live in peace.’²³

‘The right to live in peace’ was first theorised by Yasusaburo Hoshino whose primary research area was Article 9 of the Constitution. He argued that the Constitution of Japan ensured the protection of a normative framework based on ‘the right to live in peace.’ While human rights constitute the foundation of modern constitutional law, the concept of human rights has experienced significant development from political rights to social rights. Then, Hoshino claimed that ‘the right to live in peace’ reflected the latest ‘historical development’ of human rights with which the Constitution of Japan was founded.²⁴ By referring to the Ninth Amendment of the US Constitution, which provides that ‘the list of rights enumerated in the Constitution is not exhaustive, and that the people retain all rights not enumerated,’ Hoshino claimed that the lack of positive provision under the Constitution did not affect the legal validity of ‘the right to live in peace.’²⁵ In short, Hoshino insisted that human rights provisions under Chapter III of the Constitution were the legal bases of ‘the right to live in peace.’ In this respect, ‘the right to live in peace’ is understood primarily as a protection from any oppression in the name of military purposes. That is to say, any threat of war, which recalls fear, constituted the violation of human rights. In addition, Hoshino pointed out that the pursuit of peaceful lives also entailed the right to the prosperity of a society.²⁶ Considering the history of capitalism in Japan, he claimed that economic development eventually resulted in the expansion of armaments because of its high profitability.²⁷ ‘The right to live in peace’, on the other hand, propelled the economic interchange between capitalist states and socialist states where the productivity of an economy was sustained apart from military industries.²⁸ In fact, ‘the right to live in peace’ is understood as human rights based on an institutional guarantee by Article 9 so that people are eligible to desire the pursuit of society through peaceful means. Hoshino emphasised the importance of integrating recognition among peace, sovereignty, and human rights in order to

²² Kobayashi 1973, 16.

²³ Nonaka et al. 2012, 155.

²⁴ Hoshino 1977, 108.

²⁵ Ibid.

²⁶ Ibid., 110.

²⁷ Hoshino 1974, 174.

²⁸ Ibid.

comprehend the significance of pacifism under the Constitution of Japan accurately.²⁹ Given that, ‘the right to live in peace’ is seen as a point of departure from traditional national security paradigm to cosmopolitan constitutional order after the Second World War.³⁰ Following Hoshino, other constitutional lawyers such as Hideo Wada, Eisei Hisada, and Shinichi Takayanagi seek to develop ‘the right to live in peace’ based on presupposition that ‘the right to live in peace’ contradict with preservation of peace through armed forces.³¹ They claim that ‘the right to live in peace’ needs to be placed at the head of human rights system where the absence of military forces promotes protection of individuals.

Tadakazu Fukase, who is famous for engaging in numbers of suits for constitution related to anti-Defence Forces movements, put emphasis upon the significance of demilitarisation based on Article 9 as a ground for ‘the right to live in peace.’ According to Fukase, pacifism under the Constitution of Japan reflected the fruits of self-examination of modern warfare and pursuit of world peace.³² He argued that the expression of pacifism in the preamble of the Constitution and the renunciation of war by Article 9 were essentially inseparable, and this understanding made the right to live in peace’ to be a legal conception that needed to be secured judicially. Given that, Fukase proclaimed that Article 9 entailed three unique principles; illegalisation of war through the establishment of universal peace institutions, encouragement of disarmament, and protection of ‘the right to live in peace.’³³ Regarding these three pillars of Article 9, Fukase interpreted that demilitarisation is ‘institutional guarantees’ by which the institutional protection of human rights is ensured at the constitutional level.³⁴ Unlike Hoshino and other writers who regarded ‘the right to live in peace’ as a form of human rights, Fukase considered that ‘the right to live in peace’ urged demilitarisation in order to protect human rights in the absence of war. This implies that Fukase developed his theory of ‘the right to live in peace’ based on his world vision consisted with modern natural law.³⁵ By reviewing the varieties of legal thoughts of pacifism from Old Testament to modern theorists such as Erasmus, Grotius, and Montesquieu, Fukase concluded that the significance of Article 9 and its ‘ideological background’ were coincided with the ‘legitimate genealogy’ of

²⁹ Ibid., 132.

³⁰ Hoshino 1977, 120.

³¹ Hagiwara 1990, 305-306; Wada 1973, 67-68. See also, Takayanagi 1983, 8-10.

³² Fukase 1987, 5.

³³ Ibid., 205-225.

³⁴ Ibid., 206; 242. See also Schmitt 1993, 170-173 (= Schmitt 2008, 208-211). The term ‘institutional guarantees’ (institutionelle Garantien) was first theorised by Carl Schmitt. By using the concept, Schmitt explored the constitutional protections of particular institutions, which contradicted with the principles of modern constitutional theory. However, Fukase expressed his ‘sharp critique’ against the Schmitt’s conception of ‘institutional guarantees’. Rather, he identified ‘institutional guarantees’ as institutional protections of subjective human rights along with the establishment of objective constitutional laws.

³⁵ See Fukase 1987, 284-285.

pacifism.³⁶ Notably, he asserted that the phrase in the preamble ‘all peoples of the world have ‘the right to live in peace’, free from fear and want’ evinced the underlying natural legal thinking over the Constitution.³⁷ With regard to the *Naganuma* Case, Fukase praised the judgement for the elucidation of pacifism under the Constitution of Japan. Fukase considered that the judgement was a last resort to the violation of the Constitution driven by ‘conscience of judges.’³⁸ In short, Fukase theorised ‘the right to live in peace’ to ensure the protection of human rights comprehensively in parallel with the denial of military forces based on Article 9. Regarding this point, Noriho Urabe, a pacifist constitutional lawyer, claims that ‘the right to live in peace’ is to be based on Article 9 in order that it urges legal protection of human rights through the abandonment of military forces.³⁹

Some constitutional lawyers assert that the principle of ‘the right to live in peace’ can be extracted directly from the preamble of the Constitution. According to Yoshito Obuki, these writers relied on Akira Osuga, who studied the right to live and argued that the preamble provided the legal foundation of ‘the right to live in peace.’⁴⁰ Kazumi Yamano, for instance, claimed the preamble expressed a declaration of fundamental principles of the Constitution that ‘all peoples of the world have ‘the right to live in peace’, free from fear and want.’⁴¹ On one side, Yamano noticed that the protection of human rights over the world by the Constitution of Japan contradict with the fundamental principles of constitutional law, namely, the foundational law of a state. However, on the other side, she insisted that the preamble remedied the violation of ‘the right to live in peace’ as it appeared to be an infringement of constitutional principles.⁴² Kenji Urata explored the establishing process of ‘the right to live in peace’ and sought to situate its significance in the context of modern society where technologies are advanced enough to result in destruction of the entire world.⁴³ With regard to the legal basis, Urata claimed that the second paragraph of the Constitution was the foundation of ‘the right to live in peace.’⁴⁴ He developed his theory with a recognition that ‘the right to live in peace’ was hardly be based on Article 9 because the Constitution had no provision that recognised ‘the right to live in peace’ as human rights. Instead, Urata concluded that the comprehensive character of ‘the right to live in peace’ in the preamble constituted the ‘basic norms’ expressing the foundational values of the Constitution.⁴⁵ Toshihiro Yamauchi also raised

³⁶ Fukase 1972, 233.

³⁷ Ibid., 234.

³⁸ Fukase 1973, 31-34; Fukase 1978, 259.

³⁹ Urabe 2006, 400-407.

⁴⁰ Obuki 2007, 511.

⁴¹ Yamano 1984, 40.

⁴² Ibid., 45.

⁴³ Urata 1974, 35.

⁴⁴ Ibid., 36.

⁴⁵ Ibid., 38-39.

questions about Fukase's understanding of 'the right to live in peace'. Yamauchi identified that Article 9 is not a human rights provision as Fukase argued.⁴⁶ Rather, he stressed that 'the right of live in peace' was grounded on the preamble with which the relationship between Article 9 and Article 13 became apparent. That is, Yamauchi understood Article 9 in the context of the right to pursuit happiness and recognised 'the right to live in peace' as an underlying framework of protection of human rights.⁴⁷ Other commentaries also look upon 'the right to live in peace' as a right derived directly from the preamble of the Constitution. Youichi Higuchi stated that 'the right to live in peace' was developed through the interpretation of the preamble which articulated the renunciation of war.⁴⁸ Toshiaki Yaguchi claimed that the uniqueness of the Constitution of Japan lay in its expression in the preamble that peace was recognised in relation to the protection of human rights.⁴⁹ He concluded that 'the right to live in peace' suggested the ideal directions for the legal interpretations that in turn revitalised provisions under the Constitution.⁵⁰

Overall, constitutional debates about 'the right to live in peace' share in common that they emphasise the innovativeness of the Constitution of Japan that perceives peace as a part of human rights. While constitutional lawyers have not reached their agreement about the legal basis of 'the right to live in peace', 'the right to live in peace' is recognised by most lawyers as a legal right guaranteed by the Constitution.

III. Complementing Overlap between Human Security and 'The Right to Live in Peace'

In 2003, Japan's Official Development Assistance Charter was revised and human security has become a fundamental policy of Japan's aid policy. It declares that Japan 'Japan will vigorously address these new challenges to fulfil its responsibilities' along with 'the spirit of the Japanese Constitution.'⁵¹ According to Satoru Kurosawa and Mari Kawamura, the Japanese approach is grounded on the premise that the international peace and development, which also contributes to the national security of Japan, cannot be realised without ensuring the protection of individuals.⁵² Since the government of Japan promotes human security with regard to 'the ideal of international

⁴⁶ Yamauchi 1992, 276.

⁴⁷ Ibid., 278.

⁴⁸ Higuchi 1994, 36.

⁴⁹ Yaguchi 2000, 101.

⁵⁰ Ibid., 107.

⁵¹ Ministry of Foreign Affairs 2003, i.

⁵² Kurosawa and Kawamura 2004, 165.

cooperation,' Kurosawa and Kawamura evaluate that the new ODA Charter harmonises various dimension of Japan's diplomatic policies that contribute to peace and stability of the world.⁵³ However, according to Makoto Sato, it is in question whether the government of Japan is serious about human security. He concerned that Japan prioritised the Japan-US relationship and 'has seemingly lost out on the primary goal of Japanese foreign policy, and the hidden objective of human security diplomacy.'⁵⁴ Takahiro Nozaki criticised that Japan's human security diplomacy trampled on the original conception of human security. Considering that human security makes an issue of neoliberal globalisation, Nozaki pointed out that the government of Japan applied human security selectively only to external affairs.⁵⁵ Globalisation is defined as a trend by which economic, financial, technical and cultural interaction among states become faster, and it lessens the barrier of national borders.⁵⁶ While the benefits cannot be underestimated, globalisation has a negative dimension to accelerate social and economic inequalities among states.⁵⁷ That is, human security is expected to protect the values of individuals, namely the vital core of human beings in the course of globalisation. To this end, Nozaki attacked that Japan's human security policy neglect the existence of insecurity inside the state thus subordinated the beginning of human security.⁵⁸ He considered that the diplomatic use of human security subordinated the original complementarity between human security and human rights.

In fact, critiques against Japan's human security diplomacy relied upon the final report of CHS that determined the 'advantage' of regarding human security 'as a class of human rights'.⁵⁹ Then, they shed light on the idea of 'the right to live in peace' in order to actualise the concept of human security within Japanese context. Shiro Okubo, a constitutional theorist specialised in human rights, argued that Japan has been making efforts to promote the principle of 'the right to live in peace' since 1945 whereas the UNDP 're-discovered' the freedom from 'fear' and 'want' only after the middle of 1990s within the framework of human security.⁶⁰ He suggested that 'the right to live in peace' let re-examination about the relationship between war and peace with a focus on civilians.⁶¹ Okubo insisted that 'the right to live in peace' and human security were able to 'learn from each other'; 'the right to live in peace' needs to pay more attention on international acceptance,⁶² and

⁵³ Ministry of Foreign Affairs 2011, 2-3; Kurosawa and Kawamura 2004, 163.

⁵⁴ Sato 2007, 96.

⁵⁵ Nozaki 2004, 194-195.

⁵⁶ Poku 2010, 259.

⁵⁷ McGrew and Poku 2007, 9-15.

⁵⁸ Nozaki 2004, 198.

⁵⁹ Commission on Human Security 2003, 9.

⁶⁰ Okubo 2007, 32.

⁶¹ Ibid., 40.

⁶² Ibid., 44.

human security may deepen its theoretical foundation with reference to pacifism under the Constitution of Japan. Urabe argued that human security opposed to neoliberal globalisation and unilateralism of the United States. Likewise Nozaki, Urabe claimed that the constitutional recognition of all peoples' right to live in peace, as well as free from fear and want, needed to be understood as a pioneering work of human security.⁶³ In this regards, Urabe regarded Article 9 as a key provision that provided 'true meanings of human security' over against the diplomatic use of human security by the Government of Japan.⁶⁴ Urabe considered that demilitarisation based on 'the right to live in peace' is the touchstone of human security with which the meaning of security is transformed from the protection of territory to the protection from structural violence.⁶⁵

Some legal scholars also show their interest in 'the right to live in peace' and its possible contribution to international discourse. Koichi Yokota, a constitutional lawyer specialised in the Tenou-System [the Emperor system of Japan], claimed for the integration of peace, human rights, and development as three inseparable pillars of 'the right to live in peace'. He suggested that the legal complexity of 'the right to live in peace' served to broaden the applicability of the concept based on its multiplicity and flexibility.⁶⁶ Yokota was critical of the insufficient actions of the UN for demilitarisation and expected to the rigorous legal structure of 'the right to live in peace' that understood peace as a protection of human rights through demilitarisation.⁶⁷ Yoshirou Matsui, an international lawyer, have discussed 'the right to live in peace', and the interdependence between peace and human rights from international legal perspectives.⁶⁸ He argued that 'the right to live in peace' legitimised actions against 'any oppression and exploitation,' the leading cause of wars, with a right-based approach.⁶⁹ This means that 'the right to live in peace' revealed state responsibilities to secure peaceful lives of their citizens.⁷⁰ Therefore, Matsui asserted that 'the right to live in peace' enabled individuals to claim on their right to live without 'fear' and 'wart.' Kazuko Hirose estimated that it was only 'the right to live in peace' under the Constitution of Japan that articulated the responsibility of a state to secure the right of individuals to claim on a peace.⁷¹ She considered that 'the right to live in peace' was a theory of mankind whose importance was first recognised by the emergence of nuclear weapons and was developed by the Constitution of Japan. In short, 'the right

⁶³ Urabe 2004, 67.

⁶⁴ Ibid.

⁶⁵ Ibid., 65; Urabe 2006, 462.

⁶⁶ Yokota 1998, 888.

⁶⁷ Ibid., 892.

⁶⁸ Matsui 1981, 13.

⁶⁹ Ibid., 13.

⁷⁰ Ibid., 12.

⁷¹ Hirose 1987, 277-278.

to live in peace' is expected to enhance the legal norms against any violations of humanity, which makes individuals as an active participant to peace. Regarding human security as human rights enables individuals to engage in 'pursuing the paradigm change' that are not covered with traditional human rights.⁷²

Some writers discuss directly the relationship between human security and 'the right to live in peace.' Yamauchi argued that 'the right to live in peace' preceded the idea of human security.⁷³ He considered that human security attained the superiority over national security and agreed with Kinhide Mushanokoji, who is a representative theorist about the interaction between 'the right to live in peace' and human security. Mushanokoji argued that 'the ideal of pacifism under the Constitution of Japan has potential for establishing new regimes of international security 'based on 'the right to live in peace.'⁷⁴ Given that, he expected that 'the right to live in peace' provided concrete criteria of human security with which it became possible to protect 'the right to lives for those in weak positions.'⁷⁵ Moreover, he emphasised that the applicability of 'the right to live in peace' was not limited to matters related to armed conflicts; it shed light on the broad range of threats to human rights such as the right to the environment.⁷⁶ Considering the increasing impact of globalisation, Mushanokoji cautioned that the contemporary human lives were threatened by the crisis of political economy, the crisis of civilisation, and the crisis of lives.⁷⁷ He criticised that the global economy fostered by neoliberalism did not solve but exacerbated these three crises. Human security is to counter against neoliberal global order, and this eventually makes human security facilitate the mutual security between the global north and the global south. In this regards, Mushanokoji stressed the importance of 'the right to live in peace' which served to re-define the legitimacy of the international order grounded on the concept of comprehensive human rights.⁷⁸ This implies that the institutionalisation of human security as with 'the right to live in peace' empowers individuals to claim on legal responsibilities of states to ensure their citizens against threats to 'freedom from fear' and 'freedom from want.'⁷⁹ Furthermore, Mushanokoji also insisted that 'the right to live in peace' was applicable in the time of peace, and it mandated the United Nations to decide on the forms of enforcement measurements in accordance with human security.⁸⁰ For example, economic sanctions

⁷² Taya 2001, 99.

⁷³ Yamauchi 2001, 8.

⁷⁴ Mushanokoji 1998, 167.

⁷⁵ Ibid., 169.

⁷⁶ Ibid., 172.

⁷⁷ Mushanokoji 2003, 109.

⁷⁸ Mushanokoji 1998, 181-184.

⁷⁹ Ibid., 185

⁸⁰ Ibid., 187.

to developing states are accused of breach of human security because they threaten the right of citizens to pursue ‘the right to live in peace.’ In short, Mushanokoji suggested that human security based on ‘the right to live in peace’ revealed the deception of international law, which recognised peace as the absence of armed forces and substituted other forms of threats as peaceful means.⁸¹ In other words, it is necessary to develop policy goals of human security on the basis of theoretical background of ‘the right to live in peace’ in order that it demanded contemporary international order to re-examine the idea of threats to the subjects of human rights, namely individuals.

Shin Chiba clarified the relationship between ‘the right to live in peace’ and human security in accordance with his central concern for national security, which presupposed the protection of territory by using armed forces.⁸² In order to enrich the conceptions involved in human security, Chiba explored to redefine human security in relation to ‘the right to live in peace’, which embodied scepticism on the behaviours of states. Based on the preceding debate of Mushanokoji, Chiba argued that the legal and moral ground of ‘the right to live in peace’ transformed human security as an alternative to neoliberal globalisation.⁸³ Given that, ‘the right to live in peace’ thrusts forwards the demilitarisation of human security and brings about its conceptual democratisation for the sake of empowering people in the weak positions or minorities.⁸⁴ Regarding the original departure of human security, the limitation of national security paradigm, Chiba claimed on going beyond the Hobbesian framework of the international order consisted of sovereign states. In sum, Mushanokoji, Yamauchi, and Chiba looked on human security on the basis of ‘the right to live in peace’ in order that they sought to identify legitimise demilitarisation and countermeasure to neoliberalism as a part of human rights.

