(Re)Writing the Rule of Law:  
Text and Expertise in Humanitarian Intervention

by

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ABSTRACT

This dissertation examines humanitarian intervention through the texts and experts of human rights field work in inter-governmental organization (IGO) missions in conflict and post-conflict situations. Humanitarian intervention, understood as coercive collective intervention by the ‘international community’ against a state to protect the population(s) within that state, is one of the most challenging and controversial issues in international law and policy today. Humanitarian intervention involves the exercise of geo-political and institutional power, and it requires the massive mobilization of personnel and resources from around the world in complex and on-going projects of peacekeeping and nation building. Although humanitarian intervention is largely justified in the name of human rights and the rule of law, there has been little empirical study of the institutions and individuals conducting the work of human rights and the rule of law in contexts of intervention. Human rights field officers are primary actors as translators, instructors, advocates and practitioners of the rule of law in the field of humanitarian intervention.

This research uses an approach of Institutional Ethnography, informed by Actor-Network Theory, to understand the dynamics of human rights field work in IGO field missions. Its approach is to trace relations of power in humanitarian intervention through an empirical investigation into how law is constituted, deployed, adapted, and redefined in human rights field work. This project relies upon in-depth interviews with human rights field officers and analysis of three central categories of texts – international treaties, UN Security Council resolutions, and human rights field reports. This research examines law in the everyday context, but in humanitarian intervention that context is an exceptional one, and both law and expertise take on particular significance in the field. The texts of law cross temporal and spatial scales to establish normative frameworks, create institutions, deploy personnel, and assess outcomes. The experts deployed to the field are uniquely empowered as impartial outsiders, even as they are connected to and imbricated in larger networks of rule. Close consideration of the texts of international law and the everyday work of field officers offers important insights into this emerging exercise of institutional and global governance.
The research conducted in support of this dissertation was approved by the UBC Behavioural Research Ethics Board (UBC BREB Number H09-02988).

# TABLE OF CONTENTS

Abstract .......................................................................................................................... ii
Preface .......................................................................................................................... iii
Table of Contents .......................................................................................................... iv
List of Tables ................................................................................................................ vi
List of Figures ............................................................................................................... vii
List of Abbreviations ................................................................................................... viii
Glossary ......................................................................................................................... ix
Acknowledgements ...................................................................................................... x
Dedication ....................................................................................................................... xi

Introduction – Understanding the Scope and Practices of the ‘Rule of Law’ in Humanitarian Intervention ....................................................................................................................... 1

I. Human Rights Fieldwork in Humanitarian Intervention ............................................ 2
II. Research Questions and Methodology ....................................................................... 10
III. Theoretical Foundations of Law and Expertise ....................................................... 14
   A. The Multi-Dimensionality of Law .......................................................................... 15
   B. The Indispensable Expert .................................................................................... 28
IV. Chapter Outline ...................................................................................................... 33
V. Conclusion ............................................................................................................... 36

Chapter 1: The Researcher and the Human Rights Expert in the Field(s) of Humanitarian Intervention – From Institutional Ethnography to Actor-Networks .................................................................................. 37

I. The Field as Network: Connecting Researcher and Expert Informants .................. 40
   A. The People in the Field(s): Researcher and Human Rights Experts ...................... 41
   B. Making Connections ......................................................................................... 50
II. Coordinating the Field: Institutional Texts ............................................................. 56
   A. Active Texts ....................................................................................................... 57
   B. Tracing the Network .......................................................................................... 61
III. Conclusion ............................................................................................................. 65

Chapter 2: The Functions of Law in Humanitarian Intervention – Violence,
Bureaucracy, and Governmentality .................................................................................. 67

I. The Force of Law: Law as Violence in Humanitarian Intervention .......................... 69
   A. Intervention: Authorized Force .......................................................................... 71
   B. Maintaining the Peace ....................................................................................... 81
II. The Rule(s) of Law: Bureaucracy and Expertise in Projects of Human Rights ........ 86
   A. Rationalizing Law .............................................................................................. 87
   B. International Experts ......................................................................................... 90
III. Techniques of Law and Law as Technique: Human Rights as Governance .......... 93
   A. Transitional Administration ............................................................................... 95
   B. Capacity-Building ............................................................................................. 98
IV. Conclusion ........................................................................................................... 103

Chapter 3: The Textual Mediation of Humanitarian Intervention – Formal Law,
Mandates and Reports ................................................................................................. 105
I. Law and Peace ......................................................................................................................... 109
   A. The International Legal Framework .................................................................................. 110
   B. Negotiating Peace and Law ......................................................................................... 115
II. The Mandate .......................................................................................................................... 122
   A. The Security Council Decides ..................................................................................... 123
   B. The Mandate in the Field ............................................................................................. 129
III. Reports from the Field ......................................................................................................... 134
   A. Negotiating Reports: Strategic Authority .................................................................... 135
   B. Public Reports: Strategic Representation ..................................................................... 139
IV. Conclusion .......................................................................................................................... 145

Chapter 4: The Tasks of the Human Rights Officer – Expert, Translator, and Scribe ......... 146
I. The International Expert ....................................................................................................... 149
   A. The Impartial Professional ......................................................................................... 150
   B. Expertise in the Field ................................................................................................. 154
II. The Human Rights Officer as Translator ........................................................................ 163
   A. Translating Law ........................................................................................................... 164
   B. Lost in Translation ...................................................................................................... 170
III. The Field Officer as Scribe .............................................................................................. 174
   A. Monitoring and Reporting .......................................................................................... 175
   B. Writing Law ................................................................................................................. 181
IV. Conclusion .......................................................................................................................... 184

Chapter 5: Legal Action in the Field – Standards, Politics, Pragmatism ......................... 186
I. Law as Implementing International Standards ................................................................... 188
   A. Governing through Standards .................................................................................... 189
   B. Violence as Protection ............................................................................................... 194
II. Law as Political Action ...................................................................................................... 200
   A. Local Politics: Bureaucracy at Work ........................................................................... 201
   B. The Politics of Intervention ....................................................................................... 205
III. Law as Practical Intervention .......................................................................................... 209
   A. Impractical Law, Practical Expertise .......................................................................... 210
   B. Building Institutions and Capacity .......................................................................... 212
IV. Conclusion .......................................................................................................................... 217

Chapter 6: Conclusion – Revisiting the Field(s) of Humanitarian Intervention ........... 219
I. Tracing the Network from Within: Connecting to and with Texts and Experts ............. 220
II. Troublesome and Troubling Experiments: The Rule of Law in the Field .................. 224
III. Looking Forward: Unsettling Assumptions ................................................................... 229

References ............................................................................................................................... 233

Appendix A: Summary of Methods ....................................................................................... 243
Appendix B: Interview Guide ................................................................................................. 245
Appendix C: Calls for Participants ......................................................................................... 249
Appendix D: Maps .................................................................................................................. 251
LIST OF TABLES

Table 1: UN Field Missions with Human Rights Component ............................................ 4
Table 2: Interview Participants .......................................................................................... 44
Table 3: Participants’ Human Rights Work Experience ..................................................... 45
LIST OF FIGURES

Figure 1: Worldwide Peace Operations ................................................................. 3
Figure 2: United Nations Civilian Staff Locations .................................................. 9
Figure 3: Network of Participant Recruitment ...................................................... 43
Figure 4: Central Texts of Humanitarian Intervention ............................................ 58
Figure 5: Triangular View of Law ........................................................................ 68
Figure 6: United Nations Mission in East Timor ................................................... 74
Figure 7: United Nations Mission in Kosovo ......................................................... 78
Figure 8: Triangular Law as Text ........................................................................ 106
Figure 9: Texts of Humanitarian Intervention in the Field .................................... 108
Figure 10: United Nations Mission in Sierra Leone ................................................ 126
Figure 11: Triangular Law as Expertise ................................................................. 147
Figure 12: Expertise in the Field .......................................................................... 148
Figure 13: The Prism of Law in the Field ............................................................... 187
Figure 14: Worldwide Peace Operations (Large) .................................................. 251
Figure 15: United Nations Civilian Staff Locations (Large) .................................... 252
LIST OF ABBREVIATIONS