VI. Critical Insights into the Ideological Perspectives of ‘the Right to Live in Peace’

Even though ‘the right to live in peace’ has received numbers of attention from political theorists and public lawyers, it is danger to discuss the concept without paying attention to its original context, namely the Constitution of Japan. Yoshito Obuki, who is specialised in Hans Kelsen and Carl Schmitt, criticised that constitutional lawyers in favour of ‘the right to live in peace’ did not discuss constitutional issues but expressed their personal philosophical convictions in the

⁸¹ Ibid.

⁸² Chiba 2005, 73.

⁸³ Ibid. 74. See also Chiba 2004, 140-142.

⁸⁴ Ibid.

name of law.⁸⁵ He stressed that the theories of ‘the right to live in peace’ could never be derived from the interpretation of the Constitution.⁸⁶ From constitutional perspectives, Obuki insisted that it was impossible for the Constitution of Japan to ensure the human rights of all the people around the world, and the legal impossibility of theorising ‘the right to live in peace’ was evinced by the Constitution itself.⁸⁷ The Constitution of Japan identified the universality of ‘the right to live in peace’; however, advocates neglected constitutional theories but tried to place the right to the historical advancement of pacifism or peace movements.⁸⁸

Considering its legal structure, the Constitution of Japan is composed of two fundamental parts, the lists of human rights and the articles about the organising principle of the government. This distinction is corresponded to the two basic principles of modern constitutional laws, namely the ‘Rechtstaat component’ and ‘principles of political form.’⁸⁹ According to Carl Schmitt, the exercise of state power is always limited ‘with the help of the principles of bourgeois freedom.’⁹⁰ Meanwhile, the principles of bourgeois freedom ‘cannot found a political form on their own’ because constitutional law does not have any presupposition of the form of a state.⁹¹ In fact, the state ‘as political unity’ is founded upon two contradictory principles, the principle of identity and the principle of representation, and this tension served to ‘limit’ and ‘temper’ the consequences of political principle on the grounds of ‘Rechtstaat principles.’⁹² With regard to the basic rights, Schmitt argued that the actual sense of these rights was ‘essentially rights of the free individual person’ against a state.⁹³ That is, Schmitt considered that ‘the recognition of basic rights in the sense of bourgeois Rechtstaat’ signified that the ‘Rechtstaat principles’ constituted an ‘essential component’ of modern constitutional law. To this end, it is impossible to extract unlimited protection from rights which presupposes ‘a state organization that incorporates the right-holding individual.’⁹⁴

However, it remains to be unsettled whether ‘the right to live in peace’ is a right in the sense of basic rights. ‘The right to live in peace’ is a part of basic rights if it is grounded upon the freedom of individuals. Assuming that ‘the right to live in peace’ is based on Article 9 or demilitarisation, it can never be the basic rights because it presupposes a state. In fact, most discussions about ‘the right to

⁸⁵ Obuki 1990, 16.

⁸⁶ Ibid.; Obuki 2007, 515.

⁸⁷ Obuki 2007, 513.

⁸⁸ Ibid., 514.

⁸⁹ Schmitt 1993, 200 (= Schmitt 2008, 235).

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid., 214-216 (= Schmitt 2008, 247-249).

⁹³ Ibid., 164 (= Schmitt 2008, 203).

⁹⁴ Ibid., 169. (= Schmitt 2008, 207).

live in peace' fail to identify its legal character with reference to the principles of 'Rechtsstaat.' Instead, as Obuki criticised heavily, most debates have mixed up the judicial interpretations of the Constitution with personal religious or ideological beliefs. For instance, Obuki revealed that Fukase theorised 'the right to live in peace' on the basis of his underlying philosophy, namely the 'genuine religious pacifism.'⁹⁵ Although he categorised three types of pacifism, just war theories, the restraint of war and the denial of war, Fukase concluded that 'the right to live in peace' was an inevitable consequence of the historical development of absolute pacifism. This means that Fukase selected to interpret that the Constitution of Japan was predicated on the denial of war. Yamauchi praised the establishment of 'the world government' and 'souveraineté du peuple [Jinmin-Shuken]' through dissolving sovereign states.⁹⁶ Meanwhile, he recognised that the establishment of 'the world government' is hardly possible in the near future. He conceded that sovereign states continued to be the fundamental principle of the global order; thus he put emphasis on how to limit the exercise of sovereign decisions to use military forces. Regarding this point, Yamauchi stressed that 'the right to live in peace' imposed Japan upon the limitation of sovereignty in order to secure 'the right to live in peace' at the worldwide level.⁹⁷

These theorists, according to Obuki, Fukase used a rhetoric to express personal beliefs and political desire for demilitarisation in legal terminologies.⁹⁸ He made ironical remarks that constitutional lawyers in favour of 'the right to live in peace' shared only in common that they had an aversion to the Self-Defence Forces.⁹⁹ In face of the theorists of 'the right to live in peace,' who sort out their legal interpretations in accordance with their own outlooks on the world, Obuki emphasised the necessity of separating personal beliefs from legal interpretations. Then, Obuki evaluated Hans Kelsen, who sought to develop 'a theory of positive law' by freeing 'the science of law from alien elements.'¹⁰⁰ Kelsen accepted the fact that the choice between the primacy of national and international law cannot be directed by 'the science of law.' because this choice is 'guided by ethical and political preferences' of each theorist. By referring Kelsen, Obuki cautioned that constitutional lawyers 'should never deceive people in the name of constitutional law.'¹⁰¹ Kazushi Kojima also criticised that 'the right to live in peace' was not able to become positive rights. He argued that the subject of the last sentence of the second paragraph of the preamble was 'peoples

⁹⁵ Obuki 2007, 521.

⁹⁶ Yamauchi 2003, 149.

⁹⁷ Ibid., 152.

⁹⁸ Obuki 2007, 522.

⁹⁹ Ibid., 515.

¹⁰⁰ Kelsen 2008, 1.

¹⁰¹ Obuki 1983, 80; 82.

of the world', but not 'we.'¹⁰² Kojima focused on the fundamental contradiction of 'the right to live in peace.' It interprets that the Constitution of Japan recognises 'the peace-loving peoples of the world' having 'the right to live in peace', free from fear and want'; however the principle itself was constituted only by 'we the people of Japan.' For this reason, Kojima concluded that 'the right to live in peace' was not a legal right under the Constitution of Japan because 'the right to live in peace' ignored the principles of modern legal order thus exceeded the scope of legal interpretations.¹⁰³ Based on Obuki and Kojima, Masayuki Atarashi, who is also specialised in Kelsen, stressed the interrelationship between rights and sovereign states.¹⁰⁴ Atarashi insisted that 'the right to live in peace' can never be 'the right under the positive law' because every legal debate is to distinguish 'what it is' and 'what it ought to be.'

From international legal perspectives, Toshiki Mogami, whose primary concern is global constitutionalism, recognised that there existed a fundamental difference between 'the right to live in peace' and the crimes against peace. According to Mogami, crimes against peace is applicable only when peace is threatened by an aggressor whereas 'the right to live in peace' aims to prevent possible threats to peace.¹⁰⁵ In addition, he also clarified that 'the right to live in peace' and the crimes against peace presupposed different subjects that owed these legal responsibilities. Historically, the main purpose of the crime against peace has been the pursuit of individual responsibilities for aggressions. In contrast, 'the right to live in peace' put an emphasis on the legal interests of individuals.¹⁰⁶ Furthermore, he also pointed out that 'the right to live in peace' and the crime against peace did not share the same historical background. The crime against peace has been developed in parallel with the criminalisation of war after the First World War; however, legal protection of human rights at the international level has been developed only after the Second World War. Constituting peace as a part of human rights, therefore, means that international law recognises 'the infiltration of the superiority and the dignity of human beings.'¹⁰⁷ Numbers of international documents have mentioned the right to peace recently, Mogami agreed that international law was trying to overcome the distinction between 'the right to live in peace' and crimes against humanity.¹⁰⁸ Nevertheless, Mogami acknowledged the fundamental difficulty of legalising 'the right to live in peace' because it reflected not the legal principles but normative awareness, namely 'the

¹⁰² Kojima 2004, 46.

¹⁰³ Kojima 2011, 62, Kojima 2004, 46.

¹⁰⁴ Atarashi 2010, 272.

¹⁰⁵ Mogami 2006, 261.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., 262.

¹⁰⁸ Ibid., 266.

desire of all the peoples.’¹⁰⁹ Therefore, Mogami concluded that ‘the right to live in peace’ was highly suggestive of formulating ‘structural rights’ that transformed the central concern of rights from individual legal responsibilities to structural threats to individuals.

While Mogami did not proceed further his debates about the normative dimension of ‘the right to live in peace’, it is the point of discussion whether it provides normative implications for human security or not. First and foremost, ‘the right to live in peace’ indicated the fundamental difficulty of identifying peace as a part of human rights. This is evident from the fact that both constitutional lawyers and political theorists do not theorise ‘the right to live in peace’ as basic rights in accordance with the ‘Rechtstaat principles.’ Rather most advocates of ‘the right to live in peace’ argue that the significance of the concept is grounded on its contribution to demilitarisation and its anti-hegemonic character against neoliberal international economy. However, these elements are not comprised of basic rights because it presupposes the existence of a state. Since the Resolution itself re-confirms that human security ‘does not replace State security,’ critical analyses of ‘the right to live in peace’ are suggestive of revealing the danger of mixing up basic rights and other rights in the name of human security. The Resolution 66/290 distinguishes human security from the Responsibility to Protect; however, this definition is a product of a choice from various contesting definitions of human. Needless to say, this decision can be submitted to the critical analyses. However, the relativeness of the definition of human security does not denote that human security exceeds modern sovereign states. Otherwise, human security falls into ideological debates that undermine the system of modern legal order and the entire protection of basic rights.

Conclusion

This paper argues that human security is to be understood within a framework of modern states. This paper is critical of the advocates of ‘the right to live in peace,’ because they examine ‘the right to live in peace’ only to end up with criticising the current policies of the government of Japan. Human security presupposes the existence of modern states; therefore, it cannot be the basic rights because they are grounded solely on the freedom of individuals. In short, all the legal debates about human security are tied with the self-limitation of law, namely sovereign states. As Kelsen said, it is ‘irrelevant’ to choose one hypothesis ‘from the point of view of the science of law.’¹¹⁰ Meanwhile, he recognised the importance of choice because it reflected ‘the idea of sovereignty’ from the

¹⁰⁹ Ibid., 268.

¹¹⁰ Kelsen 2007, 388.

viewpoint of ‘political ideology.’¹¹¹ Atarashi emphasised the importance of respecting those advocating ‘the right to live in peace’ based on their strong political wills or religious beliefs’ so long as they were ‘in earnest.’¹¹² Nevertheless, these importance does not lower the fundamental importance of immanent consideration to human security with reference to ‘Rechtstaat principles.’ In short, the implication of ‘the right to live in peace’ to human security is the danger of confounding ‘political ideology’ with jurisprudence. The limitation of legal approach does not subordinate the importance of jurisprudence but strengthens the theoretical foundation of human security.

¹¹¹ Ibid.

¹¹² Atarashi 2010, 272.

References

- Atarashi, Masayuki. 2010. *Kenpou-Soshouron*. Tokyo: Shinzansha.
- Bedenk, Wolfgang. 2008. "Human Security and Human Rights Interaction." *International Social Science Journal*. 59. 7-17.
- Chiba, Shin. 2004. "Ikutsuka-no-Comment." Sophia University and International Christian University ed. *Ningen-no-Anzen-Hoshou: Seigi to Heiwa no Sokushin-no-tameni*. Tokyo: Sanpauro.
- . 2005. "Heiwateki-Seizonken to Ningen-no-Anzen-Hoshou no Saikou." International Christian University and Sophia University ed. *Heiwa, Anzen, Kyousei: Aratana Ground Theory wo Motomete*. Tokyo: Yushindou.
- Commission on Human Security. 2003. *Final Report of the Commission on Human Security*. New York: United Nations Publications.
- Duffield, Mark. 2008. *Development, Security and Unending War: Governing the World of Peoples*. Cambridge: Polity Press.
- Fukase, Tadakazu. 1972. "Sensou-Houki to Gumbi-Teppai no Houshisoushiteki-Kenkyu (1)." Nobuyoshi Ashibe ed. *Kenpou no Gendaiteki-Kadai*. Tokyo: Yuhikaku.
- . 1973. "Naganuma-Hanketsu no Sekkyokuteki/Souzouteki-Sokumen no Kousatsu." *Houritsu-Jihou* 45 (14). 25-40.
- . 1978. "Kenpou-no-Heiwashugi to Dai-9-Jyou-no-Kaishaku ni tsuite." Tadakazu Fukase ed. *Bunken-Senshu Nihonkoku-Kenpou 3: Senso-no-Houki*. Tokyo: Sanseidou.
- . 1987. *Sensouhouki-to-Heiwateki-Seizonken*. Tokyo: Iwanamishoten.
- Hagiwara, Shigeo. 1990. "Sensou-to-Jinken." Kenpou-Riron Kenkyukai ed. *Gendai-no-Kenpou-Riron*. Tokyo: Keibundou.
- Higuchi, Yoichi. 1994. "Zenbun." Yoichi Higuchi, Koji Sato, Mutsuo Murakami, Noriho Urabe eds. *Kenpou I*. Tokyo: Seirin-Shoin.
- Hirose, Kazuko. 1987. "Kakuheiki to Heiwakteki-Seizonken." Yasuaki Onuma ed. *Kokusaihou, Kokusai-Rengou to Nihon*. Tokyo: Koubundou.
- Hoshino, Yasusaburo. 1974. *Heiwaniikiru-Kenri*. Tokyo: Houritsu-Bunkasha.
- . 1977. "Heiwateki-Seizonken-Jyoron." Tadakazu Fukase ed. *Bunken-Senshu Nihonkoku-Kenpou 3: Senso-no-Houki*. Tokyo: Sanseidou.
- Howard-Hassmann, Rhoda E. 2012. "Human Security: Undermining Human Rights?" *Human Rights Quarterly*. 34. 88-112.
- Kelsen, Hans. 2007. *General Theory of Law and State*. Clark: The Lawbook Exchange, Ltd.

- . 2008. *Pure Theory of Law*. translated by Max knight. Clark: The Lawbook Exchange, Ltd.
- Kerr, Pauline. 2010. "Human Security", Alan Collins ed. *Contemporary Security Studies*, Oxford: Oxford University Press.
- Kobayashi, Naoki. 1973. "Naganuma-Hanketsu no Kihonmondai." *Houritsu-Jihou*. 45 (14). 8-18.
- Kojima, Kazushi. 2004. *Kenpou-Gaisetsu*. Tokyo: Shinzansha.
- Kojima, Kazushi, and Oishi, Makoto. 2011. *Kenpou-Gaikan*. Tokyo: Yuhikaku-Sousho.
- Kurosawa, Satoru, and Kawamura, Mari. 2004. "Nihon no Enjyo-Gaiko to Ningen-no-Anzen-Hoshou: Heiwakouchiku no Kanten kara." Makoto Sato, and Tsugio Ando eds. *Ningen-no-Anzen-Hoshou: Sekai-Kiki he-no Chousen*. Tokyo: Toshindou.
- Matsui, Yoshiro. 1981. "Kokusaihou-ni-Okeru Heiwateki-Seizonken: Hitotsu-no-Oboegaki." *Houritsu Jihou*. 53 (12). 8-14.
- McGrew, Anthony, and Poku, Nana K. 2007. *Globalisation, Development and Human Security*, Cambridge: Polity Press.
- Ministry of Foreign Affairs, 2003. *Japan's Official Development Assistance Charter*, Available at: <http://www.mofa.go.jp/policy/oda/reform/revision0308.pdf>. accessed 01/17, 2015.
- . 2011. *Ningen-no-Anzen-Hoshou*. Available at: http://www.mofa.go.jp/mofaj/gaiko/hs/pdfs/hs_pamph.pdf. accessed 08/21, 2014.
- Mogami, Toshiki. 2006. *Kokusai-Rikkennshugi no Jidai*. Tokyo:
- Mushanokoji, Kinhide. 1998. "Heiwateki-Seizonken-to-Ningen-no-Anzen-Hoshou." Tadakazu Fukase ed. *Kokyu-Sekai-Heiwa no Tameni*. Tokyo: Keisoushobou.
- . 2003. *Ningen-no-Anzen-Hoshou-Jyoron: Global Fascism ni Koushite*. Tokyo: Kokusai-Shoin.
- Newman, Edward. 2010. "Critical Human Security Studies." *Review of International Relations*. 36. 77-94.
- Nonaka, Toshihiko, Nakamura, Mutsuo, Takahashi, Kazuyui, and Takami, Katsutoshi. 2012. *Kenpou I*. Tokyo: Yuhikaku.
- Nozaki, Takahiro. 2004. "Ningen-no-Anzen-Hoshou to Seiji: Nihon no 'Sentakuteki-jyuyou' no Imi." Makoto Sato, and Tsugio Ando eds. *Ningen-no-Anzen-Hoshou: Sekai-Kiki he-no Chousen*. Tokyo: Toshindou.
- Oberleitner, Gerd. 2005. "Human Security: A Challenge to International Law?" *Global Governance* 11. 185-203.
- Obuki, Yoshito. 1983. *Kenpou-Tsurezuregusa*. Tokyo: Sanreishobou.
- . 1990. *Nihonkenpoui; Kakusetsu to Hanrei*. Tokyo: Bokutakusha.