ANT – Actor-Network Theory
CERD – Convention on the Elimination of All Forms of Racial Discrimination
DPKO – Department of Peacekeeping Operations (United Nations)
ECOMOG – Economic Community of West African States Monitoring Group
EU – European Union
IE – Institutional Ethnography
IGO – Inter-governmental Organization
JIAS – Joint Implementation Administrative Structure (Kosovo)
KFOR – Kosovo Force
KPC – Kosovo Protection Corps
KSIP – Kosovo Standards Implementation Plan
KTC – Kosovo Transitional Council
IAC – Interim Advisory Council (Kosovo)
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICISS – International Commission on Intervention and State Sovereignty
NATO – North Atlantic Treaty Organization
NGO – Non-governmental Organization
OHR – Office of the High Representative (Bosnia and Herzegovina)
ONUSAL – United Nations Observer Mission in El Salvador
OSCE – Organization for Security and Co-operation in Europe
SG – Secretary General (United Nations)
SRSG – Special Representative of the Secretary General (United Nations)
UDHR – Universal Declaration of Human Rights
UN – United Nations
UNAMET – United Nations Mission in East Timor
UNAMI – United Nations Assistance Mission for Iraq
UNAMISIL – United Nations Mission for Sierra Leone
UNIOSIL – United Nations Integrated Office for Sierra Leone
UNIPSIL – United Nations Integrated Peacebuilding Mission in Sierra Leone
UNITA – National Union for Total Independence of Angola
UNHCR – United Nations High Commissioner for Refugees
UNMIK – United Nations Mission in Kosovo
UNOHCHR – United Nations Office of the High Commissioner for Human Rights
UNOMSIL – United Nations Observer Mission in Sierra Leone
UNTAET – United Nations Transitional Administration in East Timor
GLOSSARY

**Humanitarian intervention**: Humanitarian intervention occurs when a group of nations (often under the aegis of an inter-governmental organization, but also in other collective organizations or ad hoc coalitions) uses force or the threat of force against another nation in the interest of protecting that nation’s citizens based upon a judgment that the nation is either unwilling or unable to do so itself. The majority of such missions are conducted under the auspices of the United Nations; however, regional IGOs also conduct similar missions or are involved in UN-directed missions. Peace operations are characterized in scholarly literature and in popular discourse as a form of humanitarian intervention.

**Human rights**: Although the expression ‘human rights’ is widely used and, often, broadly defined, in this project it refers primarily to the body of rights defined in international law and identified in the major international human rights instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. It also includes the specialized international human rights treaties (e.g., the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment) and comparable regional human rights treaties (e.g., the African Charter on Human and Peoples’ Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights).

**Human rights field work**: The terms ‘human rights mission’ or ‘human rights field work’ refer to the civilian human rights component of such field missions (in contrast to military components or other non-human rights focused civilian components).

**Human rights officer**: In this project, the term ‘human rights officer’ or ‘human rights field officer’ refers to an individual who works in a function directly related to human rights in the field mission of an international or regional inter-governmental organization. It does not include individuals working on human rights issues for a non-governmental organization (NGO). Although individuals working within their home country on behalf of an IGO are sometimes considered to be human rights officers, the term is primarily used to refer to those working outside their country of origin as ‘international’ staff in such a field mission and that is the sense in which it is used here.

**Inter-governmental organization**: Inter-governmental organizations are organizations composed primarily of sovereign states. The United Nations is the most well known inter-governmental organization, but there are similar organizations at the regional level (e.g., the African Union, the Organization of American States, the Council of Europe, and the European Union), as well as specialty organizations (e.g., the World Bank, NATO).

**Inter-governmental organization mission**: This project uses the terms ‘field mission,’ ‘peace mission’ and ‘inter-governmental organization mission’ interchangeably. Each is intended to refer to United Nations or other IGO peace operations in on-going or post-conflict situations in nation states.
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DEDICATION

To my husband, Dave, the best friend and partner ever, and to our wonderful children, Dani and Ella, who arrived in the midst of this, bringing chaos and joy. You all make the everyday extraordinary.
INTRODUCTION – UNDERSTANDING THE SCOPE AND PRACTICES OF THE ‘RULE OF LAW’ IN HUMANITARIAN INTERVENTION

Never again! Nunca mas! Stop the Genocide! How can we stand idly by? Such are the often-invoked exhortations and difficult-to-answer questions of the contemporary era with its widespread human rights violations, internecine violence, and other mass atrocities. Human rights, peacekeeping, and humanitarian intervention have emerged in the past decades as major components of international law and practice, at least in part as a response to public outcry in the face of massive violations. Although these responses have their roots in World War II and the post-war period, each gained momentum in the 1990s as the Cold War ended and forces of globalization began to reconfigure both geo-political dynamics and popular interest in issues such as the rule of law, human rights and civil society. Canada, the United States, and other western nations in particular have played foundational and significant roles in the development of these aspects of international law and practice and in ongoing efforts to implement human rights laws and policies around the globe. Since the 1990s, one major strategy for human rights protection and the advancement of the rule of law has been ‘humanitarian intervention,’ coercive collective intervention by the ‘international community’ against a state for the purpose of protecting people within that state.

As a young and aspiring human rights lawyer in the United States, I began my professional career in 1989 on the cusp of this moment of historical transformation, when the Berlin wall ‘came down’ and the possibilities for advancing global human rights seemed to be opening up correspondingly. I first worked as a human rights professional with a non-governmental organization (NGO) in the early 1990s on projects related primarily to Eastern Europe. My colleagues and I watched (and worked) as the disintegration of Yugoslavia (with the rise of ethnic cleansing) and the genocide in Rwanda unfolded in real time. The law and
practice of human rights began to shift from its more marginal (and controversial) status in the 1970s to a mainstream subject of discussion and policy. Human rights advocates and military and political ‘hawks’ suddenly had much to say to one another and, increasingly, found themselves on the same side of issues, calling for military intervention. That time (and those conversations) launched a new era of ‘humanitarian intervention’ that continues in the present day.

This dissertation examines the institutional complex of humanitarian intervention through the texts and experts of human rights field work in inter-governmental organization missions in conflict or post-conflict situations. In the past two decades, IGO peace missions have increasingly included an explicit human rights component, with such components established in missions in Cambodia, Haiti, Guatemala, the former Yugoslavia, Rwanda, Burundi, Georgia, Liberia, Angola, Sierra Leone, Guinea-Bissau, Democratic Republic of Congo, Ethiopia and Eritrea, Kosovo and East Timor. At first, the involvement of human rights staff in field missions occurred on a largely case-by-case basis, but in the past decade, it has become a more standard practice to include human rights officers in IGO peace missions. With ‘humanitarian intervention’ largely justified in the name of human rights and the rule of law, close consideration of the central texts of international law and the everyday work of human rights field officers offers important insights into this emerging exercise of institutional rule.

I. HUMAN RIGHTS FIELDWORK IN HUMANITARIAN INTERVENTION

Despite its increasing prevalence, humanitarian intervention is one of the most challenging and controversial issues in international law. Scholars, politicians, and policy makers have struggled with whether, when, how, and with what authority to intervene in situations of crisis, conflict and mass violations of human rights. The choice often seems a difficult one between inaction in the face of tremendous human suffering or forceful action.
against a sovereign state. The stakes are high and the costs can be enormous. Humanitarian intervention involves the profound exercise of geo-political and institutional power. It requires the massive mobilization of personnel and resources from around the world in complex and ongoing projects of peacekeeping, nation building, protecting human rights and re-establishing the rule of law. The operations that comprise humanitarian interventions vary in scope, duration, mandate and structure. They are collective endeavors conducted under the auspices of intergovernmental organizations (IGOs) – most commonly under the United Nations, but they are also led by regional and specialty IGOs. (Figure 1 illustrates worldwide peace operations).

Figure 1: Worldwide Peace Operations¹
(Image courtesy of the United Nations, Cartographic Section)

As the map in Figure 1 illustrates, humanitarian interventions are often projects led by the nations of the Global North and West that take place in (and purportedly benefit) the nations of the ‘Rest’ (Hall, 1992). Because they are justified in the name of universal human rights and the rule of law, that imbalance is often obscured in discussions of practice. Interventions occur

¹ Larger versions of this map and the map in Figure 2 are provided in Appendix D.
far from home and headquarters for the ‘international’ staff sent to work on behalf of intergovernmental organizations. Increasingly, these projects include the deployment of human rights officers in the ‘field’ in conjunction with peacekeeping or peace-building forces. The presence of human rights observers in the United Nations Observer Mission in El Salvador (ONUSAL) in 1991 is usually cited as the start of this phenomenon (O’Flaherty & Ulrich, 2010), and though this presence was small, it began a process of both increasing and enduring involvement over the next two decades:

Table 1: UN Field Missions with Human Rights Component

Although ‘field’ missions in support of peacekeeping and nation-building projects differ in size and mandate, there has been a trend towards increasing the scope and power of such missions. In recent years, several mission mandates have broadened to the point of displacing existing domestic sovereignty, replacing it through ‘transitional’ governance by the United Nations or other inter-governmental organization. Such ‘transitional’ government by UN or other IGO has
occurred or is occurring in East Timor (UN, 1999-2002), Kosovo (UN, 1999-present), and Bosnia and Herzegovina (OHR, 1995-present).

This transitional authority is justified, in part, as necessary to protect human rights and (re)establish the rule of law. For example, in the intervention in Kosovo, in addition to the international military presence deployed to maintain peace, the UN Security Council established an “international civil presence ... [to] provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo” (Resolution 1244, 1999, p. 3). The Security Council Resolution further enumerates the expansive powers of the transitional administration to include performing basic administrative functions, developing institutions, supporting reconstruction and humanitarian aid, maintaining law and order, and protecting human rights (1999, pp. 3-4). This expansive level of intervention is not yet typical, but it highlights the extensive power that the ‘international community’ wields in humanitarian intervention, even when it intervenes and operates at a lesser scale.

The texts of humanitarian intervention, as well as the human rights field officers I interviewed for this project, often speak in terms of international standards of human rights and the rule of law as foundational for intervention and the activities of mission personnel. In fact, the contemporary idea of human rights is premised upon their universality, and the rule of law, while clearly not universal in implementation, is widely endorsed as an aspirational goal and a key indicator of state legitimacy. These terms are presumed to reflect a set of shared understandings – and aspirations – among the members of the international community, but the everyday context of the field reveals tensions in that respect. At times, there is disagreement even within field missions as to the scope of these foundational and animating concepts:
Nathan: When we first arrived, … we were given a talk by a current mission member, again, most of whom were [military]. One of them was, he was acting head of the rule of law department, and he was telling us about the rule of law and what it is. And he defined ‘rule of law,’ and I remember this so distinctly, he said the rule of law is laws being issued by a legislature. He said that is the definition of the rule of law. (laughter) And I thought, wow, this mission is going to have some problems.

Nathan’s story, from his work as a field officer in the Kosovo mission, exposes some of the fissures in the presumably shared understanding of the scope and practices of the ‘rule of law’ that underlies humanitarian intervention. Another field officer, Gwen, who worked in several different missions, discusses similar difficulties of presuming a shared understanding and appreciation of human rights:

Gwen: It wasn't always the most strategic and effective way to realize those rights by using human rights language. So we often had to just say, listen, these people, we did say these people have the right to this and that, but we often had to help them actually realize it without … just demanding that it be dealt with.

Nathan’s comments suggest that the fissures in understanding of these foundational concepts may have been along a dividing line within the mission between its military and civilian components (or perhaps human rights staff and other staff), even as they worked together; Gwen points to differences in understanding between international staff and local counterparts. For both human rights and the rule of law, these disjunctures in understanding extend through and across interventions with consequences for the work of the missions.

In fact, different understandings of the scope and meanings of human rights and the rule of law shape, underpin and undermine decisions on when, where and how to intervene. Despite the increasing occurrence of humanitarian intervention, and its frequent appeal as an idea(l) to the public and to policymakers, profound difficulties and real controversies arise in the everyday circumstances of particular interventions:

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2 All interview participant names used in this dissertation are pseudonyms to protect confidentiality. Ellipses within the quotations indicate that intervening text has been removed for clarity and conciseness; brackets reflect editorial clarifications, where language in the quote may not be clear without the surrounding context.
“Humanitarian intervention” has been controversial both when it happens, and when it has failed to happen. Rwanda in 1994 laid bare the full horror of inaction. … Kosovo – where intervention did take place in 1999 … raised major questions about the legitimacy of military intervention in a sovereign state. … The Bosnian case – in particular the failure by the United Nations and others to prevent the massacre of thousands of civilians seeking shelter in UN “safe areas” in Srebrenica in 1995 – is another which has had a major impact … Yet another was the failure and ultimate withdrawal of the UN peace operations in Somalia in 1992-1993 … (ICISS, 2001, p. 1).

Concerns about international enforcement of human rights sharpen when interventions are made in settings of on-going national conflict or social transition. Although domestic institutions and populations are perhaps most in need in these situations, they are also most vulnerable to overreach by international authorities. Such interventions often result in the importation of comprehensive, new and foreign legal frameworks under the guidance and encouragement of international ‘experts’ (Orford, 2003, Kennedy, 2004). The level of domestic cooperation with these efforts varies, but it seldom rises to a level of democratic participation as would be expected in efforts to restore the rule of law. For example, in Bosnia, the international ‘transitional’ authority, the High Representative (an ad-hoc representative of the international community), was given power by the international community to impose laws by decree and remove elected public officials during the intervention, despite the existence of domestic Bosnian government (OHR, 2006). Jessica, another human rights officer I interviewed, who had worked in the Balkans, critiques that approach as contrary to the basic ideas of human rights and the rule of law:

Jessica: I don't think they're human rights interventions. I mean, this is the problem. If they'd been human rights interventions, then they would have been differently framed in the first place, the approach would have been different. And what we had is essentially the international community … putting in place a body, which has incredible powers and is the de facto government of the country. … So it's ill thought out from the beginning, because how can you expect people to participate and give any credibility to the government, for the government structures, when they're not the real power.
She contrasts the ideal of human rights and the rule of law to the realities of power relations in
the field, which are dependent on the everyday practices of the international community and
mission personnel, as well as the domestic authorities.

Moreover, although human rights work is motivated, at least in part, by humanitarian
goals and a commitment to universal rights, distinctions in status – between ‘international’
interveners and ‘local’ beneficiaries – permeate the activities and structure the relationships in
the field and otherwise. For example, even the institutional structures of the main UN human
rights institution, the Office of the High Commissioner for Human Rights (OHCHR), illustrate
the potential inequalities within international human rights work. The OHCHR participates in
UN peace missions through the provision of expert advice, technical assistance and functional
support (OHCHR, 2009). Depending on the scope of the mandate provided in Security Council
resolutions establishing the peace missions, the human rights component may include
“monitoring, documenting, investigating and reporting on the human rights situation; ensuring
that peace processes promote justice and equity; preventing and redressing violations of human
rights; building human rights capacities and institutions; and mainstreaming human rights into
all UN programmes and activities” (2009).

The OHCHR has regional centres in Africa, Asia-Pacific, Latin America and the Middle
East, but none in Europe or North America. The OHCHR’s country offices and advisers work
predominantly in areas of the Global South and East; this is also the case for OHCHR
participation in UN peace missions (2009). In its most recent annual report, the OHCHR noted
that it participated in UN peace missions in Afghanistan, Burundi, Central African Republic,
Central Asia (Turkmenistan), Chad, Côte d’Ivoire, Darfur (Sudan), the Democratic Republic of
the Congo, Guinea-Bissau, Haiti, Iraq, Liberia, Sierra Leone, Somalia, Sudan and Timor-Leste
(2009). OHCHR participates in UN peace missions that include human rights as a part of their
mandate through dedicated human rights staff or human rights officers (2009). (Figure 2 illustrates worldwide United Nations civilian staff locations).

The number of human rights officers deployed in each mission fluctuates significantly from mission to mission and over time. In 2009, the number of human rights officers in peace missions ranged from one (in Central Asia) to more than 100 (in the Democratic Republic of the Congo) (2009). It is difficult to find information on the levels of involvement of ‘international’ and ‘local’ staff in human rights field work, but one commentator notes that in the early years of human rights participation in field missions all human rights staff was ‘international,’ and in recent years ‘local’ human rights staff still is less that 20 percent of field personnel (O’Flaherty & Ulrich, 2010). The field officers interviewed for this project often commented on the discrepancies in numbers and responsibilities between international and local staff as well.

Figure 2: United Nations Civilian Staff Locations
(Image courtesy of the United Nations, Cartographic Section)
Concerns about inequalities in humanitarian intervention – at both the macro-level of intervention itself and the micro-level of relationships within missions – are significant as inter-governmental actors such as the UN take on ever larger roles in the development and implementation of human rights law, including through the use of force. It is important to gather information about their practices and to assess their work as it is structured by existing axes of power within field missions and across boundaries between international human rights experts and those intended to benefit from their expertise and assistance. Yet there has been little academic study of the textually mediated deployment of human rights experts and their work on the ground. This dissertation examines humanitarian intervention through the work of human rights experts deployed by the UN and other IGOs in field missions in nations undergoing transition or in a post-conflict situation. Specifically, it investigates the everyday practices of these experts in relation to the texts of law. Through in-depth interviews with human rights experts combined with an analysis of key texts, this empirical investigation offers insights into the day-to-day work of human rights experts, especially the ways they use and redefine law as they negotiate, entrench, and subvert power relations.