- . 2007. "Iwayuru Heiwateki-Seizonken-ron heno Gimon." Yoshito Obuki. *Kenpou no Kiso-Riron to Kaishaku*. Tokyo: Shinzansha.
- Okada, Nobuhiro. 1991. "Heiwateki-Seizonken: Kokusai-Shakai ni okeru Nihonkoku-Kenpou no Shitenkara." Zenkoku-Kenpou-Kenkyukai ed. *Kenpou-Mondai* (2). Tokyo: Sanseidou.
- Okubo, Toshiro. 2007. "Globalization, Ningen-no-Anzen-Hoshou to Nihonkoku-Kenpou." Toshiro Okubo ed. *Globalization to Ningen-no-Anzen-Hoshou*. Tokyo: Nippon Hyouronsha.
- Sato, Makoto. 2007. "Human Security and Japanese Diplomacy: Debates on the Role of Human Security in Japanese Policy", Giorgio Shani, Makoto Sato, and Mustapha Kamal Pasha eds. *Protecting Human Security in a Post 9/11 World: Critical and Global Insights*. Hampshire: Palgrave MacMillan.
- Schmitt, Carl. 1993. *Verfassungslehre*, 8. Aufl. Berlin: Duncker & Humblot. (= *Constitutional Theory*, translated by Jeffrey Seitzer, Durham: Duke University Press, 2008)
- Shani, Giorgio. 2007. "Introduction: Protecting Human Security in a Post 9/11 World", Giorgio Shani, Makoto Sato, and Mustapha Kamal Pasha eds. *Protecting Human Security in a Post 9/11 World: Critical and Global Insights*. Hampshire: Palgrave MacMillan.
- Shani, Giorgio, and Pasha, Mustapha Kamal. 2007. "Conclusion." Giorgio Shani, Makoto Sato, and Mustapha Kamal Pasha eds. *Protecting Human Security in a Post 9/11 World: Critical and Global Insights*. Hampshire: Palgrave MacMillan.
- Poku, Nana K. 2010. "Globalisation, Development and Security", Alan Collins ed. *Contemporary Security Studies*, Oxford: Oxford University Press.
- Schmitt, Carl. 1993. *Verfassungslehre*. 8. Auflage. Berlin: Duncker & Humblot. (=2008. *Constitutional Theory*. Translated by Jeferey Seitzer. Durham: Duke University Press).
- Takayanagi, Shinichi. 1983. "Kokka-no-Jieiken yori Jinmin-no-Heiwaken-he." *Kenpou-to-Heiwahoshou Hougaku Seminar Zoukan Sougou Tokushu Series* 22. Tokyo: Nihon Hyouronsha.
- Taya, Chikako. 2001. "Jinken to-shiten Ningen-no-Anzen-Hoshou." *Jurist*. 1205. 96-103.
- Thakur, Ramesh. 2006. *The United Nations, Peace and Security*. Cambridge: Cambridge University Press.
- Urabe, Noriho. 2004. "Kenpou 9jyou to Ningen-no-Anzen-Hoshou." *Houritsu-Jihou*. 76 (7). 63-67.
- . 2006. *Kenpou-gaku Kyoushitsu*. Tokyo: Nihon Hyouronsha.
- Urata, Kenji. 1974. "Kenpou-Saiban-ni-okeru Heiwateki-Seizonken - Koujyo-Ryouzoku-ron-ni-okeru Tokushu Nihonteki Yousei". Arikura Ryoukichi Sensei

- Kanreki-Kinen Kankou-Iinkai ed. *Gendai-Kenpou no Kihon-Mondai*. Tokyo: Waseda-Daigaku Shuppanbu.
- Yaguchi, Toshiaki. 2000. "Zenbun." Toshihiko Nonaka, Hidenori Tomatsu, Takashi Ebashi, Kazuyuki Takahashi, Katsutoshi Takami, Noriho Urabe eds. *Chushaku-Kenpou Dai-Ikan*. Tokyo: Yuhikaku.
- Yamagata, Toshiro. 2004. "Kokusaihou-heno-Chousen: 'Ningen-no-Anzen-Hoshou'." Makoto Sato, and Tsugio Ando eds. *Ningen-no-Anzen-Hoshou: Sekai-Kiki he-no Chousen*. Tokyo: Toshindou.
- Yamano, Kazumi. 1984. "Zenbun." Nobuyoshi Ahibe, Masaaki Ikeda, Yasuo Sugihara eds. *Enshu Kenpou*. Tokyo: Seirin-Shoin.
- Yamauchi, Toshihiro. 1992. *Heiwa-Kenpou no Riron*. Tokyo: Nihon Hyouronsha.
- . 2001. "Anzen-Shou-ron no Paradigm tenkan." *Houritsu-Jihou*. 73 (6). 4-10.
- . 2003. *Jinken, Shuken, Heiwa: Seimeiken karano Kenpouteki Shousetsu*. Tokyo: Nihon Hyouronsha.
- Yokota, Kouichi. 1998. "Heiwateki-Seizonken no Kokusaika ni mukete." Tadakazu Fukase ed. *Kokyu-Heiwa no Tameni*. Tokyo: Keisoushobou.
- Wada, Hideo. 1973. "Nihonkoku-Kenpou-ni-okeru Heiwa-no-Chii". Yasusaburo Hoshino ed. *Hou-to-Heiwa*. Tokyo: Gakuyou-Shobou.

The Impact of ICC Interventions on Kenya, The Ivory Coast and Human Security - A Comparative Analysis from the Initiation of Investigations to State Responses-

Hiroshige FUJII¹

Abstract

To date, the relationship between human security and the ICC has been unclear. This is because the ICC has been expected to play a variety of roles. In order to broaden the understanding of the roles, this article aims to illustrate the impact of the ICC interventions. Following a contested election in Kenya in 2007 and the Ivory Coast in 2010, these states experienced severe violence. In both cases, the ICC exercised jurisdiction by using the same trigger mechanism, *i.e. proprio motu* powers. This article initially highlights the initiation procedures for the ICC intervention, focusing on its prosecutorial strategy. In doing so, ICC objectives are outlined in relation to complementarity principle. However, the ICC is expected to intervene in not only post-conflict, but also in ongoing conflict situations which brings an added complexity to their role. The ICC hence must consider comprehensive situations within its mandate because the ICC interventions are considered to have huge impact on secure environments. In this sense, the ICC has to exercise its power within the dilemma between peace and justice, a dilemma that significantly obscures the role of the ICC. The Kenyan and Ivory Coast cases have a number of common features, but there have been contrasting reactions following the ICC intervention. These differences are crucial for the analysis of the relationship between human security and the ICC, because in the course of the discussion as to the ICC's role, these reactions provide limitations and challenges to the latter's intervention.

Keywords:

ICC, complementarity principle, post-election violence, reconciliation, justice sector reform

1. Introduction

There is little question that states themselves bear the responsibility to address the reform of their social system for the prevention of further atrocities following a conflict. Since the end of the Cold War, the nature of conflict has transformed what was of an international one to complex internal conflict. As international society has struggled to adapt this shift in the nature of conflict, the concept of human security has emerged in the international agenda as an approach to address these changes. To date, the policy has contributed to promoting the fact that states firmly achieve a secure environment. This people-centred policy sheds light for individuals itself and this

¹ Programme Adviser, Secretariat of the International Peace Cooperation Headquarters, Cabinet Office. The views expressed in this article reflect the author's opinions and not those of Cabinet Office, Government of Japan. The author would like to express his sincere gratitude to Professor Carsten Stahn at Leiden University and Programme Director of the Grotius Centre for International Legal Studies.

development can also be seen in the international law. More specifically, the concept of putting an end to impunity has advanced the international criminal law by directly enforcing international justice to the individual. In order to realise this concept, the International Criminal Court (hereafter 'ICC') was established as a permanent court.

However, where is the ICC?² Since the ICC, whose Statute entered into force in 2002, has indicted perpetrators who committed serious crimes, the international society has been progressively discussing how to apply the justice mechanism effectively to conflict situations. In spite of a new growing awareness of the ICC internationally, it is still unclear what the ICC has contributed to peacebuilding in post-conflict states. Inevitable questions remain. Will the ICC intervention truly bring sustainable peace? Will leaders of state impede the peace process until the possibility of their prosecution is taken off the table? The more justice enquires into criminal responsibility, the more peace steps away. Is there no way for us to pursue both peace and justice? This "hedgehog dilemma" between peace and justice describes clearly and ironically the variety of roles that the ICC has been required to play. Thus, the relationship between human security and the ICC seems to remain tenuous. This article aims to outline the relationship between the ICC and human security through case studies for the impact of ICC interventions on states.

It is necessary to first delineate the status quo in referred states in order to study the impact of ICC interventions. When the ICC exercises its jurisdiction, it examines not only *ratione materiae* (subject-matter jurisdiction), but also national legal capacity for accountability. After evaluation of the national legal system, the ICC decides to exercise its jurisdiction in accordance with its Statute if it deems the national legal capacity insufficient. This is the "principle of complementarity". This article will initially analyse the commencement of ICC interventions through the principle of complementarity. It will then compare past and current situations in Kenya and Ivory Coast, where the ICC office of the Prosecutor (hereafter 'OTP') initiated investigations into Post-Election Violence (hereafter 'PEV') that took place in these two states under the legal principle of *proprio motu* (the ICC Prosecutor's own initiative). Despite their similarities, the ICC currently faces contrasting dilemmas in these two cases.

The dilemmas belie the ideals of the ICC interventions in post-conflict situations and help make headway in the analysis of the association between human security and the ICC, although there has been insufficient study of this approach. This article seeks to contribute to, and hopefully broaden, the role of the ICC by addressing case studies in the light of states reactions. It is expected that,

² Stahn (2011) provides a comprehensive analysis on the role of the ICC.

through analysis of similarities and differences in these cases, this article will revisit the positive and negative impacts of ICC intervention.

2. The Initiation of ICC Intervention

Under the ICC Statute, the ICC can initiate investigations under three trigger mechanisms; “the States (Self) referral”,³ “the Security Council referral”⁴ and “*proprio motu*”.⁵ The decision to exercise of jurisdiction or not is one of the most sensitive areas for the ICC. The ICC necessarily operates not only in a legal, but also a diplomatic and a political sphere, because the decisions it takes can affect the very security of the region.⁶ Yet, the Court, when taking a decision to initiate an investigation, must safeguard itself from political-influence in order to maintain the Court’s impartiality and independence. On this point, the Kenyan and Ivory Coast PEV incidents were directly connected with the domestic political power balance. This section examines the ICC’s prosecutorial discretion and then highlights its prosecutorial strategy for bringing these cases within the ambit of ICC scrutiny.

2.1 Prosecutorial discretion

A notable difference between international prosecutors and national prosecutors is that international prosecutors have relatively broad discretion for their prosecutions. For examples, whereas there were thousands of suspects, only 24 were actually indicted in the Nuremberg Tribunal and only 28 in the Tokyo Tribunal.⁷ The International Criminal Tribunal for former Yugoslavia (hereafter ‘ICTY’) also admitted that its prosecutor has broad discretion in the initiation of investigations and in the preparation of indictments.⁸ Louise Arbour, a former Chief Prosecutor of the ICTY and International Criminal Tribunal for Rwanda, explains this as follows:

“[a]n immediate distinction can be seen between the work of these Tribunals and a domestic criminal justice system because a domestic prosecutor is never really

³ Article 13 (a) and Article 14 of the Statute.

⁴ Article 13 (b) of the Statute.

⁵ Article 13 (c) and Article 15 of the Statute.

⁶ Crane 2005, 8.

⁷ The Charter for both Nuremberg and Tokyo Tribunals provided that the Chief Prosecutors were responsible for the final designation of major war criminals to be tried at the Tribunal, in accordance with Article 14 (b) of the Charter of the Nuremberg Tribunal and Article 8 (a) of the Charter of the Tokyo Tribunal, respectively. See, e.g., Matthew 2004, 75.

⁸ *The Prosecutor v. Delalic, Mucic, Delic and Landžo, (Celebici case), Appeals Chamber Judgement, Case No. IT-96-21-A, 20 February 2001, para. 602.*

seriously called upon to be selective in the prosecution of serious crimes. Crimes are committed, they are reported, investigated, charges are brought, and the prosecutors prosecute all major crimes where the evidence permits. By contrast, in the work of the international Tribunals, the Prosecutor has to be highly selective before committing resources to investigate or prosecute, and must work in a manner that can complement domestic legal systems.”⁹

Hence, the ICC adopts a selective approach, due to the limitation of human, financial and other necessary resources. The ICC Prosecutor is only able to prosecute perpetrators which bear the greatest responsibility for the most serious crimes and has a critical responsibility to initiate investigations into the situation. In this respect, is the discretion of the ICC Prosecutor, indeed, like the hole in the doughnut as Dworkin illustrated?¹⁰

The ICC Statute provides the legal framework for prosecutorial discretion. According to Articles 1 and 5 of the ICC Statute, the ICC has the power to exercise jurisdiction over persons for the most serious crimes of international concern under the condition of complementarity to national criminal jurisdictions: *i.e.* the expected function of the ICC is to complement domestic justice in the case of serious crimes. However, in doing so, the ICC Prosecutor has become exposed to more politicisation than in past ad-hoc Tribunals, because the ICC is expected to address not only post-conflict situations but also ongoing armed and political conflicts. As Greenawalt has summarised, “if the decision to prosecute depends on deeply political questions that require complex policy judgments about what form of transitional justice is best suited to a particular situation, then the very rationale for delegating this decision to an independent Prosecutor is undermined”.¹¹ In response to this dilemma the Prosecutor has to exercise its power under the ICC Statute with great caution to remove any doubt of political influence, and a strict application of the law is required for full independence and impartiality of the OTP.¹²

Under the principles of independence, impartiality, objectivity and non-discrimination, the OTP proceeds in involving the following four steps, namely the selection of regions, incidents, groups and then individual perpetrators.¹³ In order to secure independence and impartiality, the OTP practice is

⁹ Arbour 1997, 534.

¹⁰ Dworkin 1977, 31.

¹¹ Greenawalt 2007, 650.

¹² The OTP seems to be increasingly nervous about this argument. It can be seen in the context of Palestine. The Prosecutor released her statement to explicitly deny political pressure and defend the Court’s non-intervention in Palestine. See, Statement of the Prosecutor of the ICC, 2 September 2014.

¹³ See, The OTP 2006c, 1-2 and 12-13.

to examine in stages of “situations” and “cases”. Although there is no clear definition regarding these two stages throughout the ICC Statute and the Rules of Procedure and Evidence,¹⁴ it is possible to make the distinction that situations relate to investigations and cases relate to prosecution. The Pre-Trial Chamber mentioned that on the one hand, “situations” are generally defined in terms of temporal, territorial and, in some cases personal, parameters,¹⁵ and on the other hand, “cases” refer to specific incidents, during which one or more crimes within the jurisdiction of the Court have been committed by one or more identified suspects, entailing proceedings that take place after the issuance of a warrant of arrest or a summons to appear.¹⁶ The Prosecutor thus first requests to open investigation into “situations”, but not specific “cases” to prevent allegations of political motivation targeting identified individuals.

2.2 The OTP prosecutorial strategy -From positive complementarity to *proprio motu* –

The OTP explicitly states that the goal of the ICC should not be the number of cases decided by the ICC, but rather the lack thereof, as the absence of ICC intervention would be an indication of effective functioning national systems.¹⁷ Indeed, the examination of the national system is a vital juncture of ICC intervention. However, on this point, there is serious doubt for the ICC examination due to a lack of law enforcement for the ICC as an external intervener. Though the Pre-Trial Chamber may recognise jurisdiction and authorise an investigation, it is not always the case that referred states willingly accept OTP investigations.¹⁸ Where there is a lack of state cooperation, the OTP is placed in a very challenging situation in implementing its mandate, as it depends on states to execute its warrants to perpetrators and collect evidence.¹⁹ As a result of such conditions, the OTP has driven the application of self-referral from Member States as the strategy of “positive complementarity”.

The OTP adopted the policy of inviting and welcoming voluntary referrals by territorial states as a first step in triggering the jurisdiction of the Court.²⁰ This self-referral strategy based upon the idea of “positive complementarity” is considered as no impediment to the admissibility of a case,

¹⁴ Rastan 2008, 435.

¹⁵ *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6. ICC-01/04-101, 17 January 2006 para 65*: See, e.g., Nserenko 1998, 398.

¹⁶ *Ibid.*, para 65: See, e.g., Hall 1999, 407- 408.

¹⁷ The OTP 2003a, 4.

¹⁸ The difficulty of the prosecution was described as “the ICC is independent and interdependent at the same time”, by the ICC former Prosecutor Moreno-Ocampo. See, The Statement by Moreno-Ocampo, 16 June 2003.

¹⁹ The first President of the ICTY described the ICTY as “a giant without arms and legs”, which means the ICTY cannot implement its mandate without state cooperation. See, Cassese 1998, 13.

²⁰ The OTP 2006d, 7.

because there may be cases where inaction by states is the appropriate course of action.²¹ In 2006, the OTP report clearly mentioned that “at the core of the Prosecutorial Strategy lie three essential principles that the Office has developed during its first three years of work: positive complementarity, focused investigations and prosecutions, and maximizing the impact.”²² For instance, although the ICTY has overriding jurisdiction in domestic courts, it faced serious difficulties in exercising its power due to a lack of state cooperation within its territory. For this experience, positive complementarity is explained as something that it seeks to encourage genuine national proceedings where possible relies upon national and international networks, and participates in a system of international cooperation.²³

In spite of the above benefits, there are basically two criticisms regarding positive complementarity. The first is that, even if states referred their situations themselves, there is always a probability that they may change their stance on cooperation with the OTP in the course of prosecution. The prosecutorial strategy can also come under direct political pressure from the state. In the case of Uganda, the leader of the Lord's Resistance Army (hereafter ‘LRA’), Joseph Kony, demanded that his charges regarding war crimes be dropped for a peace deal.²⁴ Uganda President, Yoweri Museveni, officially refused his request, but the President wanted the ICC to withdraw arrest warrants of LRA members as an implied consideration of Kony’s request.²⁵ The investigation was opened in 2004 and the Pre-Trial Chamber issued warrants of arrest to four suspects in 2005, but they remained at large as of when this section was written.

Secondly, there is a concern that the practice of positive complementarity undermines the independence and impartiality of the OTP selection process. When states choose a self-referral, they do so under the assumption that the Prosecutor will not indict incumbent government members, and will provide cooperation with the ICC only as long as such assumptions are met. This prosecutorial cooperation may implicitly vindicate the legitimacy of the government by presenting its political opponents in front of the ICC,²⁶ hence the likelihood of states using the ICC for their political power games.

In view of these concerns, positive complementarity is a double-edged sword for the OTP where its pursuit of prosecution in strict neutrality could evoke aversion by main parties. It is thus

²¹ The OTP 2003a, 5.

²² The OTP 2006b, 4.

²³ Ibid, 5.

²⁴ It was reported that Museveni has promised immunity for the LRA leader from arrest in Uganda. See, e.g., McGreal 2007.

²⁵ McGreal 2008.