II. Research Questions and Methodology

This research explores humanitarian intervention through the practices of ‘international’ human rights experts in UN and other IGO human rights field missions and the human rights texts that authorize their work. A number of questions guide this research: How do human rights experts use law in their everyday work in the context of international humanitarian interventions? How is law’s multi-dimensionality engaged in ‘establishing the peace,’ ‘rebuilding the nation,’ and ‘restoring the rule of law’ in post-conflict situations? More specifically, how is human rights law characterized, invoked or deployed by experts in the field
and in the larger institutional context of the IGO? How is expertise – in law, human rights, or otherwise – established and sustained in the field?

This research uses an approach of Institutional Ethnography (IE), informed by Actor-Network Theory (ANT), to understand the dynamics of human rights field work conducted in inter-governmental field missions. As more fully elaborated in Chapter 1 (The Researcher and the Human Rights Expert in the Field of Humanitarian Intervention), institutional ethnography is a particularly suitable approach for this project because it attends to relations of power and allows for an exploration of the coordinating practices of rule. In many contexts, including humanitarian intervention, that coordination of the everyday work of people and institutions is achieved primarily through institutional texts (Smith, 2005, 2006). Actor-Network Theory (ANT) contributes to this approach by offering a conceptual framework for an investigation of complex activities – networks of association that include both human and non-human actors – that take place across temporal, institutional and spatial boundaries (Latour, 2005, Tummons, 2010).

Like many qualitative methods, institutional ethnography is interested in the people engaged in the practices under study. Institutional ethnography calls for exploring participants’ “work knowledge” of their own everyday practices as a source of data (Smith, 2005, pp. 153-155). In addition to the ‘work knowledge’ of participants, texts also play an essential role in institutional ethnography. Texts themselves become coordinators or actors in ruling relations – in the contexts in which they are created and used, as well as in the social relations “extending both temporally and spatially beyond the moment of the text’s occurrence” (2005, p. 103). It is primarily through texts that the research extends beyond the ‘local’ of participants’ experiences to the extended relations of power that structure and shape those everyday practices.

Similarly, in an ANT-informed approach, research does not focus on traditional factors of causation and explanation but instead traces associations among mediators – humans and
non-human actors – to develop an account of the network under consideration (Latour, 2005, p. 108). Both people and objects are active within networks; they can “travel across networks, and can carry meaning and intention” (Tummons, 2010). And these active objects may include texts. ANT’s “sociology of translation” or “sociology of association” describes research practice that is focused on mapping matters of concern with precision and clarity rather than reaching ultimate conclusions or certainty (Latour, 2005, pp. 106, 160). Thus, like institutional ethnography, ANT is interested in the interplay of individuals, institutions, and texts along networks of association. This approach, in the broader methodological context of institutional ethnography, allows for a cautious tracing of relations of power among participants and texts and across borders and scales, from the global to the local in humanitarian intervention.

As described in greater detail in Chapter 1, the project generated data through two primary means: 1) in-depth interviews with human rights experts who are working or have worked in IGO field missions in post-conflict situations; and 2) analysis of key texts prepared in relation to humanitarian intervention and by or for these experts, particularly human rights laws and treaties, peace agreements, Security Council resolutions, and human rights field reports. Unsurprisingly, these two facets of data generation are entwined, as well: participants discussed how they engage with – and are engaged by – relevant texts, and the texts shape, directly and indirectly, the everyday practices of the participants. Institutional ethnography, informed by ANT, provides the framework to describe these points of connections and disjuncture among texts and experts in humanitarian intervention.

This project seeks to contribute to the growing body of literature on human rights law and practice and, to a smaller extent, on humanitarian intervention. Much of that literature engages in offering or contesting normative accounts of human rights and human rights practice, or, alternatively, challenging or embracing the dominance of the international legal framework (e.g., An-Na’im, 1994, Eide et al., 1994, Meckled-Garcia & Cali, 2006, Goodale & Merry,
Sociologists are self-described latecomers to the area of human rights (Anleu, 1999, Turner, 1993, 1995, Wilson, 2007). Legal scholarship, which has dominated the field of human rights, has centered largely on substantive rights issues or international procedures, with limited examination of larger theoretical concerns (e.g., Franck & Fairley, 1980, Orentlicher, 1990, Hannum, 1992, Bassiouni, 2001). In recent years, there has emerged a smaller thread of critical scholarship that links international law and practice to earlier colonial endeavors and that problematizes the foundations of ‘good intentions’ that purportedly underlie human rights and humanitarian intervention (e.g., Anghie, 1999, 2005, Orford, 2003, Razack, 2004, Kennedy, 2004, Douzinas, 2007). The empirical research that has been done tends to focus on social movements, grass roots activism, and non-governmental work (e.g., Goodale & Merry, 2007, Keck & Sikkink, 1998). There are few projects that examine inter-governmental organizations, such as the UN, and their personnel (Zifcak, 2009, Kennedy, 2004, O’Flaherty & Ulrich, 2010).

My research brings together insights from this diverse scholarship to bear on the primarily law-centric work of human rights experts in the field. In doing so, I build upon my previous work as a human rights lawyer and law professor and contribute to the socio-legal scholarship that illuminates how the law reflects and reconstitutes global axes of power and inequality as it intervenes, rules and governs. My approach is to trace relations of power in humanitarian intervention through an empirical investigation into how law is constituted, deployed, adapted, and redefined in human rights field work. This project is theoretically informed by literatures on law and expertise, as well as critical approaches to human rights and humanitarian intervention. It examines law in the everyday context, but in humanitarian intervention that context is an exceptional one, and both law and expertise take on particular significance in the field. The texts of law cross temporal and spatial scales to establish normative frameworks, create institutions, deploy personnel, and assess outcomes. The experts
deployed to the field are uniquely empowered as impartial outsiders, even as they are connected to and imbricated in larger networks of rule. This project traces the practices of law and expertise from headquarters to field and back again.

III. **Theoretical Foundations of Law and Expertise**

This dissertation research investigates the everyday uses of law, particularly human rights law, by the human rights experts deployed in international humanitarian interventions. It contributes to a growing body of literature on international human rights and humanitarian intervention that spans – but does not often connect – the disciplines of law, sociology, anthropology and political science. In particular, it seeks to foster dialogue between the disciplines of sociology and law regarding issues of legality, expertise and global human rights. Sociologists have been interested in law since the inception of the discipline; early sociologists, such as Max Weber, were trained in law and were interested in its roles and effects in the social world. From that foundational time to the present, social scientists have investigated the nature of law, the practices of the agents and institutions of law, and law’s relation to other important social developments. They have also explicated notions of expertise, often focusing on the social sciences but offering insights into expert practices more generally. It is this literature on the nature of law and the role of expertise that lays the foundation for my dissertation research on the texts and experts of human rights field work.

Over the course of my research and analysis, several dominant themes emerged regarding the nature of law and legal practices in the particular context of international humanitarian intervention. These themes include the multi-dimensionality of law, the centrality of texts as active coordinators of law, expertise as a relation of power, and the complex interplay of law, text, and expert in the field. I begin my analysis with a triangular view of law as violence, bureaucracy and governance, inspired by the literature on the nature of law and Michel
Foucault’s triangular view of power (1994). However, this triangular view becomes more complicated and is enriched by closer examination of the role(s) of text and expert and the complexities of power relations in humanitarian intervention and human rights field work.

A. The Multi-Dimensionality of Law

For many people, law is simply law: a set of rules that a given society creates, by whatever process, for itself and its members to live by (Wald, 1995). At its most basic level, this reflects the sense of the ‘rule of law’ as ‘laws being issued by a legislature’ (as Nathan relayed the perspective of his colleague in the field mission). Law may aspire to or represent justice, but more commonly, it is viewed as a tool, an instrument, a set of institutions, a system for achieving social goals (Riles, 2006, Weber, 1978). According to this view, particular laws may be controversial, but law itself is fairly mundane. Although some participants in the system, such as criminal defendants or human rights violators, may be violent and may subsequently be faced with forceful punishment, law itself is seen as an alternative to and bulwark against violence. Despite the prevalence and straightforwardness of this view, it is evident that there are deeper complexities, even contradictions, in the law – in its structures, objectives, practices, and participants.