²⁶ Cassese 2006,436.

inevitable that self-referral is described as “a trap - a Trojan horse for the Court”.²⁷

These negative aspects of positive complementarity could bring favourable argument for the exercise of *proprio motu* powers. In the drafting stage, the International Law Commission initially did not consider prosecutorial *proprio motu* powers. Nevertheless, once the idea of such powers was suggested, this suggestion was widely supported. This is because *proprio motu* powers were thought to enhance the independence and autonomy of the Prosecutor who would be in a position to work on behalf of the international community rather than a particular case identified by states or the Security Council.²⁸ In the next section, after examining the initiation of *proprio motu* investigations and the threshold required under the complementarity test, the interaction between the ICC intervention and state responses is dealt with more specifically.

3. ICC Interventions and State Responses

The jurisdiction of the ICC is not solely an *ex post facto* mechanism, but functions at least partially as an instrument with which to constrain ongoing violence and to secure accountability in the context of hostilities.²⁹ In this context, the ICC is expected to consider not only legal but also security issues more comprehensively than the scope usually required of national judicial organs. Intervention without state consent can have significant impact on the peace negotiations and peacebuilding process. Accordingly, for a long time, the OTP did not exercise *proprio motu* powers. However, the passive attitude of the Prosecutor was criticised insofar as the Prosecutor did not “select” the situations.³⁰ In 2009, the Kenya PEV at last became the first situation initiated by the *proprio motu* power, followed by the Ivory Coast in 2011, albeit the feasibility of self-referral had been simultaneously discussed in both cases. This section analyses the reaction for the ICC intervention focusing on the initiation of the ICC procedure in these states.

3.1 The Kenyan case

It can be seen at the beginning of the Kenyan case that the ICC intervention was considered as the last resort as a means to restore domestic justice. Former President Mwai Kibaki was re-elected in the 2007 presidential election, but supporters for the opposition leader Raila Odinga claimed that the election was manipulated. In the end, instigated protest activities became more and more

²⁷ Schabas 2008, 753.

²⁸ UN Doc A/50/22 (1995) para. 25: See, e.g., Stegmiller 2011, 183-186.

²⁹ Stahn 2012, 326.

³⁰ Shabass 2008, 741.

aggressive toward other supporters, based on ethnic divisions and bringing mass violence over Kenya for two months. Although the PEV brought a large number of casualties,³¹ reconciliation among political leaders seemed to be effectively led by the Panel of Eminent African Personalities chaired by Kofi Annan. Through the national dialogue, the Commission of Inquiry into the Post-Election Violence (hereafter ‘CIPEV’) was established to investigate the PEV that took place between 27 December 2007 and 29 February 2008 and to recommend measures for bringing justice in Kenya.³² The CIPEV produced a comprehensive report on the PEV of 2007/2008, embracing the establishment of a special criminal tribunal or a hybrid tribunal, as modelled on the Extraordinary Chambers in the Courts of Cambodia, within a designated time limit. The CIPEV also created a confidential PEV suspects list. Despite the encouragement by Kofi Annan to implement CIPEV recommendations, the time limit passed without any positive progress within the Kenyan parliament. Consequently, the suspects list was handed to the ICC prosecutor to provide information regarding the PEV.³³ Negotiations focusing on the timing of the ICC intervention between Kenya and the ICC followed. These negotiations were seen as a new attempt to build on the concept of positive complementarity,³⁴ but on 31 March 2010, the ICC Pre-Trial Chamber which reviews “reasonable basis” to proceed, adjured to authorise the first ever *proprio motu* prosecutorial investigation into the Kenyan situation.³⁵

3.1.1 National system reform and the test of complementarity

The ICC is assumed to bring about a positive impact on the national justice sector by complementing rather than replacing the system. While self-referral had covered this argument, the initiation of the Kenyan situation revisits this point in the course of the examination of the admissibility. As an initial reaction after the opening of the investigation, Kenya collaborated with the African Union (hereafter ‘AU’) that had requested the Security Council to defer the ICC examination pursuant to the ICC Statute Article 16.³⁶ However, this request was rejected.³⁷ Kenya

³¹ The number of dead reached 1,133 and many people suffered and fled from violence by not only opponent ethnic groups, but also the security authority. In seeking this evidence, the CIPEV relied upon information provided by respective hospitals in the five provinces under inquiry. These were: Western, Rift Valley, Nyanza, Nairobi and Coast. See, CIPEV 2008, 305.

³² Agreement of Commission of Post-election Violence, 4 March 2008.

³³ The ICC Press Release 2009a.

³⁴ Sriram and Brown 2012, 232.

³⁵ The OTP initially had a blueprint called the “three-pronged strategy” to promote, which is the prosecution of top-level perpetrators by the ICC, of middle-level perpetrators by a hybrid tribunal and a truth commission to address violation more generally. See, The ICC press release, 2009b.

³⁶ AU Doc. Assembly/AU/Dec.334(XVI).

³⁷ For instance, the AU reiterates Kenyan ongoing effort in the promotion of peace and the primary response for PEV investigations. See, AU Doc, Assembly/AU/Dec.482 (XXI).

then challenged admissibility pursuant to the ICC Statute Article 19 based mainly on two claims.³⁸ The first is that Kenya has advanced justice sector reform through the adoption of a new constitution by the August referendum; the other is that Kenya has the capacity to conduct its own prosecutions relating to the PEV.

Kenya had already commenced a justice sector reform programme before the PEV occurred, but there was little progress due to political interference.³⁹ However, in parallel to discussions about ICC intervention, reform was advanced in the police and justice sectors. It was apparent that the ICC engagement with Kenya helped bring about some positive changes, which contributed to the strengthening of domestic rule of law.⁴⁰ Nonetheless, the Pre-Trial Chamber,⁴¹ and then the Appeal Chamber⁴², respectively rejected Kenyan challenges. According to the ICC decisions, admittedly, the Kenyan Constitution 2010 has contributed to improvements in the criminal justice system in terms of due process and independence.⁴³ However, the ICC decided that the Kenyan government had not taken sufficient action in response to the PEV incident.⁴⁴ Many of those who are suspected by the ICC of involvement in PEV, *inter alia* William Samoei Ruto, Joshua Arap Sang and Uhuru Muigai Kenyatta, have not been arrested and prosecuted in domestic courts yet. Bearing this in mind, the ICC adopted the “same person, same conduct” test for examining whether the Kenyan authority would prosecute the same perpetrators who are subject to the ICC investigation. The test clarified the gap between the ICC and Kenyan investigations⁴⁵ and then decided that the current Kenyan justice shows an unwillingness and inability to take action on the issue of PEV. In order to meet this test, any Kenyans accused have to substantively demonstrate their accountability in front of a court.

³⁸ *Application on behalf of the Government of The Republic of Kenya pursuant to Article 19 of the ICC Statute*, ICC-01/09-01/11 and ICC-01/09-02/11, 31 March 2011.

³⁹ Mbote and Akech 2011.

⁴⁰ Wanyeki 2012, 17.

⁴¹ *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, No. ICC-01/09-01/11, *Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute*, 30 May 2011; *The Prosecutor v. Francis Kiriimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11, *Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute*, 30 May 2011.

⁴² *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, No. ICC-01/09-01/11, *Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute*, 30 August 2011; *The Prosecutor v. Francis Kiriimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11, *Judgement on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute*, 30 August 2011.

⁴³ Political interference was a serious problem in Kenya. For instance, under the former Constitution, the Judiciary was influenced by the political power to appoint the Chief Justice and judges to the President.

⁴⁴ The “inaction” is one of essential elements to constitute complementarity practice. See, The OTP 2003b.

⁴⁵ The test was initially applied at the Lubanga case. See, *The Prosecutor v. Thomas Lubanga Dyilo*, *Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to Article 19(2)(a) of the Statute of 3 October 2006*, ICC-01/04-01/06-772 A.Ch., 14 December 2006.

3.1.2 The impact of political interferences

In response to this decision, Kenya has intensified political pressures on the ICC prosecution. More interestingly, in 2012, political rivals Kenyatta and Ruto, who are both being prosecuted at the ICC formed an alliance for the 2013 election and succeeded in finally winning the election.⁴⁶ President Kenyatta thus became the first case of an incumbent head of a state to be prosecuted by the ICC. Without doubt, this unforeseen development made the ICC's scenario more complex. Against the backdrop of criticism from other African states, Kenya produced notable developments which the ICC cannot discount.

Firstly, in 2013, the 12th ICC Assembly of States Parties (hereafter 'ASP') discussed changing the Rules of Procedure and Evidence regarding the presence at trial of senior government officials while in office. The ASP adopted Rule 134 *quarter*,⁴⁷ but it was obvious that the adoption was made under the pressure of African states concerning the trial of the Kenyan leaders.⁴⁸ African states constitute more than 20% of the Member States of the ICC have considerable political power at the ASP.⁴⁹ In immediate response to this amendment, Ruto requested the ICC to be absent from the Court. The ICC admitted his request during his trial except for the closing statements, the delivery of the judgment and the first five trial days after a judicial recess in accordance with Regulation 19bis.⁵⁰

Secondly, in 2014, the AU adopted an amendment to the Protocol on the Statute of the African Court of Justice and Human Rights. The aim of the amendment is to replace the African Court on Human and Peoples' Rights (hereafter 'ACHPR') with the African Court of Justice and Human Rights giving it criminal jurisdiction over war crimes, crimes against humanity and genocide within AU member states. It was often criticised that the ACHPR does not work well for the protection of human rights, so this amendment is expected to strengthen the rule of law in Africa. However, the complication is that this new African court admits that heads of state and senior officials can enjoy

⁴⁶ Kenyatta and Ruto were elected as a president and a vice president, respectively. It is pointed out that they increased their popularity and ethic-based voting behaviour by promoting criticism of the ICC intervention. See, Lynch and Zgonec-Rozej 2013, 9-11.

⁴⁷ Rule 134quarter

1. An accused subject to a summons to appear who is mandated to fulfil extraordinary public duties at the highest national level may submit a written request to the Trial Chamber to be excused and to be represented by counsel only; the request must specify that the accused explicitly waives the right to be present at the trial.

2. The Trial Chamber shall consider the request expeditiously and, if alternative measures are inadequate, shall grant the request where it determines that it is in the interests of justice and provided that the rights of the accused are fully ensured. The decision shall be taken with due regard to the subject matter of the specific hearings in question and is subject to review at any time.

⁴⁸ Knottnerus 2014, 3-4.

⁴⁹ While there are 122 Member States in total, 34 African states ratified the ICC Statute in 2014 September.

⁵⁰ *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang, Reasons for the Decision on Excusal from Presence at Trial under Rule 134quarter*, ICC-01/09-01/11, 18 February 2014. See, e.g., Knottnerus 2014, 6.

immunity while they are in office.⁵¹ This article is starkly inconsistent with the ICC Statute in that Article 27 explicitly stipulates the irrelevance of official capacity for prosecutions. Perhaps most obviously is the fact that this amendment sends a political message to Kenyan trials.⁵² As a matter of course, there is serious concern if the impunity of senior government officials is justified in the new African court. Without doubt, these officials who are prosecuted would remain in their higher positions indefinitely. It is further inevitable that the ICC will be pressed to deliberate over the relationship with the new African court, in terms of the complementarity principle.

Thirdly, it is argued that the ICC should issue warrants of arrest for Kenyan accused. In 2011, the ICC Pre-Trial Chamber issued initial summonses pursuant to the ICC Statute Article 58 (7), but not warrants of arrest. The accused have still been allowed to remain at liberty pending trial. The Kenyan government sent a letter to the Security Council asking for withdrawal of the case of Kenya.⁵³ Having seen the above responses, the Kenyan government continuously attempts to impede their trials by the ICC.

More significantly, the increasing interference in witnesses is also obvious, especially in Kenyatta became a president.⁵⁴ What cannot be overlooked is the fact that such political interferences directly have the most negative impact on victims and witnesses. Some witnesses recanted their testimony and others were reluctant to testify due to fear of reprisals from the government. As the first case in the ICC, the warrant of arrest for Walter Osapiri Barasa is issued for the breach of the ICC Statute Article 70 (1) (c)⁵⁵ because he is suspected of offering bribes to prosecution witnesses in the trial of Ruto. These reveal the severity of the protection of witnesses and victims in Kenya, without supports from the government.

Regrettably, the AU produced decisions criticising the ICC intervention in Kenya.⁵⁶ In the context of ongoing tension between African states and the ICC, the Kenyan reaction to the ICC intervention presumably accelerates non-cooperation and a backlash from other African states.⁵⁷ Eventually, these political interferences have created not only the critical divide among major parties,

⁵¹ Article 46A bis of the Protocol on Amendments

No charges shall be commenced or continued before the Court against any serving African Union Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office.

⁵² Furthermore, another trigger for this amendment is that the ICC Arrest Warrant issued for President al-Bashir of Sudan in 2009.

⁵³ See, e.g., BBC News, 9 May 2013.

⁵⁴ See, e.g., BBC News, 8 February 2013; Escritt 2013.

⁵⁵ *The Prosecutor v. Walter Osapiri Barasa, Warrant of arrest for Walter Osapiri Barasa, ICC-01/09-01/13, 2 August 2013.*

⁵⁶ See, AU Doc. Ext/Assembly/AU/Dec.1, Oct. 2013.

⁵⁷ In response to these negative reactions from Africa, the ICC produced a press release to clarify its position. It stressed that the ICC is autonomous from the UN and the SC, and ICC Judges are the guarantors of the fairness of proceedings. See, The ICC Press Release 2013a.

but also further victims.

3.2 The Ivory Coast Case

Sketching out the Ivory Coast case is more complicated than the Kenya case because there are many linked incidents for the OTP examination due to political instability.⁵⁸ After the death of President Félix Houphouët-Boigny in 1993, the Ivory Coast became embroiled in a fierce power struggle. In 2004, the United Nations Operation in Côte d'Ivoire (hereafter 'UNOCI') was established in response to this situation⁵⁹ and has since contributed to the peace process. The 2010 presidential election, thus, was regarded as an achievement of this peace operation. Notwithstanding this, PEV occurred after election candidates, Laurent Gbagbo and Alassane Dramane Ouattara, both declared their respective election victory, while the Independent Election Commission (hereafter 'IEC') admitted Ouattara had won the election and its IEC's decision was supported by the UNOCI. The PEV had continued until former President Gbagbo was arrested on 11 April 2011.

3.2.1 Inaction of the OTP

Although the Ivory Coast was not a member State of the ICC Statute in 2010, its government had accepted the ICC jurisdiction for crimes committed on the country's territory since 19 September 2002 pursuant to the ICC Statute Article 12 (3).⁶⁰ The Prosecutor could, thus, legally initiate its investigation pursuant to Article 15 when the PEV occurred. In fact, having been under the preliminary examination since 2002, it was thought that the Prosecutor had a "reasonable basis" to open investigation in the wake of the PEV. However, the Prosecutor did not initiate it immediately after the PEV. There is a reason why he was waiting for "state-referral".

It is apparently shown that the Prosecutor preferred state-referral to the exercise of *proprio motu* powers. The Prosecutor stated that, with regard to the Ivory Coast PEV:

"... we are discussing with some (ICC) state parties, particularly within the region, if they wish to refer the case. That would help to expedite the activities of the court."⁶¹

Albeit no precedent of member states referring another State to the ICC,⁶² the Prosecutor

⁵⁸ The ICC had initiated preliminary examination in the Ivory Coast in 2003.

⁵⁹ UN Doc. S/RES/1528 (2004).

⁶⁰ See, Declaration under Article 12-3 of the Rome Statute, 18 April 2003.

⁶¹ Gray-Block 2011.

⁶² The first instance of this was brought, according to the ICC statement, by the Union of the Comoros requesting the Prosecutor to investigate the event of the Israeli raid on the Humanitarian Aid Flotilla bound for the Gaza Strip with

sought member states to refer the Ivory Coast situation. This is because, even though the Ivory Coast accepted ICC jurisdiction pursuant to Article 12 (3), Article 14 explicitly defines that only “member states” can refer the situation. As a result, the Prosecutor did not have the option of encouraging the Ivory Coast to refer itself based upon the strategy of positive complementarity. On this point, the state referral has an additional advantage for the OTP in this case. As mentioned in the previous section, the ICC needs states’ cooperation for exercising investigations and prosecutions. However, to date, African states have harshly accused the ICC for singling out Africa by virtue of all ICC cases coming from Africa.⁶³ Therefore, if an African State referred another African State to the ICC, it would be conceivably possible to avoid such condemnation, and would restore the legitimacy of the OTP intervention.

In the end, President Ouattara submitted a letter reconfirming the acceptance of the ICC jurisdiction on 14 December 2010,⁶⁴ demonstrating his agreement with the ICC intervention for the PEV. Indeed, the initiation of this investigation was almost the same as the process of self-referral. After an amended Constitution of the Ivory Coast, the government subsequently ratified the ICC Statute on 15 February 2013.⁶⁵

3.2.2 Limited negative response to the ICC intervention

In contrast to Kenya, no significant negative response has been raised from the Ivory Coast on the issue of the ICC intervention. The crucial difference is that the government of the latter agreed to the ICC intervention. However, a question remains. According to the presidential election results, 45.9% voters supported Gbagbo. When the ICC opened the investigation in Kenya, the ICC sparked strong negative reaction from the supporters of those being prosecuted. In the case of the Ivory Coast, did Gbagbo’s supporters genuinely accept the ICC intervention? Several differences can be pointed out in contrast with Kenya.

Firstly, Ouattara’s election victory has been supported, not only by the national authority, but also by the international society. After the presidential election, the international actors supported the decision of the IEC.⁶⁶ Under the Security Council Resolution, which implicitly mentioned “the

respect to the 31 May 2010. See, Referral under Articles 14 and 12 (2) (a) of the Rome Statute arising from the 31 May 2010, Gaza Freedom Flotilla situation

⁶³ In 2013, it is reported that the chairman of the AU's Executive Council said “the court has transformed itself into a political instrument targeting Africa and Africans”. See, e.g., BBC News, 11 October 2013.

⁶⁴ See, Letter reconfirming the acceptance of the ICC jurisdiction.

⁶⁵ The ICC Press Release 2013b.

⁶⁶ For instance, the UN supported the IEC announcement through the examination of tally sheets that UNOCI had received from the Ivorian polling authorities. See, UN Doc, S/2011/211 (2011) para.18.

responsibility to protect”,⁶⁷ the intervening UNOCI collaborating with French forces, brought about Gbagbo’s arrest by assisting Ouattara’s forces.⁶⁸ This international commitment increased the legitimacy of Ouattara’s political regime at the national level.