These complexities and contradictions have increasingly been recognized and interrogated by social and legal theorists, most frequently in the domestic context of a single nation-state or government. From their work, a triangular view of law emerges, reflecting three significant and overlapping dimensions: law’s violence, law’s bureaucracy, and law’s governance. Law as violence foregrounds the originating and sustaining force that underlies the creation and maintenance of law (and the state), as well as law’s authorized use of violence (Benjamin, 1986 [1921], Derrida, 1990). Law as bureaucracy focuses on the rationalization of law and its processes, as well as the ways in which law works through the expertise of
individuals and institutions (Weber, 1978). And law as governance traces the move to
government both within and outside of the formal mechanisms of the law and the state
(Foucault, 1994).

The multi-dimensional nature of law and the ways in which it operates are important
concerns not just in the context of a single nation-state or government, however, but also in the
field of international law and in the context of humanitarian intervention. International law
appears to lack many of the familiar institutions of domestic law, and the question is often raised
whether international law is really law at all (Orford, 2003). Humanitarian intervention purports
to (re)establish the rule of law and protect human rights, but it remains controversial for its
reliance on international law for authorization and normative guidance. An understanding of
law as more than an instrument or particular system offers productive means for evaluating both
the endorsement and the critique of international law and humanitarian intervention. The
insights of social theorists regarding law in the domestic context provide some guidance and
suggest new ways to view some common issues in the global context.

1. Law as Violence

According to conventional views, law and violence are connected, but law domesticates,
channels, and justifies violence. Not all violence is equal; there is a fundamental distinction
between violence used for just (or legal) purposes and violence used for unjust (or illegal)
purposes. Violence authorized by law is just(ified), and violence outside the law is not (Cover,
1992, Wald, 1992). Legal theorist Robert Cover articulates this understanding of law as an
alternative to and a means to control violence: “Were the inhibition against violence perfect, law
would be unnecessary; were it not capable of being overcome through social signals, law would
not be possible” (1992, p. 219). Here, law represents the best intentions: it “is the projection of
an imagined future upon reality” (1992, p. 207). However, punishment is a central feature of law as it strives to provide justice.

Punishment under sovereign reign was understood as the vengeance of the sovereign. Over time, however, subsequent penal reform shifted from the idea of vengeance to the idea of defending society. The police and other non-judicial actors assume a more dominant role in the legal system, and this transformation results in a new form of law – “a mixture of legality and nature, prescriptions and constitution, the norm” (Foucault, 1975, p. 304). The power to punish extends beyond the sovereign to include the wide range of actors that are familiar today: the police, the courts, lawyers, probation officers, social workers, prison guards, and so forth. It is common, particularly among those within the legal system, to adopt the conventional view, which considers the law as objective, rational, and impartial, rather than emotional, subjective, and biased. Underlying this view is a sense that the move to rationalize punishment represents a sort of forward progress in the law, a channeling of violence into impartial bureaucracies or the hands of various experts to become discipline and punishment. In this new framework, the relations of power multiply.

Law’s violence is implicated in those relations of power, where “perpetrator and victim of organized violence will undergo achingly disparate significant experiences” (Cover, 1992, p. 238). Even the conventional view recognizes that the ideology of law as a civilizer of violence “is much more significant in justifying an order to those who principally benefit from it and who must defend it than it is in hiding the nature of the order from those who are its victims” (1992, p. 212). Simply put, the judge or lawyer is more likely to believe that the legal system tempers violence than the defendant and his or her community (and, likely, the crime victims). This recognition, however, is ultimately reconciled in, or obscured by, the belief that law serves to domesticate violence, that those with power in the system can use their power (and the law) for benign purposes, to restrain other, non-authorized forms of violence. This view results in a
focus on institutions as dominant – and identifying – features of law, and it also leads to questions about international law’s status as law when it appears to lack these features. How can international law be law without the means to enforce, to punish, to meet unauthorized violence with authorized violence?

Although international law’s status may be in question at times, its practitioners and texts often reflect conventional views of law. International legal institutions are modeled on domestic institutions and international legal texts similarly reflect domestic influences. Humanitarian intervention – and human rights field work – are premised on the idea of law as civilizer of and bulwark against violence. Humanitarian intervention typically involves the use of force or the threatened use of force, but it is force authorized by international law and exercised in the expert hands of the international community. In contrast to the unauthorized force of the underlying domestic conflict, international force is rational (rather than emotional), impartial (rather than partisan), and disciplinary (rather than vengeful).

Alternative and non-conventional views of law as violence offer further insight on the fundamental questions about international law. Although conventional theories of law as a substitute for or opposition to violence are useful ways of thinking about the nature of law and law’s work, there are also more critical views of law’s relationship to violence, which see the two as deeply enmeshed. These perspectives shift the focus from law’s use of violence to violence as a feature of law. In a foundational essay, “Critique of Violence,” Walter Benjamin examines violence through its relationship to law and justice (1986 [1921]). His focus is on violence itself as a means – law-making violence and law-preserving violence – without concern for the particular ends towards which it is directed (just or unjust, for example). Law-making violence is an originating violence, the violence that establishes law, and law-preserving violence is a maintaining violence, which sustains law’s power (though these distinctions ultimately break down). Benjamin argues that in the quest to find the original source of
legitimacy for law, one must end up with – or rather begin with – violence. In a basic sense, law-making violence is about power as it establishes the new order. Law’s oft-noted interest in a holding a monopoly on violence is a law-preserving violence, concerned with maintaining power, because “violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law” (1986, p. 281). Violence is enmeshed with law; it is present in the foundational moment of law and also serves to preserve law and the legal order. This more critical view supplements the conventional view as much as it challenges it; it grounds law in violence rather than in opposition to it, and it expands law’s use of violence to the preservation of itself.

Other theorists have both critiqued and extended this view of law’s intimacy with violence. Jacques Derrida begins his inquiry with a revealing point of language regarding the common expression of ‘the force of law’ (1990). He emphasizes that “there is no law without enforceability, and no applicability or enforceability of the law without force” (1990, pp. 926-927). The relationship of force or violence to law is a complex one; law itself emerges from violence that is not yet legal or authorized (nor illegal or unauthorized) in the founding moment. However, law and violence are entwined even beyond this originating moment. Law “claims to exercise itself in the name of justice” and “that justice is required to establish itself in the name of a law that must be ‘enforced’” (1990, pp. 959, 961). Law-preserving violence and law-making violence are in a dialectical relationship; founding law and conserving law eventually collapse into one another. This becomes evident – and particularly relevant to the context of international law and humanitarian intervention – in examining the origin of the state. Law-making violence is a revolutionary moment, the creation of a new state and a new law; in fact, it is an exceptional moment, even “an instance of non-law” as it exists outside the law (1990, p. 991). Law-preserving violence seeks to conserve that new state and new law, and this may often be the conventional, and more familiar, violence of law that seeks to punish threats to the
existing legal and social order. However, there is always a contradiction in that the founding violence can be repeated and a new law established.

This more complicated view of law’s violence, particularly in exceptional moments, also appears where the law is suspended, deactivated and inactive (Agamben, 2005). Because the ‘state of exception’ appears to be both inside and outside the juridical order, it illuminates both the presence of law and the absence of law, the efficacy of law and the force of law. The state of exception essentially separates the force of law (its “formal essence”) from the law itself (2005, p. 38). It is “the opening of a space” where “in order to apply a norm it is ultimately necessary to suspend its application, to produce an exception” (2005, p. 40). In this context, there are real dangers to the juridical order and beyond. Agamben discusses these risks when a domestic sovereign suspends law in the name of emergency, but something very similar happens in international intervention. Domestic law is suspended or overtaken in response to conflict or crisis; although a new legal framework is ultimately (re)institated, international authority governs in the interim and in the name of the (rule of) law but without meaningful legal constraint.

Despite the dangers and grim possibilities in these exceptional moments, however, there may also be opportunity in the deactivation of the law. To explore the possibilities of the open space of the state of exception requires beginning to re-imagine the possible uses of law disconnected from violence. Or, more simply, it may just require beginning to ask what “price is paid for law’s intimacy with violence” (Sarat, 1992, p. 261). This foundational question is one that critical theorists have engaged with and begun to explore through a deeper examination of the ways in which law and violence are enmeshed. Although international humanitarian intervention aspires to restore law disconnected from violence, it seldom asks the more important questions about how law and violence are enmeshed and what costs that may exact.
2. Law as Bureaucracy

Given the dominance of instrumentalist views of law, social theorists have long and prominently considered the links between law and bureaucracy. Early sociologist (and trained lawyer) Max Weber shows how bureaucracy operates in the administration of justice, through the development of ‘rational’ legal procedures and formalized legal concepts (1978 [1922]). Like the theorists of violence and law, Weber was interested in the origins of law and its subsequent legitimacy (Turner & Factor, 1994). In his view, a simple norm or rule became law if it was ‘enforced’ through coercion (1994). Thus, a sense of force underlies his understanding of law, and both force and bureaucracy are present in his definition of the state. While force may be foundational, however, law’s process itself appears as rational and bureaucratic.

The modern state is “completely dependent on bureaucracy,” and the longer the process of bureaucratization goes on, the further it extends (Weber, 1978). This proliferating bureaucratization is caused by the intensification of demands on administration as societies become increasingly complex with increased social responsibilities, modern forms of interaction and communication, and political sophistication. In terms of political factors, the most significant is the social demand for stability, order, and protection. Thus, bureaucracy is an instrument and feature of law and order; it offers its unique attributes of “[p]recision, dispatch, clarity, familiarity with the documents, continuity, discretion, uniformity” and reduced material and personal costs (1978, p. 350). However, there are other costs to a bureaucratic system – such systems are inflexible, rigidly hierarchical, almost mechanized. The administrators and officials are dehumanized, in a sense, as professional and objective office is separated from private life and subjective sensibilities. At the same time, other participants are also dehumanized as bureaucratic practice focuses on general rules and disregards individual, particular situations.
Along with the rise of the legal bureaucracy comes the increasing rationalization of the law and legal system. In both civil and common law systems, “[t]ypification, one-sided selectivity, idealization (especially in the context of instruction), rationalization, and codification” become central to processes of developing and applying the law (1978, p. 140). These same practices remain central to the law in contemporary settings. In fact, this leads to a common conception of the law as ‘scientific’ or ‘objective’ (Latour 2004, p. 73). Law, like science, appears to “emphasise the virtues of a disinterested and unprejudiced approach, based on distance and precision” (2004, p. 73). Nonetheless, there remain important distinctions as well; law’s quest for ‘objectivity’ centers on the sort of indifference and distance characteristic of bureaucracy. Law decides, and it does so through processes constructed as rational and objective, removed from the individuals involved.

Bureaucratic law also appears in international law and humanitarian intervention. International law itself is coordinated, rationalized and implemented through the massive bureaucracies of the United Nations and other inter-governmental organizations and institutions. The scope of their work is literally global in reach and wide-ranging in subject matter, from telecommunications to trade, from human rights to health, and from war to education. In the almost 70 years since the creation of the UN, it has developed an expansive international civil service to oversee its work, together with an informal network of international professionals and experts (Haynes, 2008). In humanitarian intervention, these civil servants and other professionals are deployed to manage the project of nation-building, drawing upon their impartial expertise.

Once established, the bureaucracy of law spreads and flourishes, facilitated through processes of institutional isomorphism that lead to a similarity of structures across society, or in the case of international law, similarities across societies. DiMaggio and Powell identify three mechanisms of isomorphic change – coercive, mimetic, and normative isomorphism – which
operate primarily in the intertwined realms of the state, law, and education (2007 [1983]).

Coercive isomorphism occurs when change is mandated by authority and, where necessary, enforced; the state and the law are central to these processes. In addition to coercive isomorphism, law is also relevant in mimetic processes of isomorphism, where an institution mimics or copies the conduct of other institutions for reasons other than coercion. Because of the general power of the state, there is social pressure to follow the practices of institutions that are successful within the system; the practices of those institutions are, in turn, shaped by the legal regime at work. Finally, the third mechanism of institutional isomorphism, normative pressure, is also evident in both the law and the working of the state system. Normative pressure is the sense of ‘should’ or ‘ought’ that underlies the choice for a particular system or process. Law is also at work in normative processes when legal education is standardized (in part, through law), and lawyers are ubiquitous in government bureaucracies and legislatures.

Mimetic and normative processes are manifest in the ‘model laws,’ uniform documents and processes, standardized education, and ‘best practices’ that are prevalent in domestic legal practice, as well as international legal practice. These processes of isomorphism help explain the increasing rationalization of law and its systems and the proliferation of particular types of systems, domestically as well as transnationally and internationally. Humanitarian intervention reflects all three isomorphic processes. It is coercive when new legal frameworks are negotiated under threat of force or simply imposed by international administrators. It is mimetic when international administrators draw upon familiar examples from home (or comparable legal frameworks) or embrace ‘international’ standards based upon the same. And it is normative, particularly in its reliance on international standards of human rights and the rule of law.
3. Law as Governance

Although law’s violence and bureaucracy are significant dimensions of its nature and work, law’s reach extends beyond the confines of any particular legal system(s) or set of legal processes. In his important and foundational lecture “Governmentality,” Michel Foucault addresses the “problematic of government” and elaborates the idea of governmentality as a configuration of power (1994, p. 229). The rise of government occurs in the wake of the decline (or reconfiguration) of sovereignty, as historically understood. Traditionally, sovereignty or sovereign power relied upon the law (backed by force) to achieve its aims – “law and sovereignty were absolutely inseparable” (1994, p. 237). With the emergence of government as a form of power, the relationship with law is transformed: “[I]t is a question not of imposing law on men but of disposing of things: that is, of employing tactics rather than laws, and even of using laws themselves as tactics – to arrange things in such a way that, through a certain number of means, such-and-such ends may be achieved” (1994, p. 237). Law is no longer a simple manifestation of sovereign will, but rather one tool among many for the exercise of power.

The idea of ‘governmentality’ captures the sense that power achieves its objectives as it becomes internalized in practices of self-government, within individuals or, more broadly, within societies. In a general sense, “governmentality simply refers to any manner in which people think about, and put into practice, calculated plans for governing themselves” (Golder & Fitzpatrick, 2009, p. 31). More specifically, it is “a particular mode of deploying and reflecting upon power” (2009, p. 31). Neither sovereignty nor disciplinary practices are necessarily replaced by government, but rather a new dimension is added. Foucault offers a triangular view of power as “sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism the apparatuses of security” (Foucault, 1994, p. 243).

While Weber considered the modern state as dependent on bureaucracy, Foucault contends that it functions based upon the “dispositional and technocratic logic of
governmentality” (Golder & Fitzpatrick, 2009, p. 32). With the “governmentalization” of the state, the sovereign authority, and even the law itself, has less and less significance (Foucault, 1994, p. 244). Instead, power is largely directed at the population through schemes of reform, pedagogy, and governance. This results in “the formation of a whole series of specific governmental apparatuses, and . . . in the development of a whole complex of knowledges” (1994, p. 244). These governmental apparatuses and bodies of knowledge include the legal system and the law but also extend beyond the law to include projects of education, social work, and other efforts to manage or reform the individual and the population. Law then becomes integrated into governance strategies to manage social problems and concerns.

Other theorists have questioned the idea that the move to governmentality necessarily results in a lesser significance or role for law in society. For example, Hunt and Wickham contend that law retains a prominent status even as power relations shift: “[L]aw has been a primary agent of the advance of new modalities of power, [and] law constitutes distinctive features of their mode of operation” (1994, p. 65). They suggest that Foucault’s theories of governmentality must be framed in dialogue with the work of Weber, among others; from that perspective, “all operations of law are instances of governance” (1994, p. 99). Governmentality and the rise of governance are, at least in part, “about the growth of modern government and the growth of modern bureaucracies” (1994, p. 76). In fact, these familiar bureaucratic institutions are where governmental power is exercised through a wide range of regulatory practices. Public law, while not synonymous with governmentality, is always involved in either exercising control over or exempting from control the different projects of governance.

International humanitarian interventions, together with the nation-building projects they launch and support, illustrate the integration of law and governmentality. Law is a tactic of intervention – international law authorizes intervention, and the rule of law becomes a product or outcome of the mission; at the same time, law operates in conjunction with a range of related
tactics designed to rebuild the nation and reform the population in the post-conflict environment. Legal experts and legal expertise are integral to most, if not all, of these projects of governance. Creating a bureaucracy, a quasi-governmental apparatus, of international experts is a foundational step for most interventions, and that apparatus embarks on long-term projects of knowledge production, management and reform. Given their wide-ranging scope, human rights (and human rights law and expertise) are particularly useful in extending law’s reach in intervention.