Secondly, the Popular Ivorian Front (hereafter ‘FPI’), the party of Gbagbo, has boycotted elections since the parliamentary election in December 2011. The FPI has taken a strict position that they will boycott any election until implementation of Gbagbo’s release from the judicial procedure, electoral commission reform and amnesty for crimes relating to the PEV.⁶⁹ On the one hand, Kenya advanced reconciliation, at least, among political leaders in response to the ICC intervention and the unity of political leaders delivered the success of the Kenyan presidential election in 2013. On the other hand, there have been few substantial steps towards reconciliation among Ivory Coast’s political leaders.⁷⁰

More specifically, the ruling parties in the Ivory Coast have a history of repeatedly excluding and suppressing opposition parties. For instance, when Henri Konan Bedie was the President between 1993 and 1999, he suppressed Ouattara by encouraging ethnic discrimination. After the military coup in 1999, Robert Guei held the presidential election in October 2000, but the process was implemented without major candidates. However, in the case of Kenya, the former President Kibaki did not exclude political opponents.⁷¹ As the latest Kenyan presidential election showed, it is indispensable for the success of political reconciliation for the opposition to be involved in free and fair elections. As long as Gbagbo’s supporters are positioned far from an official status due to boycott of elections, the government can dominantly interfere with the ICC intervention without any domestic oppositions. As a result, their testimony for the PEV might not effectively reach the OTP investigation, whereas the FPI’s information about the PEV is also essential for independence and impartiality of the OTP prosecutions. Although the ICC has to find a way to break such deadlock, it is envisaged that more impartial approaches will bring up the issue of non-cooperation from the government. The ICC intervention into the Ivory Coast thus has produced a more complex and sensitive situation for the main parties, namely the government, Gbagbo’s supporters and the ICC.

⁶⁷ UN Doc.S/RES/1975 (2011). The AU and ECOWAS decisions led to this SC resolution. See, *African Union Peace and Security Council, 250 meeting, Press Statement, PSC/PR/Comm.2 (CCL), 30 November 2010; African Union Peace and Security Council, 251 meeting, Press Statement, PSC/PR/BR (CCLI), 4 December 2010; The ECOWAS Press Release, Session Extraordinaire de la Conférence des Chefs d'Etat et de Gouvernement sur la Cote d'Ivoire, N° 193/2010, 24 December 2010.*

⁶⁸ On this point, there was an instance of criticism of the action of the UN bringing a political change. See, UN Doc, SC/10223 (2011).

⁶⁹ The FPI also boycotted local elections in April 2013. See, e.g., Voice of America News, 21 April 2013.

⁷⁰ See, e.g., Reuters, 14 September 2014.

⁷¹ For instance, he did not dismiss the political status of the accused even after opening the suspect list, in terms of “presumption of innocence” which stipulates Article 66 of the Statute. See, Macharia 2014.

It is argued that, judging from the lack of negative reaction, unbalanced prosecutions have been exercised for the PEV of 2010 in the both international and national criminal courts. In the ICC, the Prosecutor has not hitherto prosecuted any of Ouattara's party members despite allegations that both sides committed serious crimes during the PEV. In the Ivorian domestic court as well, national prosecutors have together charged more than 150 people from the Gbagbo side with crimes committed during PEV, yet no member of the pro-Ouattara forces has been charged with such crimes.⁷² This is the very situation of a victor's justice, even though President Ouattara assures that investigations on all sides are ongoing.⁷³ For this existing condition, it inevitably appears that the ICC prosecutions of former government members justify Ivorian partial prosecutions for the PEV.

The Ivory Coast is planning to hold a presidential election in October 2015. In order to prevent further PEV, the pressing issue for the government is how to advance the reconciliation process. What could be the role of the ICC? In fact, the Prosecutor is leaving considerable leeway for negotiation among relevant actors, in light of the prosecutorial timing and sealed or unsealed warrants of arrest. However, these political considerations undeniably show the ICC could not possibly be called a mere judicial organ. Thus, if so, the ICC considers the prosecutorial impact on political and secure environments, the ICC should tackle two agendas when it decides to intervene in the situation. The first would involve the ICC withdrawing the investigation for further prosecutions. The other would involve the ICC leaving positive effects in the national judicial practices as its legacy. This case encourages the ICC to plan a more concrete exit strategy to preclude the possibility that the ICC loses its direction amid its intervention.

4. Conclusion

Overall, these divergent reactions in Kenya and the Ivory Coast indicate that human security is one of the key concepts in order to serve as a bridge between ICC intervention and state responses. Upon a detailed examination, the above cases differ more than might first be surmised. Unfortunately, the common essential feature is that the ICC cannot escape from political interference. Bearing this in mind, while negative aspects outline the limitations and challenges of the ICC intervention in terms of independent and impartial approaches, the stimulation of national justice sector reform and reconciliation are some of the positive effects. Furthermore, admittedly, electoral violence has been a nagging headache for a number of African states over the years: almost all PEV

⁷² Human Rights Watch 2013, 28.

⁷³ See, e.g., Nelson 2011; Nelson 2013.

incidents have not been legally judged before courts as the perpetrators of violence are those who wield political power. However, the ICC interventions in these two cases send a strong message for putting an end to impunity in PEV, although it does not diminish the possibility that ICC intervention polarises state interests. This message, thus, expects to achieve a deterrence effect for further PEV.

It seems the ICC has been required to further clarify its role throughout the two cases, while the ICC's *raison d' être* is the direct enforcement of the *ius puniendi* (the right to punishment) of the international community as a whole.⁷⁴ This is because, as the case studies showed, the ICC intervention is producing a division, rather than linkage between the ICC and states. On this point, human security is a vital approach to advance a cooperation between the ICC and states. It is, thus, significant to revisit the reason why the ICC does not have the same competence compared with past ad-hoc tribunals. In order to enhance the ICC independence and impartiality, the ICC jurisdiction, *inter alia* prosecutorial *proprio motu* power, might actively seek exercise under the complementary principle for the reason that domestic proceedings are given priority to the ICC intervention. Under this logic, the ICC intervention can be expected to promote the justice sector reform and reconciliation, but, in doing so, the ICC is simultaneously forced to formulate a credible exit strategy based upon the concept of human security. The exit strategy should contribute a positive legacy and avoid leaving an irreconcilable division between the ICC and states. Accordingly, as long as the ICC exercises its jurisdiction without any contribution to peacebuilding, the same question will be raised at the end of these two trials, "Where is the ICC?"

⁷⁴ Kreb 2009, 144.

References

Books

- Dworkin, Ronald. 1977, *Taking Rights Seriously*. London: Duckworth.
- Hall, C.K. 1999, "Commentary on the Rome Statute of the International Criminal Court Article 19". O. Triffterer eds. *Commentary on the Rome Statute of the International Criminal Court : observers' notes, article by article*. Baden-Baden : Nomos.
- Kreb, C. 2009, "The international Criminal Court as a Turning Point in the History of International Criminal Justice". Antonio Cassese eds. *The Oxford Companion to International Criminal justice*. Oxford University Press.
- Mbote, Patricia Kameri and Migai Akech. 2011, *Kenya Justice Sector and the Rule of Law*. The Open Society Initiative for Eastern Africa.
- Nserenko, D. 1999, "Commentary on the Rome Statute of the International Criminal Court Article 18". O. Triffterer eds. *Commentary on the Rome Statute of the International Criminal Court : observers' notes, article by article*. Baden-Baden : Nomos.
- Schabas, William. 2010, *The International Criminal Court: A Commentary on the Rome Statute*. Oxford University Press.
- Stegmiller, Ignaz. 2011, *The pre-investigation stage of the ICC: criteria for situation selection*. Berlin : Duncker & Humblot.

Journal Articles

- Arbour, Louise. 1997, "Progress and Challenges in International Criminal Justice" *Fordham International Law Journal*, Volume 21, Issue 2: 531-540.
- Brubacher, Matthew. 2004, "Prosecutorial Discretion within the International Criminal Court", *J. Int'l Crim. Just.* 2 (1): 71-95.
- Cassese, Antonio. 1998, "On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law", *EJIL*, 9: 2-17.
- . 2006, "Is the ICC Still Having Teething Problems?", *JICJ* 4(3): 434-441.
- Crane, David. 2005, "Dancing with the Devil: Prosecuting West Africa's Warlords: Building Initial Prosecutorial Strategy for an International Tribunal after Third World Armed Conflicts", *Case W. Res. J. Int'l L.* 37 (1): 1-9.
- Knottnerus, Abel S. 2014, "The International Criminal Court on Presence at Trial: the (In)validity of Rule 134quater", *ICD Brief* 5: 1-11.

- Lynch, Gabrielle and Zgonec-Rozej, Miša. 2013, "The ICC Intervention in Kenya", *Africa/International Law*:1-14.
- Greenawalt, Alexander K. A. 2007, "Justice without Politics - Prosecutorial Discretion and the International Criminal Court" *N.Y.U. J. Int'l L. & Pol.* 39 (3): 583-673.
- Murithi, Tim. 2007, "The responsibility to protect, as enshrined in article 4 of the Constitutive Act of the African Union", *African Security Review*, Vol 16 (3): 14-24.
- Rastan, Rod. 2008, "What is a case for the Purpose of the Rome Statute?" *Criminal Law Forum*, 19 (3): 435-448.
- Schabas, William A. 2008, "Prosecutorial Discretion v. Judicial Activism at the International Criminal Court", *J. Int'l Crim. Just.* 6 (4): 731-761.
- Sriram, Chandra Lekha and Brown, Stephen. 2012, "Kenya in the Shadow of the ICC: Complementarity, Gravity and Impact", *International Criminal Law Review* 12 (2): 219-244.
- Stahn, Carsten. 2012, "Libya, the International Criminal Court and Complementarity A Test for 'Shared Responsibility'", *Journal of International Criminal Justice* 10 (2): 325-349.
- . 2011, "How is the Water? Light and Shadow in the First Years of the ICC", *Criminal Law Forum*, 22 No. 1: 175-197.
- . 2005, "Complementarity, Amnesties and Alternative Forms of Justice: Some Interpretative Guidelines for the International Criminal Court", *Journal of International Criminal Justice* 3(3): 695-720.
- Takemura, Hitomi. 2007, "Big Fish and Small Fish Debate — An Examination of the Prosecutorial Discretion", *International Criminal Law Review*, vol. 7, no. 4: 677-685.
- Wanyeki, L Muthoni. 2012, "The International Criminal Court's Cases in Kenya: Origin and Impact", *Institute for Security Studies*, No. 237:2-26.

Press and Web Sources

- Agreement of Commission of Post-election Violence, 4 March 2008, The web site of the Kenya National Dialogue and Reconciliation Committee,
<http://www.dialoguekenya.org/Agreements/4%20March%202008-Commission%20of%20Post-election%20Violence.pdf> (accessed on 20/10/2014).
- BBC News, 8 February 2013, <http://www.bbc.co.uk/news/world-africa-21382339> (accessed on 20/10/2014)
- BBC News, 9 May 2013, <http://www.bbc.co.uk/news/world-africa-22472242> (accessed on 20/10/2014)

- BBC News, 11 October 2013, <http://www.bbc.com/news/world-africa-24489059> (accessed on 20/10/2014)
- Commission of Inquiry into the Post Election Violence (CIPEV), 2008, “CIPEV final report”, http://reliefweb.int/sites/reliefweb.int/files/resources/15A00F569813F4D549257607001F459D-Full_Report.pdf (accessed on 20/10/2014)
- Escritt, Thomas. 18 July 2013, “ICC case against Kenyan president suffers blow as witnesses withdraw”, Reuters, <http://www.reuters.com/article/2013/07/18/us-kenya-icc-witnesses-idUSBRE96H0KE20130718> (accessed on 20/10/2014)
- Gray-Block, Aaron; Editing by Susan Fenton. 5 April 2011, “ICC prosecutor wants Ivory Coast atrocities referred”, Reuters, <http://www.reuters.com/article/2011/04/05/us-ivorycoast-icc-idUSTRE7346HM20110405> (accessed on 20/10/2014)
- Human Rights Watch, Turning Rhetoric into Reality Accountability for Serious International Crimes in Côte d’Ivoire, April 2013. http://www.hrw.org/sites/default/files/reports/CDI0413_ForUpload.pdf (accessed on 20/10/2014)
- Macharia, James. 15 December 2010, “Kenya’s Kibaki says won’t act yet against ICC suspects”, Reuters, <http://af.reuters.com/article/kenyaNews/idAFLDE6BE17M20101215?sp=true> (accessed on 20/10/2014)
- McGreal, Chris. 9 January 2007, “African search for peace throws court into crisis. Uganda fears first crucial test for tribunal could prolong brutal 20-year civil war”, The Guardian, <http://www.guardian.co.uk/world/2007/jan/09/uganda.topstories3> (accessed on 20/10/2014)
- . 13 March 2008, “Museveni refuses to hand over rebel leaders to war crimes court”, The Guardian, <http://www.guardian.co.uk/world/2008/mar/13/uganda.internationalcrime> (accessed on 20/10/2014)
- Nelson, Dean. 14 April 2013, “Ivory Coast: Alassane Ouattara calls for justice as questions remain over French role”, The Telegraph, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/cotedivoire/8449602/Ivory-Coast-Alassane-Ouattara-callsfor-justice-as-questions-remain-over-French-role.html> (accessed on 20/10/2014)
- . 15 April 2011, “Ivory Coast’s justice minister admits both sides have ‘blood on their hands’”, The Telegraph,

<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/cotedivoire/8453722/Ivory-Coasts-justice-minister-admits-both-sides-have-blood-on-their-hands.html> (accessed on 20/10/2014)

Reuters, 14 September 2014,

<http://www.reuters.com/article/2014/09/14/us-ivorycoast-politics-idUSKBN0H90Y320140914> (accessed on 20/10/2014)

The Statement by Moreno Ocampo, 16 June 2003, “Ceremony for the solemn undertaking of the Chief Prosecutor of the International Criminal Court”, The Coalition for the International Criminal Court website, <http://www.iccnw.org/documents/MorenoOcampo16June03.pdf> (accessed on 20/10/2014)

Voice of America News, 21 April 2013,

<http://www.voanews.com/content/ivory-coast-local-polls-begin-amid-boycott/1645870.html> (accessed on 20/10/2014)

The International Criminal Court

Declaration under Article 12-3 of the Rome Statute, 18 April 2003, The ICC official website,

<http://www.icc-cpi.int/NR/rdonlyres/CBE1F16B-5712-4452-87E7-4FDDE5DD70D9/279779/ICDE.pdf> (accessed on 20/10/2014)

Letter reconfirming the acceptance of the ICC jurisdiction, The ICC official website,

<http://www.icc-cpi.int/NR/rdonlyres/498E8FEB-7A72-4005-A209-C14BA374804F/0/ReconCPI.pdf> (accessed on 20/10/2014).

Referral under Articles 14 and 12 (2) (a) of the Rome Statute arising from the 31 May 2010, Gaza Freedom Flotilla situation The ICC official website,

<http://www.icc-cpi.int/iccdocs/otp/Referral-from-Comoros.pdf> (accessed on 20/10/2014)

Statement of the Prosecutor of the ICC, 2 September 2014. The Public Deserves to know the Truth about the ICC’s Jurisdiction over Palestine,

http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-st-14-09-02.aspx (accessed on 20/10/2014)

The ICC Press Release, 2009a. ICC Prosecutor Receives Sealed Envelope from Kofi Annan on Post-election Violence in Kenya, ICC-OTP-20090709-PR436.

———, 2009b, ICC Prosecutor Supports Three-Pronged Approach to Justice in Kenya, ICC-OTP-20090930-PR456.

- , 2013a, ICC underlines impartiality, reiterates commitment to cooperation with the African Union, ICC-CPI-20130529-PR908.
- , 2013b, ICC welcomes Côte d’Ivoire as a new State Party, ICC-CPI-20130319-PR884.
- The OTP, 2003a, Paper on some Policy Issues before the Office of the Prosecutor.
- , 2003b, The Principle of Complementarity in Practice, Informal Expert Paper.
- , 2004, Annex to the “Paper on some Policy Issues before the Office of the Prosecutor”: Referrals and Communications.
- , 2006a, Draft Paper, Criteria for the Selection of Situations and Cases.
- , 2006b, Paper on Prosecutorial Strategy 14 September 2006.
- , 2006c, Criteria for Selection of Situations and Cases, an annex to the policy paper, unpublished draft of the Office of the Prosecutor, June 2006.
- , 2006d, Report on the Activities Performed During the First Three Years (June 2003-June 2006).
- , 2007, Policy Paper on the Interests of Justice.
- , 2010a, Paper on Prosecutorial Strategy 2009-2012.
- , 2010b, Draft Policy Paper on Preliminary Examinations.

Field Explorer: A Digital Tool for “Studying in the Field”

Yosuke Tsuchiya¹

Abstract

This paper examines a set of requirements for an information and communications technology (ICT) tool optimized for human (in)security researchers and practitioners. Specifically, this paper examines and describes the features and performance of Field Explorer, a digital tool that the author designed from the perspective of a human security researcher. Many ICT tools exist that are useful to human security researchers and practitioners, including Computer-Aided Qualitative Data Analysis Software, multimedia fieldwork, visual data archives, and mobile devices, although most of these are specifically geared towards fieldwork in anthropology or sociology. First, this paper reviews these existing conventional tools and derived requirements for an effective ICT tool for human security studies. These are: 1) the function to determine the relevance of data recorded in different media formats such as photos, videos, voice recordings, GPS, and memos; and 2) the function to integrate the tasks of gathering, organizing, and sharing data to reduce vast and complicated handwork. Field Explorer is designed to be compatible for both notebook computers and smartphones in order to satisfy these requirements. This paper, however, will focus on Notebook computer version. User studies with students from the field of international development obtained positive results regarding the effectiveness of Field Explorer during fieldwork.

Keywords:

Field Explorer, ICT for Development, Empowerment, Studying in the field, fieldwork

1. Introduction

The notion of the human security paradigm indicates that most people recognize their own feelings of insecurity as stemming "not from a cataclysmic world event, but from worries about daily life."² Due to the complex and indeterminate features of these insecurities, the notion of human security also exposes the fact that a nation state is no longer the only framework for promoting security, and a person's potential ability to "act on their own behalf—and on behalf of others"³ is a key to addressing human security. Therefore, it has become a mainstream to investigate policy issues of development, including poverty, public health, sustainability, and environmental degradation from the perceptions of insecurities in people's everyday life. Human security researchers are expected to conduct investigations based on detailed observations of people's ordinary lives or

¹ Assistant, Faculty of Global Media Studies, Komazawa University

² See United Nation Development Program 1994, 3.