Although scholars may disagree about the extent to which law is displaced by the rise of governmentality, it is clear that its role changes as forms of power shift. In a sense, the triangular model of power offered by Foucault, comprising sovereignty-discipline-government, is reflected in law’s multi-dimensional nature as violence-bureaucracy-governance and in the ways power is exercised through the courts, administrators, and civil society. Violence remains an important component of law – connected to its origins, its preservation, and its enforcement – and bureaucracy retains its significance in the formal institutions and processes of the legal system itself. Law as governance, however, captures another dimension. In the modern state, law is pervasive; it extends its reach outside of the formal legal system to the encompassing and overlapping array of efforts to manage society. In turn, those projects of governance also shape the content and scope of the law, domestically, and increasingly in the international realm.

4. Multi-dimensional Law in the Humanitarian Intervention

As more fully elaborated in Chapter 2 (The Functions of Law in Humanitarian Intervention: Violence, Bureaucracy and Governmentality), the multi-dimensional nature of law illuminates, and in turn is illuminated by, the exceptional context of humanitarian intervention. In humanitarian intervention, everyday understandings of law as a practical tool or instrument and the legal system as the efficient and rational means of implementing and enforcing law turn
to the importation of ‘rational,’ international legal regimes and the deployment of ‘objective’
experts to establish and manage such regimes and to train local participants in these new
procedures and practices (Orford, 2003, Chandler, 2006). This bureaucratic understanding of
law expands to include practices of governance when IGO human rights experts and other actors
in the field, such as non-governmental organizations and their staff, and local governmental
actors and individuals, establish more diffuse networks of actors focused on educating and
governing the local population as the nation is rebuilt (Orford, 2003, Hammer, 2007). However,
the bureaucratic and governing features of law rest upon a seldom examined or acknowledged
foundation of violence. This foundation is manifest in the force that supports international
intervention at both the micro-level of the legal (and other) institutions at work during and after
intervention and at the macro-level of the geo-political dynamics of the intervention itself.

In human rights field work, the triangular nature of law also multiplies and refracts
through the lenses of texts and human rights officers (as more fully elaborated in Chapters 3 and
4). Law is a textually-mediated field, and there are several central categories of texts in
humanitarian intervention. As both foundation and pinnacle, there are the formal texts of
international law, especially human rights treaties. Human rights experts are empowered by and
deploy major human rights treaties, bringing them into domestic law through peace agreements,
as representations of the law in the field. The formal texts of law are given particular authority
in humanitarian interventions through another significant text, the mandate of the field mission.
The mandate is formally represented by the actual text of the UN Security Council resolution(s)
authorizing the intervention; however, the mandate also takes shape and is negotiated in
relationships in the field mission and within the host country. Finally, there is the report, which
constitutes the everyday work of the field and field officers and a tangible product of the
mission. Such reports become points of contestation and connection within the mission and
structure interactions throughout the inter-governmental organization and with the host country.
Through both text and expert, field missions attempt to distance (human rights) law from violence, to situate field officers in opposition to bureaucratic headquarters, and to govern as care-takers of the host population. In the field, these practices result in the transformation of law into ‘standards’ or general principles and the struggle to reconcile law with the ‘practical’ and the ‘political’ (see Chapter 5). This transformation reflects a sort of legal pluralism reminiscent of colonial endeavors that is difficult to reconcile with the purported goal of establishing the ‘rule of law.’ It also creates a cynicism and tension within field missions as officers struggle to negotiate relations of power within the mission and host country.

B. The Indispensable Expert

As the literature on law illustrates, the role of the expert is essential as law does its work through the individuals and institutions who wield its power. In traditional venues and most domestic legal systems, these experts are judges, lawyers and administrators; these familiar experts appear in humanitarian intervention, but there are other unique forms of ‘international’ expertise in the field, including human rights field officers. Human rights officers are specifically deployed as ‘experts’ – as ‘objective,’ outside observers – in projects intended to promote human rights and the ‘rule of law.’ Human rights officers wield, interpret and represent law and legal text in the local context as experts, and their expertise is (re)constituted in the field, in part through text. These officers mediate relations of law and power among components of the field mission and between the mission and individuals and governmental partners at the local and national level.

1. The Legal Expert

As with multi-dimensional law, the insights of social theorists on more familiar forms of expertise are useful in understanding expertise in the exceptional context of humanitarian intervention. Weber has traced the emergence of expertise in his history of the rise of legal
rationality (1978). Although his focus is on the development of law and procedure, the role of the expert is threaded throughout:

From a theoretical point of view, the general development of law and procedure may be viewed as passing through the following stages: first, charismatic legal revelation through “law prophets”; second, empirical creation and finding of law through legal honoratiores, i.e., law creation through cautelary jurisprudence and adherence to precedent; third, imposition of law by secular or theocratic powers; fourth and finally, systematic elaboration of law and professionalized administration of justice by persons who have received their legal training in a learned and formally logical manner (1978, p. 882).

In fact, Weber contrasts the role of the legal expert in the rationalized legal system with the exceptional case of the jury, where laypersons can adjudicate according to ‘irrational’ standards. Trained jurists are distinguished by “that special capacity which results from specialized professional training, viz., the capacity to state clearly and unambiguously the legal issue involved in a complicated situation” (1978, p. 853).

Judges and lawyers, though not its only agents, are often the most visible faces of the law. Trained jurists and advocates – due to their expertise – become an important aspect of the development of the rational state as well as the rationalized legal system. The traditional, idealized view of judges (and sometimes lawyers) focuses on esteemed qualities of intelligence and ethics, but also on an objectivity and “ability to step away from the battles of the day and to articulate the principles of a rational and orderly society” (Wald, 1992, p. 77). Judges hold an important place in the legal hierarchy and exercise their power through interpretation and judgment. Under their guidance, the system “appears to partake both of the positive logic of science and the normative logic of morality and thus to be capable of compelling universal acceptance through an inevitability which is simultaneously logical and ethical” (Bourdieu, 1987, p. 818). The rationalization of the legal process provides judicial decision-making with its effectiveness by “granting the status of judgment to a legal decision which no doubt owes more to the ethical dispositions of the actors than to the pure norms of the law” (1987, p. 828).
This rational expertise appears as the anti-thesis of violence, and yet judges also wield violence through their ability to command the enforcement of the law. If “a society is defined by its ability to enforce communal decisions – by force, if necessary,” then it is left to the judge to set that process in motion (Wald, 1992, p. 78). Expert legal interpretations serve to justify violence exercised by the state; these are “organized, social practices of violence” where the interpretation of what ought to be done is separated out from the act of doing the violence (Cover, 1992, p. 203).

Despite their prominence, judges are not the only experts at work in the law. Other bureaucrats and administrators also serve as trained, impersonal, and ‘objective’ specialists in the legal system. As bureaucracy develops, rationalizing and dehumanizing itself, it increasingly relies upon the expert “who is all the more indifferent in human terms, and so all the more completely ‘objective’ the more complex and specialised the culture becomes” (Weber, 1978, p. 351). Expertise becomes more broadly implicated in relations of power. The increasing rationalization of the legal system reflects political transformation and a new type of power relations. Judicial power now operates in conjunction with a “whole network of nonjudicial power,” particularly the experts who become so prevalent in the bureaucratized state (Foucault, 1994 [1974], p. 57). These experts include the administrators, officials, staff, and consultants that are responsible for so much of the everyday work of the domestic legal system and, increasingly, the international legal system. They purport to offer certainty, clarity, distance, objectivity, and rationality to non-experts as they seek to navigate the complexities of the law and the legal system, but also in encounters shaped by law in the everyday world.

Expertise is significant not just in the exercise of law’s violence or in its bureaucratic institutions. Governance is also accomplished through power/knowledge and through the activities and practices of a wide range of specialized experts (Foucault, 1994). The power of government arises not from a static, all-powerful sovereign or state, but rather from “an
assemblage of forces” organized into “mobile and loosely affiliated networks” that include both state officials and numerous other practitioners in the public and private spheres (Rose & Miller, 2008, p. 64). Governance occurs through the “assorted attempts at the calculated administration of diverse aspects of conduct through countless, often competing, local tactics of education, persuasion, inducement, management, incitement, motivation and encouragement” (2008, p. 55). In this more indirect manifestation of power, it is the various ‘experts’ who provide the links between political authorities and individuals; they ensure that “self-regulatory techniques can be installed in citizens that will align their personal choices with the ends of government” (2008, p. 69). The task of expertise in governance is not one of “weaving an all-pervasive web of ‘social control,’” but a more diffuse (though equally powerful) management of individuals as members of society (2008, p. 55).