³ Commission on Human Security 2003, 11.

communities exposed to insecurities.⁴ People who act on behalf of others, such as social workers, volunteers, designers, entrepreneurs, and even students, are also expected to seek solutions to insecurities through collaboration with those exposed to them.⁵

However, it is very hard for researchers and practitioners, who act on their own behalf and on behalf of others, to participate in the field because there is not enough “distance” between them and the people there. The prejudices, cultural, social, and linguistic differences, and/or differences of any other kinds compose this “distance.” In addition, as a critique of the development or post-colonial theory indicates, researchers or practitioners reveal their privileged positions based on the North's (i.e., developed regions) hegemony over the South (i.e., undeveloped regions)⁶. On the other hand, there are issues that researchers or practitioners can study in depth only in the field⁷. In this scenario, researchers or practitioners should not treat their observations as a “case”, but instead sustain an attitude of a “study in the field.”⁸ Therefore, it is indispensable to examine methods and tools that foster fieldwork.

Information and communications technology (ICT) is essential in fostering a “study in the field” approach. The number of people who can access the Internet is increasing not only in developed countries, but also in developing countries, allowing researchers and practitioners to communicate and collaborate more easily with people in the field. In addition, relatively deep insights into the realities of people’s ordinary lives or communities exposed to insecurities can be obtained using digital media devices such as video cameras, voice recorders, or recent smartphones. As noted in a 2001 Human Development Report, ICT can break the barriers regarding knowledge and participation,⁹ and in fact, there are many innovative precedents that use ICT for studying (knowledge acquisition and sharing), such as One Laptop Per Child and Personal Fabrication.¹⁰ Of

⁴ There are a lot of studies on the production of knowledge based on close observations of one's ordinary life, including Vu (2011) and Umegaki et al. eds (2009).

⁵ There are many practices for seeking solutions based on activities at ground level. Specifically, practices by inclusive designers should be noted. Here, the notion of design is defined as “intentional problem-solving”(Smith 2007, 6), and the role of the designer is to “work directly with end users to determine what their needs are” (Smith 2007, 11). This resonates with the notion of human security.

⁶ We do not treat these issues in detail here. See Escobar as critique of development with seeking the notion of ‘poverty’ as a framework for intervention from Western to East (Escobar 1995). Also, Rosaldo discussed about a privileged position of anthropological fieldworkers and historians with referring classical works in cultural anthropology and *Annals School* (Rosaldo 1986).

⁷ Especially, Sato, 2003 is a volume to re-examine participatory development and call for attention roles and ethics of NGO/NPO or outsiders in participation.

⁸ Umegaki 2009, 264 stated that “human (in)security researchers don't study ordinary life, they study in ordinary life” while relying on Clifford Geertz's famous phrase of “Anthropologists don't study villages (tribes, towns, neighborhoods...); they study in villages” (Geertz 1973, 22). Here, we use the term “field” (in Japanese, *genba*) to refer to one's ordinary life or communities that are exposed to insecurities.

⁹ United Nation Development Program, 2001 35-36.

¹⁰ One Laptop Per Child is a project that aims to produce a Note-PC for education in developing countries for under \$100 US. (See Bender, 2012). Personal Fabrication is a movement that aims to make almost anything using digital

course, there are some useful ICT tools and methods for human security researchers and practitioners that relate to fieldwork in anthropology and sociology, including Computer-Aided Qualitative Data Analysis Software, multimedia fieldwork, or mobile research. However, these existing tools and methods are difficult to use because they are less interactive when conducting a study in the field. In short, these tools are not optimized to meet the needs of human security researchers and practitioners.

Therefore, this paper examines the requirements and features of ICT tools that are especially suited for human security researchers and practitioners. Specifically, this paper examines the features and performance of “Field Explorer,” a digital tool that the author has designed from the perspective of a human security researcher. In the next section, we review some existing tools and methods and outline the requirements of ICT tools for human security researchers before describing the features and performance of Field Explorer as a tool to satisfy these requirements. Field Explorer is an application that organizes and shares various kinds of visual/non-visual data captured in the field. Both a notebook computers and smartphone version of Field Explorer are available, although this paper deals only with the notebook computer version. Then, we demonstrate the effectiveness of Field Explorer using user studies with students concerned with international development.

2. Previous work

Here we will review some tools for anthropological and sociological fieldwork, which are based on recent information and communication technologies. First, Computer-Aided Qualitative Data Analysis Software (CAQDAS) is reviewed as a tool for classifying and accessing gathered data "after" finishing studies or activities in the field. Second, constructions of visual archives are discussed as a method of sharing observations "before" going into the field. Finally, mobile phones or smartphones are reviewed as the latest tools for gathering data "in" the field.

2.1 Computer-Aided Qualitative Data Analysis Software

Computer-Aided Qualitative Data Analysis Software was developed to support theory-building processes regarding social or cultural phenomena through the creation of a database of text data from observations and interviews. It originated in the 1980s with the release of the first

fabricators such as 3D printers and cutting machines (See Gershenfed, 2005). Both of these are examples of how knowledge acquisition and knowledge sharing by ICT impacts the whole concept of education, children's learning, and sustainability in developing and/or developed countries.

personal computers. The first CAQDAS was "The Ethnograph," which was developed by John Seidel in 1984 to classify text data he had gathered for his PhD studies,¹¹ and was initially programmed with a simple function to input and retrieve text data.¹² Thomas Muhr developed the Atlas.ti, which is probably the most famous CAQDAS, in a project at the Berlin Institute of Technology. It was developed to support a theory building process using a grounded theory approach.¹³ A couple of other CAQDAS have been released recently, such as MAXQDA¹⁴ and NVivo¹⁵, which have become more complicated with the implementation of text-mining and the recent trend of information retrieval.¹⁶

CAQDAS is quite useful for analyzing data from interviews or observations. However, because the goal of CAQDAS is building a theory regarding social or cultural phenomena, it requires users to be well acquainted with qualitative research. Nevertheless, because the interfaces and functions of CAQDAS are designed with the premise that users possess adequate knowledge of qualitative research methods, it is difficult for non-professionals in the fields of sociology or anthropology to use. Moreover, CAQDAS is designed for use "after" gathering enough text-based data (memos of observations or transcripts of interviews) in the field. Most CAQDAS does not adequately support multimedia data such as photos, movies, voice recordings, and GPS/GIS; thus other tools must be used to examine these data formats. Last, an enterprise version of CAQDAS such as Atlas.ti is too costly for individual researchers or small organizations, and although there is also an educational version, it too is very costly for students. For these reasons, it is difficult for people involved in human security research to use CAQDAS "during" fieldwork. Rather than heavy text-analyzing software used after fieldwork is completed, simple classification tools for retrieving various kinds of data from fieldwork should be developed.

2.2 Multimedia Fieldwork and Visual Data Archiving

Digital media devices such as cameras, video cameras, or voice recorders can obtain deep

¹¹ See also Fraiese 2006.

¹² In 1984, John Seidel introduced the first prototype of "The Ethnograph" (Seidel & Clark 1984), and this application still continues to be updated as free software. Currently, the latest version is available at: <http://www.qualisresearch.com> (accessed 2013/09/17).

¹³ In 1991, Muhr introduced the basic idea and first version of Atlas.ti (Muhr, 1991). The latest version of Atlas.ti is version 7 (<http://www.atlasti.com/> accessed on 2014/10/31). Grounded theory approach is the method advocated by Barney Glaser and Anseim Strauss to build social or cultural theories from data gathered through observations or interviews of the phenomena (Glaser and Strauss 1967).

¹⁴ See MAXQDA Website (<http://www.maxqda.com> accessed on 2014/10/31). MAXQDA support recently Mac OS and iOS version were also released recently.

¹⁵ See NVivo's official website (http://www.qsrinternational.com/products_nvivo.aspx accessed on 2014/10/31).

¹⁶ A study by Sato (2006) is helpful in understanding how to use these CAQDAS. See also Corbin and Strass (2008) to marshal consideration for using CAQDAS in the grounded theory approach.

insights into the realities of people's ordinary lives or communities exposed to insecurities; for example, in the field of cultural anthropology there are a couple of practices that rely on digital devices to analyze the social, historical, and cultural aspects of specific areas.¹⁷ In this context, photos and videos collected by anthropologists during fieldwork have been archived in museums, and some visual data is even archived online so that it can be accessed by anyone. In addition, effective methods to retrieve data from these archives have been studied and implemented in the field of information science.¹⁸ Lately, it has become easier to create these multimedia archives using existing network services or web applications such as YouTube or Dailymotion. For example, the media studio at the United Nations University is creating "Our World 2.0,"¹⁹ which will provide photos and videos related to environmental problems in specific regions. United Nations Development Program (UNDP) has an original channel on YouTube and uploads videos related to specific issues such as poverty reduction, HIV/AIDS, and women's empowerment once or twice a week.²⁰

Visual data archives are useful for studying the field "before" going there. Especially online archives can be referred to from anywhere at any time. However, online archives as a means of sharing photos or videos have a few problems associated with them. First, it requires not only monetary resources to purchase web server machines and software in order to create and maintain visual data archives, but also human resources to manage them, which is often done by the individuals or through small projects. Second, the creation of visual data archives places added burden on the researchers who supplied the data, as they often have to take time to modify the data for the archives by cataloguing it themselves. Certainly, it is sufficient to use free web services such as Instagram, Facebook, or Youtube if researchers simply want to share photos or videos with their collaborators. Nevertheless, if visual data is to be used effectively, then it must be catalogued and have captions or tags added with temporal or locational information in order to raise the accuracy of retrieval. Moreover, visual data should ideally be edited to respect privacy or portrait rights. In short, because the task of classifying data is separate from the task of sharing data with others, the creation of archives can become stagnant unless benefits can be attained from data sharing.

¹⁷ There are various studies and discussions regarding visual-aid research methods. For example, Marcus Bank published a textbook for anthropology graduate students in the U.K that explains the many perspectives of visual data use (Bank 2001).

¹⁸ For example, Ishibashi and Kiyoki demonstrated a method to integrate multiple databases on a meta-level and retrieve information by computing the data's temporal and spatial co-occurrences (Ishibashi and Kiyoki 2004). In addition, Hara presented metadata related to area studies in order to retrieve appropriate information from databases across the Internet (Hara 2009).

¹⁹ "Our World 2.0" (<http://ourworld.unu.edu/en/> accessed on 2013/09/17).

²⁰ UNDP's Youtube channel can be found here: <https://www.youtube.com/user/undp> (accessed on 2014/10/31).

2.3 Studies with Smartphones and the Cloud System

Smartphones and cloud services, which have both become widespread recently, are helpful for several reasons. First, smartphones are able to intensively record field data in different media formats (e.g., photos, videos, voice recordings, etc.) all with the same device. In particular, smartphone applications such as "myTracks" or "GPSNote" can gather location and migration pathways in the field (which were difficult to obtain prior to smartphones). Second, by connecting smartphones to existing cloud services such as Dropbox or SugarSync, data can be automatically synchronized among different type of devices and can easily be shared with others. By using cloud-based text management systems like Evernote on smartphones, researchers can interconnect their activities in the field (recording/modifying/sharing). Third, multiple researchers can simultaneously gather various kinds of data using smartphones. Studies regarding mobile research surged once mobile phones with cameras became widespread (in the mid-2000's); for example, a system that accumulates field data corresponding to time and location and its practical use in social research²¹ and a method that uses mobile wiki-clones to gather and share field data were proposed.²² The most significant point for using smartphones to conduct research is that anyone can participate in the research process of everyday life, as field data can be recorded and used at anytime from anywhere.²³

These existing smartphone tools and cloud services are quite powerful for gathering, storing, and sharing data "in" and from the field. Nevertheless, there are a couple of problems associated with using these tools in the field. Table 1 displays a comparison of each existing tool for iOS devices that aid researchers in gathering, modifying, or sharing data. The application myTracks can take photos while logging GPS data to pinpoint the locations of photos and routes on maps. However, memos, videos, and voice recordings cannot be added to them. Evernote can store text-based data from observations or interviews that can be referred back to at anytime from anywhere. Nevertheless, it is difficult to accommodate photos, videos, or any other type of non-text data. Namely, if we use existing smartphone tools and cloud services, we have to switch between these tools according to the types of data collected. Seemingly, it is useful to combine these tools to gather, store, and share data. However, it also takes additional effort for users to understand the relevance of data and makes the research in the field less efficient. What is required is a tool that can

²¹ See Nicola et al. 2011.

²² See Rost and Holmquist 2008.

²³ See also Kato et al. 2007, for a discussion regarding the possibilities and ethics of using mobile phones with cameras as research tools.

gather, modify, and share any kind of data on one single platform.

Table 1. Comparison of each existing tool for gathering, sharing, and organizing data

	Types of data					Sharing data with exiting cloud services	Organizing on PC	
	Text	Photo	Voice	Video	GPS Log		Classifying	Mapping
iOS Camera	x	o	x	o	x	△*(by iCloud)	o(iPhoto)	o(iPhoto)
iOS Memo	o	x	x	x	x	o(by iCloud)	x	x
iOS Voice Memo	x	x	o	x	x	x	x	x
Evernote	o	△**	△**	x	x	△**	△**	△**
myTracks	x	o	x	x	o	x	x	o
Dropbox	x	x	x	x	x	o	x	x

* Video files are limited to less than five minutes per file.

** Embedded in the memo file.

Source: The author

3. Features of Field Explorer

This section discusses the requirements for an effective field study tool, which have not been realized with the aforementioned tools. Then, how Field Explorer meets these requirements is described.

3.1 Requirements

Figure 1 compares the existing approaches to Field Explorer in terms of workflow of researchers and practitioners in the field. A workflow can be divided into three steps: 1) before going into the field; 2) duration in the field; and 3) after coming back from the field. We can conduct field studies while relying on the existing approaches, although several problems exist. First, the existing conventional approaches make it difficult to grasp the relevance of data that is recorded in different media formats. Smartphones can record photos with GPS information and can organize these photos by location using recent photo manipulation software such as iPhoto or Aperture; however, this photo manipulation software cannot capture and organize voice recordings, memos of observations, or transcripts of interviews together. This separation of data by media format makes it difficult to gain deeper insights from fieldwork. Second, the existing conventional approaches are specialized to support the single tasks of data gathering, data organizing, and data sharing, and it is difficult to interconnect these tasks on one device/software program because these existing approaches require vast and complicated handwork. This separation of tasks makes research in the field less efficient.

Therefore, the requirements for Field Explorer to be an effective tool for researchers and practitioners in the field are: 1) the function to grasp the relevance of data recorded in different media formats, such as photos, videos, voice recordings, GPS, and of course, memos; and 2) the

function to integrate the tasks of data gathering, organizing, and sharing in order to reduce vast and complicated handwork. It is notable that these are not technical requirements from the viewpoint of information scientists, but rather practical requirements from the viewpoint of social researchers, including human security researchers.

3.2 Basic Features of the Field Explorer Notebook Computers version²⁴

Field Explorer satisfies the aforementioned requirements and is designed to foster field studying by researchers and practitioners of human insecurity. As shown in Figure 1, Field Explorer consists of both a Notebook computers and smartphone version. The Notebook computers version of Field Explorer is mainly designed for organizing data, whereas the smartphone version is intended for gathering data. In addition, both are designed to automatically synchronize existing data stored on the cloud. This data storage also works as a data sharing space with others by enabling data to be accessed and shared from both notebook computers and smartphones. This paper focuses solely on the Notebook computers version of Field Explorer, which was released first²⁵.

The Notebook computers version of Field Explorer was designed to organize and visualize the relevance of data (gathered in the field) by classifying conceptual, temporal, and spatial metadata. The reason why we started to implement the Notebook computers version of Field Explorer earlier than the smartphone version was due to the ICT conditions in Southeast Asia, particularly in Vietnam where the author conducts his fieldwork. First, smartphones were not widespread initially and high-speed mobile data communication was only available in and around urban areas. Specifically, smartphones do not work well for accessing GPS locations when they cannot connect to the Internet. In this situation, it is better to use a GPS logger or digital still camera for gathering data. Second, access to the Internet is increasingly improving and places with Wi-Fi networks such

²⁴ We only describe the features of the Field Explorer Note-PC version in this paper. See also Tsuchiya, 2011 for a discussion of the basic architecture and technical issues of this Note-PC version.

²⁵ First version of Field Explorer was released in April 20 2011, and latest version (3.0.0) is released in February 20, 2015. Field Explorer is distributed as a free software with its source code. See also the download site of latest version: https://github.com/yskt0810/FieldExplorer_Desktop_ver.3.x

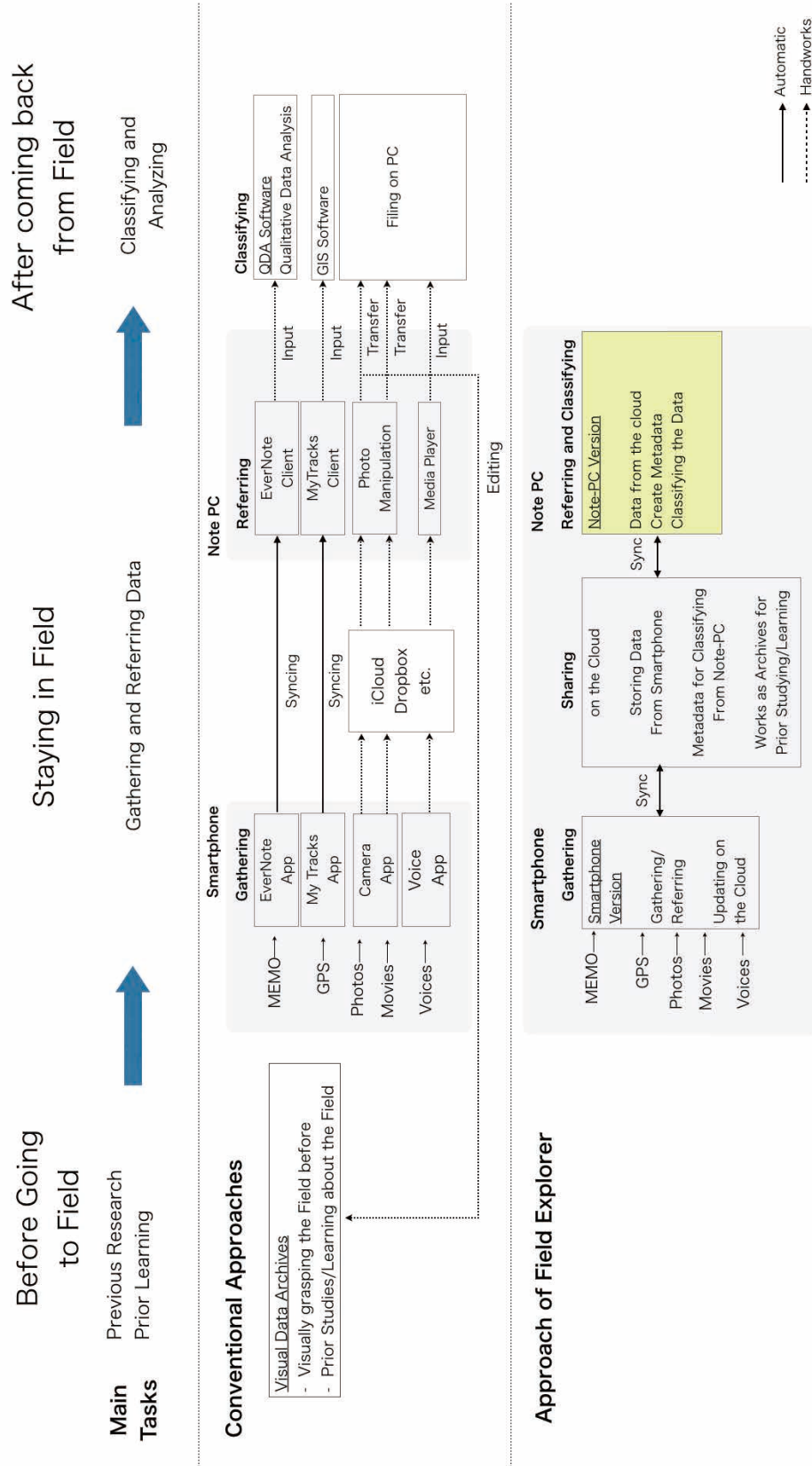


Figure 1. Conventional approach vs. Field Explorer

as cafés are becoming more widespread, making Notebook computers more efficient than smartphones for organizing data. Moreover, researchers who want to record good quality photos are better off using single-lens reflex cameras. Foremost, it is sometimes better to create memos of interviews or observations by hand rather than use smartphone memo applications.

The Notebook computers version of Field Explorer implements the following functions: 1) a function that classifies various kinds of data with tree-structured keywords, timestamps, and GPS locations; and 2) a function to share data via Dropbox. We describe the details of both functions next.

3.2.1 The Function to Organize Data with Temporal, Spatial, and Conceptual Relevance

All data gathered in the field contains temporal and locational information. In addition, conceptual classification is important so that researchers and practitioners can understand the data. Field Explorer implemented a method to organize and visualize data with temporal, spatial, and conceptual relevance, which we call here the Simultaneous Data Access Method.²⁶ This method consists mainly of two functions: 1) storage of temporal, locational, and conceptual information as metadata; and 2) retrieval and mapping of data using this metadata.

In addition, there are three functions that process temporal and locational metadata: 1) one function automatically captures the location, date, and time using the file information of each piece of data; in the case of photos these are EX-IF data; 2) one automatically seeks the location from GPS log data and matches it with the date and time that it was gathered; and 3) one enables location, date, and time to be added manually. Moreover, Field Explorer implemented a function that enables users to create a tree-structure of keywords and conceptual metadata, and Field Explorer stores these collections of keywords.

Figure 2 displays the interface for retrieving and mapping data. It contains five interconnected components, including a calendar, map, search function for tree-structured keywords, list of retrieved data, and preview of the data. If we click on a date on the calendar, the interface displays the data gathered that day with locational information on the map. Then, if we click on data in the list, the interface displays the specific locations of the collected data on the map, points out keywords from the tree-structure, and displays a preview of the data. If we register the GPS log data, the interface traces the log data and shows its route on the map, and when a specific date on the calendar is clicked, it also shows that day's route on the map. By using these functions and interfaces,

²⁶ See also Tsuchiya 2013, for technical issues regarding this method.

users are expected to reach deep insights in the field by classifying and grasping the data's temporal, locational, and conceptual relevance.

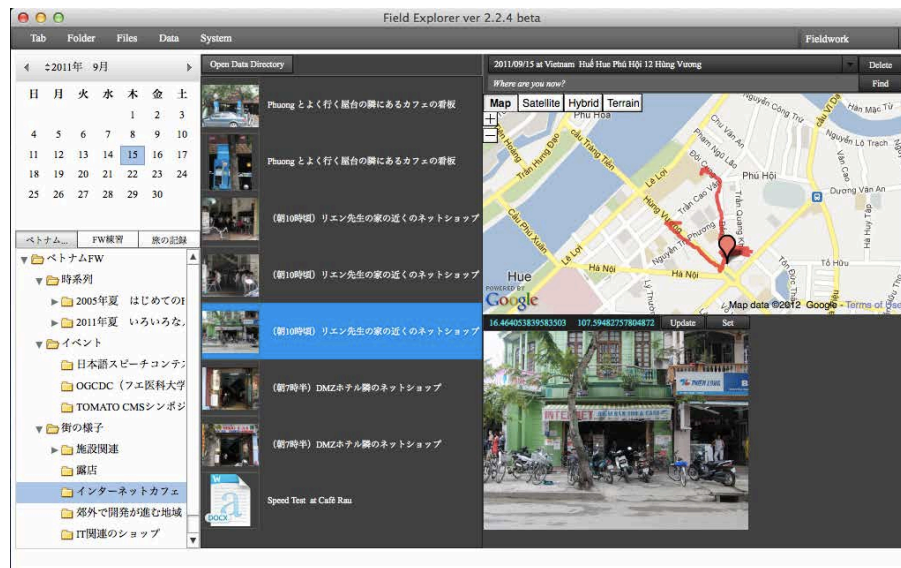


Figure 2. The interface for retrieving and mapping data

3.2.2 The Data-Sharing Function via Dropbox

The Notebook computers version of Field Explorer implemented a function to share data via Dropbox on existing cloud services. There are several reasons why we chose to incorporate Dropbox. First, Dropbox can store any kind of file that is compatible with a PC. As is mentioned later, Field Explorer not only shares individual data such as photos and memos, but also files that contain temporal, locational, and conceptual metadata, which Dropbox can easily store. Second, when the client application of Dropbox is installed, the task to sync data to Dropbox is automatically carried out. Finally, Field Explorer concentrates solely on controlling “which” data should be added/updated/deleted and with “whom” it should be shared. In order to use this data sharing function, users are required to sign up for Dropbox and install the client application on their PC. After setting up Dropbox, Field Explorer creates an original folder and copies the data and metadata files to that folder. Then, users configure Dropbox to share that folder with their collaborators.

Figure 3 displays the interface for data sharing. It contains a map, date-selection tool, preview of the data, list of pick-up data, and search function for tree-structured keywords. The list and keyword explorer are divided according to one's local PC and Dropbox. When users select a specific date on the date-chooser, the interface picks up the data gathered by collaborators on that day and draws their pathway on the map from that day. When users select specific data from the list from

collaborators, the date when that data was gathered is displayed on the date-chooser. By using this data sharing function, users and their collaborators share not only individual data, but also information regarding when and where the data was gathered.

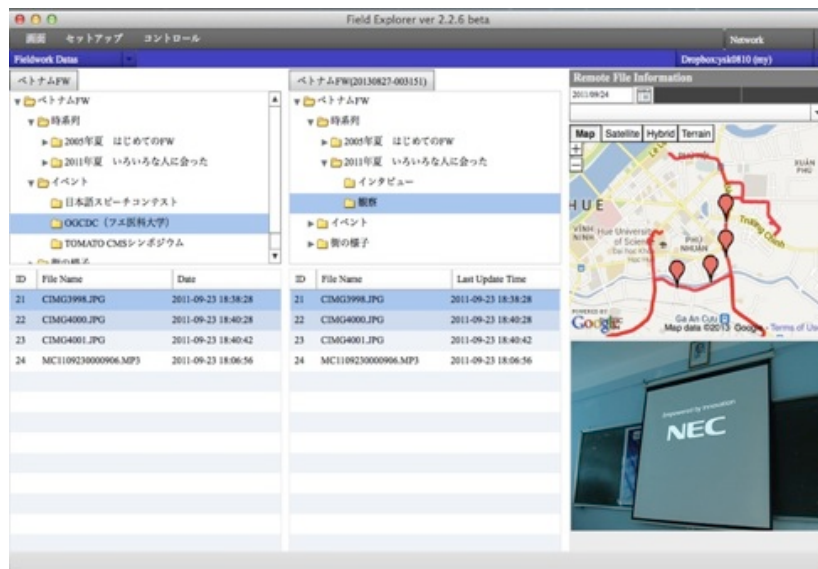


Figure 3. The interface for sharing data via Dropbox

4. User Study with Students of International Development

We conducted some user studies for researchers and practitioners to grasp the effectiveness of Field Explorer. Here we discuss the results of our study that involved students in the field of international development (i.e., they are very familiar with human security studies).

4.1 Procedure and Student Characteristics

The purpose of this study was to assess the effectiveness of Field Explorer. This study was conducted using qualitative data from observations and interviews regarding the usability of Field Explorer.

First, we selected students and conducted a tutorial on how to use Field Explorer. We also carried out a questionnaire survey, which is shown in Table 2. Students were then asked to conduct fieldwork for several days using Field Explorer. After that, we asked students to report their findings. Finally, we interviewed students for one or two hours regarding the usability of Field Explorer and their own behaviors while using it during fieldwork. Table 3 displays a list of the questions asked during the interviews.

Table 2. Questionnaire conducted before the study

1. Experience of fieldwork or topics that are now studying
1-1. Where do you conduct your fieldwork
1-2. How much time has passed after starting the fieldwork.
1-3. What kind of research you do (in detail)
2. Experience of participation to NGO/NPO or any kinds of organizations working for contribution to society
The name of organization, place where the organization works, details of activities
3. Experience of overseas travel
4. Experience of domestic travel

Table 3. Questionnaire conducted after the study

1. Behaviors in the fieldwork
1-1. How many photos, movies or memos did you take?
1-2. Is there anything you did consciously in your fieldwork?
1-3. Is there anything you observed carefully in the field?
2. About the use of Field Explorer
2-1. How long did you take to get used to this tool?
2-2. The amount of data you registered to Field Explorer
2-3. Which did you mainly use to access to the data, calendar, maps or tree-structure of keywords
2-4. How often did you look back the data?
2-5. Is there any behaviors or actions attributable to the merits or advantages of Field Explorer?
2-6. Is there any point that you changed by using Field Explorer?
3. Accessibility
3-1. Anything that can be regarded as bug
3-2. Anything that feel inconvenient or the functions to add.

This study was conducted from August to December of 2011 with seven students, and again in July 2013 with one student. Table 4 displays the basic characteristics of the students who participated in this study. Students A and B have already completed a few rounds of fieldwork in Southeast Asia (Vietnam and Cambodia, respectively). Students C and D are involved as volunteers at international non-governmental organizations. Most students answered that they understood how to use Field Explorer during the tutorial. Six students used the GPS logger in their fieldwork, and all of them recorded their route for two or three hours. Figure 4 shows three students' pathways as a sample, and we can locate everyone in the field using the GPS logger.

Table 4. Profile of students and usage of Field Explorer

	Grade	Fieldwork Experience	NGO/NPO Participation	Period of Experiment	Time for getting used to	Number of Photos taken per day	Time for tracking GPS log
A	Master 1st	Yes	No	August 2011	For one day	50	3 hours /day
B	4th year	Yes	No	August 2011	For two day	10	Not used
C	3rd year	No	Yes	December 2011	In tutorial	20	3 hours
D	1st year	No	Yes	December 2011	In tutorial	150	Not used
E	1st year	No	No	December 2011	In tutorial	76	2 hours
F	1st year	No	No	December 2011	In tutorial	700	4 hours
G	3rd year	No	No	December 2011	In tutorial	66	4 hours
H	2nd year	No	No	July 2013	In tutorial	150	1 hour



Figure 4. Example of pathways by students using the GPS Logger

4.2 Results

Here we discuss students' responses from the interviews after the study regarding Field Explorer and its function to grasp the relevance of data recorded in different media formats such as photos, videos, voice recordings, GPS, and memos. First, student F reported that she tried to concentrate on recording while disregarding her location when conducting her fieldwork. As for the reasons why, she pointed out that she knew she could determine when and where she recorded the data by importing photos and GPS logs into Field Explorer.²⁷ Student C, who participated in NGO activities in Thailand and Indonesia, reported that he paid attention to his surroundings on the way to his destination, which was something he did not do prior to using Field Explorer. As for the reasons why, he pointed out that he could display the pathway, location, and date of his photos together using Field Explorer.²⁸ According to Student B, the most useful function of Field Explorer was the one to search for data by selecting a calendar date. She kept a diary using Microsoft Word and then transferred it to Field Explorer. The diary entries were then automatically organized by date so that they could be easily accessed using the calendar.²⁹ In comparison with conventional approaches, Student H pointed out that Field Explorer made it easier to remember observed landscapes than myTracks because it simultaneously shows and maps data with the date and location where it was gathered, whereas myTracks only shows the pathway on the map.³⁰

Only Students A and B used the data sharing function via Dropbox, which we explained how to use during the tutorial. Both reported that this function was efficient in determining the temporal, locational, and conceptual relevance of collaborators' data; however, they pointed out that this function was difficult to use due to the complicated configuration and interface of Dropbox. In

²⁷ From the answer by Student F to the question: "1-2. Is there anything you did consciously in your fieldwork?" (during the interview on December 10, 2011).

²⁸ From the answer by Student C to the question: "2-6. Is there anything that you changed when using Field Explorer?" (during the interview on December 9, 2011).

²⁹ From the answer by Student B to the question: "2-3. Which did you mainly use to access the data: calendar, maps, or tree-structured keywords?" (during the interview on September 5, 2011).

³⁰ From the answer by Student H to the question: "2-5. Are there any behaviors or actions attributable to the merits or advantages of Field Explorer?" (during the interview on July 26, 2013).

addition, they also reported that functions such as a text messenger, voice chat, or the Bulletin Board Service are better for sending feedback to collaborators.³¹

4.3 Discussion

This study confirmed the effectiveness of Field Explorer, especially its ability to organize the temporal, locational, and conceptual relevance of data. In addition, we examined some users' behaviors and attitudes when using Field Explorer, which confirmed some of its advantages over the existing location mapping tool.

On the other hand, this study could not prove any other advantages of Field Explorer over other conventional tools, which we need to examine further. We also could not confirm the effectiveness of data sharing via Dropbox from this study because participants worked individually, and were therefore not within a framework where they needed to share and discuss their gathered data with the others; thus, they did not have much of a reason to use this function. Therefore, the data sharing function should be examined further in future studies. When the smartphone version of Field Explorer is implemented, it is expected to interconnect the tasks of gathering, sharing, and organizing data in real time in the field.

5. Conclusions

This paper examined the requirements and features of an ICT tool that is better fit for human security researchers and practitioners, which are: 1) the function to determine the relevance of data recorded in different media formats such as photos, videos, voice recordings, GPS, and memos; and 2) the function to integrate the tasks of gathering, organizing, and sharing data in order to reduce vast and complicated handwork. With these merits in mind, the author designed Field Explorer as a fieldwork tool. From the results of user studies with students of international development, we confirmed the effectiveness of Field Explorer in organizing and grasping the temporal, locational, and conceptual relevance of data. Future studies should include: 1) more in depth examinations of the advantages of Field Explorer over existing conventional approaches, and 2) examinations of Field Explorer's data sharing function through revisions of the Notebook computers version and the implementation of the smartphone version.

³¹ From the answers by Students A and B to the question "3-2. Is there anything that feels inconvenient or are there any functions that should be added?" (during the interviews on August 16, 2011 and September 5, 2011, respectively).

References

- Bender, Walter. 2012, *Learning to change the world: The Social Impact of One Laptop Per Child*. St. New York: Palgrave Macmillan.
- Commission on Human Security. 2003, *Human Security Now: Protecting and Empowering People*. New York: The Commission on Human Security.
- Corbin, Juliet & Strauss, Anselm. 2008, *Basic of Qualitative Research; Techniques and Procedures for Developing Grounded Theory*, 3rd edition. Los Angeles: Sage Publications.
- Escobar, Arturo. 1995, *Encountering Development: The Making and Unmaking of The Third World*. Princeton: Princeton University Press.
- Fraiese, Sussane. 2006, "Software and Fieldwork," in Richard Wright ed., *The SAGE Handbook of Fieldwork*. London: SAGE Publications. pp.309-332.
- Geertz, Clifford. 1973, *The Interpretation of Cultures*. New York: Basic Book.
- Gershenfeld, Neil. 2005, *Fab: the coming revolution on your desktop – from personal computers to personal fabrication*. New York: Basic Book.
- Glaser, Barmey. and Strauss, Anseim. 1967, *The Discovery of Grounded Theory: Strategies for Qualitative Research*. Chicago: Aldine Publishing Company.
- Hara, Shoichiro. 2009, "Studies on Resource Sharing System and Metadata for Area Studies." *Tonan Ajia Kenkyu*, 46(4): 608-645. (Written in Japanese).
- Ishibashi, Naoki & Kiyoki, Yasushi. 2004, "Meta-Chronicle: A Spatial and Temporal Multidatabase System and its Applications to Histories." IEEE International Symposium on Applications and the Internet (SAINT 2004): 515-522.
- Kato Fumitoshi, Daisuke Okabe, Mizuko Ito and Ryuhei Umemoto. 2005, "Uses and possibilities of the keitai camera," in Mizuko Ito, Daisuke Okabe and Misa Matsuda eds., *Personal, Portable, Pedestrian: Mobile Phone in Japanese life*, Cambridge: The MIT Press.
- Muhr, Thomas. 1991, "ATLAS/ti - A Prototype for the Support of Text Interpretation." *Qualitative Sociology*, 14(4): 349-371.
- Nicola Nedall-Hill, Abdul Jabbar and Salah Al Shehri. 2011, "Social Mobile Devices as Tools for Qualitative Research in Education: iPhone and iPad in Ethnography, Interviewing, and Design-Based Research." *Journal of the Research Center for Educational Technology*, 7(1): 67-89.

- Rosaldo, Renato. 1986, "From the Door of His Tent: The Fieldworker and the Inquisitor," in James Clifford and George Marcus eds., *Writing Culture: The Poetics and Politics of Ethnography*. Berkeley: University of California Press.
- Rost, Mattias and Holmquist E. Lars. 2008, "Tools for Students Doing Mobile Fieldwork," in *Fifth IEEE International Conference on Wireless, Mobile, and Ubiquitous Technology in Education*: 74-81.
- Sato Ikuya. 2006, *Teisei data bunnseki nyuumon: QDA software Manual*, Tokyo: Shinyo Sha.
- Sato Hiroshi ed. 2003, *Sankagata Kaihatsu no Saikentou*, Chiba: Ajia Keizai Kenkyuusyo IDE-JETRO. (Written in Japanese).
- Saidel, John. and Clark, Jack. 1984, "The Ethnograph: A Computer Program for the Analysis of Qualitative Data," *Qualitative Sociology*, 7(1/2): 110-125.
- Smith, Cynthia, ed. 2007, *Design for other 90%*. New York: Cooper-Hewitt, National Museum, Smithsonian Institution.
- Tsuchiya, Yosuke. 2011, "Multimedia Data Management-Sharing System to Enhance Students' Fieldwork Activities Related to Development Studies." *Proceedings of the IASTED International Conference on Technology for Education* (TE2011): 8-15
- Tsuchiya, Yosuke. 2013, "A System with Simultaneous Data Access Method for In-the-Field Learning Related to Development Studies." *Proceedings of the IASTED International Conference on Technology for Education and Learning* (TEL2013): 470-477.
- Umegaki, Michio, Thiesmeyer Lynn and Watabe Atsushi eds. 2009, *Human Insecurity in East Asia*. New York: United Nation University Press.
- Umegaki, Michio. 2009, "Research in human insecurity", in Umegaki, et al, ed., *Human Insecurity in East Asia*, New York: United Nation University Press, 260-267.
- United Nation Development Program. 1994, *Human Development Report 1994*. New York: Oxford University Press.
- United Nation Development Program. 2001, *Human Development Report 2001*. New York: Oxford University Press.
- Vu, Le Thao Chi. 2011, "Risk and Farmers in Transitional Rural Societies: Case of Laos and Vietnam." *KEIO SFC JOURNAL* 11(1): 199-207.

Reading and Comprehending
Giorgio Shani, *Religion, Identity and Human Security*¹
— A Question Posed to Human Security Studies —

Seiko Hanochi and Kinhide Mushakoji

1. Reading and Comprehending:

Reading this book is an eye-opening experience for anybody interested in Human Security Studies. The question posed by the author seems simple enough, but without any good practical answers. Yet reading chapters after chapters, the reader finds that the question is not so simple but very complex. The author develops his reasoning in such a way that the reader is led gradually to comprehend that after all we have reached a critical moment when humankind will have to find an answer and there are possible ways already under scrutiny which can lead to practical answers. The reader will thus be led to understand that Human Security is a new entry-point into a world which ceases to believe in the Westphalian myth inseparable from National Security.

The question which appears simple and is in reality quite complex is about what human security treats. The reader thinks that it deals with the variety of insecurity experienced by human individuals and communities, and this does not include religious and identity problems, except if it involves violent armed conflicts. Reading this book will make the reader aware of the fact that Human Security opens up a cognitive space much more complex and difficult to approach.

The reader will appreciate the didactic efforts of the author who prepares the reader to reflect on human security with special emphasis on religion and identity. He first discusses the general political-economic context of contemporary neoliberal globalization. Contrary to what people tends to think, globalization does not lead to a global standardization of the world toward global Human Security. On the contrary, the competition between different identity groups and religions accompany the economic polarization between rich and poor intensified by neo-liberal globalization. The author points out the problems arising from an easy-going expectation that hybridization and other factors will create a homogenized, ahistorical global society where insecurities caused by religion and ethnic identities disappear, so to speak. The nation-State continues to divide the world and the clash of civilizations brings back religion and identity in the world of national security.

¹ Routledge Studies in Religion and Politics, Routledge, 2014

Globalization also intensifies identity conflicts through the creation of diaspora communities remaining strongly attached to their prior homes. This general situation makes it difficult to ignore the role of religion and identity in Human (In)Security, and to stick to the simple-minded belief of social science, especially of international relations in the “myth of Westphalia” which established national security where secular societies are securitized by the nation states. This is why the reader is led into the question of the Secular Public Sphere and of Post-Secularism, which must be well-understood to approach Human Security in the complex ontological and epistemological space of contemporary world historically unique. It is in this post-secular public space that Human Security is constructed. Habermas is quoted in terms of his approach to communicative discourse ethics in this secular civil societies.

He himself modified his position and admits now that we are in a post-secular world where the re-emergence of religions forces us to admit the importance of interactions between religious faith and secular reason. Habermas and other thinkers convinced of the superiority of secular modernity, such as Peter Berger, are quoted by the author who points out two aspects of this debate, one is on Post-Secularism which concludes that it needs to be provincialized and not be based on Judeo-Christian ideas forcing believers of other religions to be part of this “secular” space which is in reality Judeo-Christian. After so many quotations from not only Habermas, but also from Jose Casanova, Charles Taylor, and Andrew Linklater, the reader cannot remain indifferent to this contradictory situation where secularism, which wants to build an open public space independent from religion, has in reality a religious root. In this post-secular situation, security has to be re-conceptualized.

2. Question and Critique:

This is where Human Security appears as an approach which ceases to believe in National Security, a Mortal God whose nature is well described in the Political Theology of Carl Schmitt. The Nation State, Thomas Hobbes’ Leviathan, is the protector of its citizens who need to be protected by another agency which is Human Security. This securitization of the (post-)secular public space needs another agency, the narrowly-defined Human Security, making the state the legal protector of its subjects or citizens. This calls for a wider definition de-securitizing this new Security, by giving it a broader assignment to empower peoples, or to emancipate them.

The author draws the attention of the reader, who may have a narrow understanding of “protective” Human Security, to a broader approach “critical” of the securitization by the states,

which makes the citizens, active agents of Human Security, passive agents protected by the Nation State. This analysis, however, is not the end of the conceptual scheme proposed in this book. Emancipation as proposed by Critical Human Security, is a Judeo-Christian concept, and to use it is in itself highly discriminatory toward the non-Western Civilizations. The reader finds here the reason why the author insisted on the importance to avoid an easygoing post-secularism hiding Judeo-Christian concepts in the public space. The author points out here the need to avoid another mistake of making Human Security a Judeo-Christian securitization of “Human Security”. In the Post-Secular public space where neo-liberal global standards prevail, Human Security will have to avoid a neoliberal securitization.

3. Critique on Critique

As is pointed out by Giorgio Agamben, the “bare life” (*zoe* in Greek), without meaning and dignity, is turned by the Nation States into meaningful and dignified life (*bios* in Greek) thanks to their protection which turns bare life humans into human resources precious for the Nation State and for the Global Market. This securitization leads, for the author after Agamben, to the Nazi Camps, a politicisation of bare life, the worst kind of Human Insecurity. Even if it does not reach this extreme lack of Human Security, the *homo oeconomicus* of the neoliberal financial crisis management uses Human Security as a means of its bio-politics.

Agamben presents the process of emancipation as one transforming the bare life *zoe* of *homo-sacer* into the meaningful *bio* of *homo-messianicus*. This may be a de-secularization of Human Security, but will not be able to cope with the Human Insecurity of the post-secular Public Spaces unless this new concept of Security can be dissociated from its Judeo-Christian context. The author gives concrete example about the Judeo-Christian origin of the basic ideas used in the broad definition of Human Security. Emancipation as well as the concepts used by the broadly defined secular Human Security are based on the concept of universality. All human beings everywhere have the universal rights to live in peace, free from fear and wants. This universal transcendence is a Messianic notion which can be traced back to Saint Paul according to Alain Badiou, who maintains that *agape* or *caritas* alone enable different peoples to transcend their imagined differences and share a universal life through their identification with Jesus.

This transcendence is one of the core values of Human Security, which is nothing but a secularized Christian concept making us believe in the universality of freedom from fear and wants. After citing other Christian Post-Secular thinkers like Slavoj Žižek who believes that this Christian

legacy is worth fighting for, the author turns to the Post-Colonial thinkers who see in this trend an epistemic privilege attributed to the West as Paul Passavant points out in his critique of Habermas. He asks a god question. “What if someone does not want to be loved (by the Christians)?” Aime Cesaire more strongly denounces the Christian Pedantry which equates Christianity with Civilization and Paganism with savagery. Colonialism is, according to him, the precursor of Nazism. It is within this historical context that Human Security cannot but adopt an anti-colonialist stance, or at least be decolonized.

This is why Human Security must also be the object of a truly meaningful de-secularization, and why human security becomes a concept closely associated with religion and identity. This opens a new field of social inquiry, with a global ethical objective, the de-securitization and the de-secularization of Security, promoting life and the diverse core-values associated with it in different religions and identity communities.

4. Dialogue on Dialogue:

This task assigned to Human Security Studies by the author is to develop a dialogue of civilizations. He introduces this civilizational project on two levels, institutional and theoretical. On the institutional level, he introduces the readers on two international initiatives, the Parliament of World’s Religions which made public in 1993 a Declaration towards a Global Ethic, The author presents the positive and the negative aspects of this initiative which tries to overcome Christian-centred concept of Religion with the support of Christian theologian such as Hans Kung. However, the readers are reminded that the concept “Religion” is in itself Judeo-Christian, and was a concept which was spread in the non-Western world as part of the colonialist tradition. This fact must be taken up by Human Security in its effort to decolonize itself. Another institutional initiative is symbolized by the UN Decision to make 2001 the UN Year of Dialogue Among Civilizations, based on the proposition made by the former President of Iran, Muhammad Khatami. This UN project was unable to develop a dialogue among member-States involved in the 9-11 War against Terrorism. It was an effort, basically destined to fail, in the sense that this dialogue engaged among Nation States was not open to a critique of the Westphalian States, and thus could not become a true dialogue of civilizations.

On the theoretical level, the author cites the work of Karl Jaspers on the Axial Age when great religions emerged independently in Grece, the Middle East, India and China. This Age was characterized as the Time when “man became conscious of Being as a whole, of himself and his

limitations.”. This Concept is important in pointing out the diversity of equally relevant approaches to inform global ethics. It is, however, ignoring the role of indigenous and oral cultures, giving them a lower status in comparison to these World Religions. It is also necessary to avoid the approach proposed by Habermas and other Western thinkers who want to build a synthesis including all World Religions, ignoring the specificity of each tradition which should not be sacrificed in an effort to build a common global ethics.

Hermeneutics as developed by Hans-Georg Gadamer could provide a ground for dialogue among civilizations which would seeks to acquire a single horizon of diverging points of view free from relativism as well as from ethnocentrism. This sharing of horizons should not fall into the trap of sharing a horizon ”mediated by Western assumptions and frameworks” as so well said by Ashis Nandi, Human Security, in search of divergent core values in different geo-historical locations has to play an almost impossible role of developing a dialogue in search of a de-securitized Life in its unity and Diversity. The objective of this dialogue should not be a culturally integrated world. As Nandi writes, it should be a search of a multicultural World where each culture can hope to live in dignity with its own distinctiveness”.

Having summarized the First Part of the book under review, the reviewers wish to start a dialogue with the author on the Post-Secular Public Space. It is a common knowledge shared by feminists that one of theirs, Carol Pateman, a Feminist political scientist from Australia, criticized Habermas about his concept of the Public Sphere and succeeded in having him recognized a serious problem at the base of this concept. She pointed out the masculinist bias of this notion which excluded from the Public Sphere any discussion on domestic patriarchal problems, including violence against women in the intimate and private sphere outside the Public Sphere. A similar critique about the separation of the public and private life is made by the believers in the universal application of Sharia Law denied by the Secular Public Space Model which treats religion, including Islam, as a matter of the Private life excluded from the Public Sphere. The two critiques of Habermas have in common their disagreement with Habermas on the separation between Private and Public Life. Their concerns about this separation are based on mutually exclusive motivations, the elimination or the preservation of Patriarchalism. This is where a dialogue of civilizations will have to be developed, not only between those who support the separation of the Public and the Intimate Private Spheres, but also between the members of the Ummah and the Feminists, including the Feminist members of the Ummah who are directly concerned about this separation which affects their Human (In)Security. The reviewer wishes to ask the author’s opinion on this inter-religious and also inter-gender question of the treatment of the Private Space to open a dialogue on this crucial

issue related to Violence against Women and Gender Human Security.

5. Examples and Further Examples:

Now let us turn to the Second part of the Book under Review. The author gives three examples of a search for a new formula of Post-Secular Human Security which seems to face difficulties hard to overcome. He takes the reader in three particular cities where different human communities are engaged in their search for a new formula to fight this multi-cultural Human Insecurity. The first case is most typical of the post-secular situation in the motherland of secularism, the Secularization of the veil in France. The Human Insecurity of the Muslim Diaspora Community in Europe is studied in connection with the feminine Muslim school children whose veil is declared illegal, a situation which is not resolved by dialogue, and pose the problem of an unresolved conflict between two universal rights, the rights of secular public space vs. the rights of public expression of religious minorities. The author gives a clear answer to this complex question by returning to De-securitization. Rather than attempting to liberate Muslim women from the Patriarchal imposition of the veil by Muslim authorities, it is crucial for the French citizens to resist “the bio-political strategies used by the secular, patriarchal, state to assimilate its subjects in the name of protection and empowerment.”

The second example is from India where a post-secular approach recognizing the co-existence of all the different religions in the public space of this country which is non-Western and is proud of being the largest democratic State of the World. In this country, however, the legal recognition of the plurality of religions causes regional inter-religious conflicts among communal groups. As the author points out, the partition and the colonial history prior to it make it difficult to arrive at a state of human security where all Religions flourish as the post-secular principles of the Constitution of India asserts. In face of the communalism and the “epistemic privilege” of caste Hinduism, the Government had the impossible task of respecting the inner core of each religion, and yet intervene where the disfavored religious minorities and scheduled casts and tribes were excluded and discriminated, the author points out that the Post-Secular Indian Government should have better challenge the existing religious status-quo and apply the Principles of *Sarva Dharma Sambhava* not as a policy to securitize the Caste privileges but as a dynamic call to build a society where equal respect between all Castes, ethnic groups and religious minorities could enjoy equal dignity.

A third example comes from Japan, where the post-Defeat State of Japan with its Peace Constitution, makes this Country a champion for Human Security supporting Tabunka Kyosei

(Multi-cultural Symbiosis). The author points out the fact that in spite of this superficial official position of the Japanese Government, Japan is deeply ethno-nationalist and affected by Human Insecurity of minorities so well described by Doudou Diene in his Report on his Mission to Japan as UN Special Rapporteur on Contemporary Forms of Racism, Racial Discriminations and Related Intolerance. In their historical contexts, the Special Rapporteur analyzes the human insecurity of the Buraku-min, the Ainu and Okinawa peoples, the “Old-Comers” or Zainichi diasporas of Korean and Chinese origin, and the “New-Comers”, migrant workers from Asia and Latin America who began to increase during the 1980s.

All the above minorities are receiving discriminatory treatments which are the consequence of the ethno-nationalist belief of the Homogeneity and Unity of the Japanese nation, state, and culture. The author points out the fact that Human Security was not applied inside Japan until the East Japan Earthquake and Tsunami accompanied by the Explosion of the Fukushima Daiichi Nuclear Plant triggered-off a bottom-up process of multi-culturalism based on local community-building. The author points out correctly the need to “form the basis of a new national ethic” which enables the Japanese Government and people to be committed to the Human Security of all of Japan’s residents. He mentions the recent development of local “Tabunka- Kyosei” activities of the local communities as an opening to such an ethic. He calls for a more endogenous model built possibly on the Kyoto School of Thought which tried to build on Japanese traditional values an endogenous ethic accepting multiculturalism.

In support of the author’s expectation, the reviewers wish to draw his attention to two recent trends in Japan which may strengthen the author’s remarks about possible improvements regarding the development of a genuine multiculturalism in Japan. The first regards the local communities endogenous efforts to revive traditional values to overcome the homogenizing pressures of the State ethno-nationalism. In the post-East Japan Earthquake recovery period many local communities developed a self-critique of their unconditional acceptance of Eurocentric Modernism. The local citizens began a collective campaign to reactivate traditional community values in harmony with nature respecting the diversity of life and culture in the Japanese archipelago. In this post-secular phase of local democratic development in Japan, a return to the pre-modern animist traditions of stressing the local community identities against the State homogenizing securitization through the “Matsuri” Festivals returning to their primitive hybrid mixing Buddhist and Shinto traditions in their local-specific bio-regional universe where visible nature co-exists with invisible ancestral cultural heritage. This new trend emerges in a variety of local communities in spite of the pressures from the State Shintoism which remains strong among the nationalist State elites.

This post-secular trend towards differentiation between local communities within Japan, is now complemented by another post-securitizing trend which develops multiculturalism within local communities. As mentioned by the author, a rapid increase of foreign migrants brings in local communities, counter-trends to the national securitization by the State unable to manage local in-securities brought in by its neoliberal recovery policies. This local insecurities often cause the emergence of local bottom-up trends of multiculturalism. Such new multiculturalism is created by the foreign migrant themselves who try naturally to counteract the ethnocentric tendencies which remain strong among the Japanese citizens. They efficiently break such negative aspects of *tabunka kyousei* through their autonomous activities.

An interesting event symbolizing the combination of the above two trends has taken place in Kasugai-City on the outskirts of Nagoya. One of the shopping streets, the Kachikawa Shopping Street tries to regain the local customers taken away by the incoming convenience stores and shopping-centres by holding festival-markets called Kobo Ichi, in honor of Kobo Daishi , a well-known Buddhist Monk whose big statue overlooks the shopping street. This is a typical example of the return to Shinto/Bouddhist cults and festivities to reactivate the local communities.

On the other hand, the Filipinas in Kasugai City have formed a new network which they called SALVIFK (Sustainability and Liberation: Voluntary Initiative of Filipinos in Kasugai). They participated in the Kobo Ichi Summer Festival of 2009 and organized with the support of Chubu University students a Filipino-Japanese chorus who danced singing “Pinoi Ako” which declares the Filipinos the best people in the World. This participation of Filipinas disagreeing with the myth of Japanese supremacy, in a Shopping Street Festival celebrating Kobo Daishi symbolizes the combination between local festival Community identity-building where multiculturalism helps to develop a Post-Secular and Post-Securitized local-specific bio-community. This is a good example of the above-mentioned double trends which breaks, on the local level, the homogeneity myth which continues to play an important role in the national public space of Neoliberal Global Japan.

The above remarks by the reviewers are made as an attempt to make this review article an entry-point into a dialogue between Human Security Studies and Religions/Identity Studies. We hope that this review will contribute to have the researchers of Human Security read the book under review and come to comprehend the importance of the questions raised by the author. The Dialogue among Civilizations must begin by an inter-paradigmatic dialogue on the basis of the book of Dr. Giorgio Shani and its Review.