Law works in conjunction with expertise domestically and internationally, at home and in the field; it “translates aspects of a governmental programme into mechanisms that establish, constrain or empower certain agents or entities and set some of the key terms of their deliberations” (2008, p. 70). In a sense, law is meaningful in conferring expertise and shaping the confines of expert authority, both within and outside the legal system. Law may be a specific tactic of government, but it also operates more broadly to contour the range of possibilities available to individuals, to experts, and even to the state and the international community. This is evident domestically in the familiar practices of the extended systems of justice, social work, public health, and so forth, that include networks of actors, legal and other experts, and official and unofficial participants. It is also manifest in humanitarian intervention which is accomplished through networks of ‘international’ texts and experts, intervening and ‘host’ nations, ‘local’ authorities and beneficiaries.
2. The Expert in Humanitarian Intervention

As more fully elaborated in Chapter 4 (The Tasks of the Human Rights Officer: Expert, Translator, and Scribe) and throughout this dissertation, these strands of theoretical investigation on (legal) expertise in the domestic context provide a foundation for my research on the use of law by human rights experts in humanitarian interventions. Human rights officers are embedded in the field in two important respects – first, the ‘field’ of law or the juridical field, and second, the ‘field’ as distinguished from home or headquarters (Bourdieu, 1987, Hyndman, 2000). Human rights officers are usually trained as lawyers and/or in relevant issues of human rights law. This professional expertise of the legal field becomes magnified as ‘international’ expertise in the context of distant, not-home ‘field’ work of humanitarian intervention (Orford, 2003). This duality of field expertise frames their everyday work.

As experts, human rights officers assume familiar legal roles as advocates, legislators and decision-makers without the familiar constraints on those roles that exist in domestic legal systems. In humanitarian intervention, expertise is heightened as ‘international’ expertise, only loosely tethered to traditional foundations of professional or authoritative status. The expert human rights officer becomes impartial observer, authoritative interpreter, problem-solver, and, at times, law-maker and adjudicator. This expertise is integrated with the multi-dimensionality of law. International experts establish and manage newly imported legal regimes and train local participants in new procedures and practices. They educate and govern the local population as the nation is rebuilt; they train and ‘build capacity.’ This work is enabled and enforced by a rarely acknowledged foundation of violence, manifested in the military and political force that supports international intervention.
From the beginning, my dissertation research has been interested in questions regarding the nature of law, the role of texts, and the practices of those who work directly with law as experts. As discussed above, these questions have generated an understanding of humanitarian intervention that features the multi-dimensionality of law, the centrality of texts as manifestations of law, expertise as a relation of power and the complex interplay of law, text, and expert in the field. What emerges is a mobile and kaleidoscopic view of law in constant translation, shifting development and unstable implementation. These themes are addressed in the following chapters:

Chapter 1 – The Researcher and the Human Rights Expert in the Field of Humanitarian Intervention – from Institutional Ethnography to Actor-Networks. This chapter provides an overview of the methodological approach of Institutional Ethnography, informed by Actor-Network Theory, as well as the methods of data generation for this project. Institutional ethnography has emerged in the last decade as an effective approach for exploring the relations of power in institutional complexes, and actor-network theory provides a framework for tracing networks of connection among actors (human and non-human). This methodological approach attends to relations of power and allows for an exploration of the interplay of individual and institutional actors and texts that comprise human rights field work in humanitarian intervention. Data generation relied upon in-depth interviews with human rights experts in IGO field missions and analysis of significant legal texts of intervention, especially human rights treaties, peace agreements, Security Council resolutions, and human rights field reports.

Chapter 2 – The Functions of Law in Humanitarian Intervention: Violence, Bureaucracy, and Governmentality. This chapter begins with an understanding of law’s multi-dimensionality – law as violence, law as bureaucracy, and law as governance (as
elaborated above) – and explores that feature in the context of international law supporting humanitarian intervention conducted in the name of human rights and the ‘rule of law.’ It problematizes the force that supports international intervention at both the micro-level of the legal (and other) institutions at work during and after intervention and at the macro-level of the geo-political dynamics of the intervention itself. It elaborates the importation of ‘rational’ international legal regimes in the post-conflict setting and the deployment of ‘objective’ international experts to establish and manage such regimes. Finally, it considers the use of law as a technique in projects of governance and the roles of experts in creating, facilitating, and maintaining networks and practices of reform and management.

Chapter 3 – The Textual Mediation of Humanitarian Intervention: Formal Law, Mandates, and Reports. This chapter considers three central categories of texts in humanitarian intervention and their networks of interconnection as they organize and manage work in the field missions deployed on humanitarian grounds. These texts are examined not just for their substantive content but also for their active facilitating work in the intervention. Although the experts who are deployed by and who create and use these texts appear in some aspects of this discussion, fuller elaboration of their roles is left until the next chapter (Chapter 4). Instead, this chapter focuses on the dominant texts – and networks of texts – in international law to examine the relations of power in humanitarian intervention, beginning with the formal law, which frames and authorizes the international intervention. It then considers the role of the mandate, authorized by law but implemented by the international administration. It concludes by discussing the everyday texts of the field mission, the myriad reports prepared and used by field officers, also shaped by and responsive to the law and the mandate.

Chapter 4 – The Tasks of the Human Rights Officer: Expert, Translator, and Scribe. This chapter explores the role of human rights officers in field missions, and their engagements with law and the text of humanitarian intervention in the context of field work.
Human rights officers are called upon in their everyday work to fulfill many roles, grounded in a particular form of expertise. They are deployed as international experts but find such expertise both challenged and reified in the field. This chapter begins by considering the features of professional legal expertise and the ways in which they are manifested, challenged and transformed in the context of human rights field work. It then examines the role of human rights officers as translators of the law and of the ‘international.’ Finally, it returns to the issue of reporting but examines it as a role of the writing expert. Reporting is one of the written forms of expertise deployed by human rights officers, along with drafting legislation and other coordinating texts in the field.

Chapter 5 – Legal Action in the Field: Standards, Politics, and Pragmatism. This final chapter returns to questions about the nature of law in the exceptional context of humanitarian intervention and human rights fieldwork. From a perspective grounded in the texts and expertise of power, law’s multi-dimensionality appears in the violence of military intervention, the bureaucracy of international administration, and the governing projects of nation-building. Tracing these dimensions of law into and through the field complicates this understanding, surfacing new coordinating practices and pathways of rule. This chapter sketches an outline of the (uneven and unequal) dialectic between field and headquarters (home, not-field), where multi-dimensional law is imposed but also altered and ignored, received but also transformed and returned. International law as the formal law of treaty and mandate is abstracted to universal standard or principle; freed from some of the constraints of legality, law expands its reach as norm. As both formal law and norm, however, law must contend with other competing values and visions in the field. For human rights law in the field, these encounters take shape as conflicts between law and politics and law and practicality.

This dissertation concludes by returning to the questions posed at the beginning of the research and offering some conclusions drawn from the research on the interplay of law, text
and expertise in humanitarian intervention. It contends that more complex understandings of law, text and expertise can inform practices of human rights and humanitarian intervention, and in turn, existing practices of human rights and humanitarian intervention can illuminate current understandings of the nature of law, text and expertise.

V.  Conclusion

Recent decades have seen the self-proclaimed rise of an era of human rights and humanitarian intervention to spread democracy and (re)establish the ‘rule of law.’ Yet international intervention in the affairs of a sovereign nation, even intervention for humanitarian purposes, remains controversial. From Somalia to Bosnia, Rwanda to Iraq, Kosovo to Darfur, scholars, activists and policymakers have struggled with whether, when, and how to intervene in situations of crisis or conflict. In the field, human rights experts and policymakers typically adopt an approach that attempts to blend pragmatism with idealism, but that seldom allows for a more critical view. Instead, it leads to an understanding of intervention based on human rights or humanitarian grounds as, at best, an attempt to (re)establish the ‘rule of law’ and to (re)build the nation, and at worst, as a well-intentioned choice to avoid the greater evil of ‘doing nothing’ in response to crisis. This research contributes to a more complex appraisal of the role(s) of law and expertise in humanitarian interventions. As an institutional ethnography, it traces relations of power through their institutional complexes of law, text and expert in the context of human rights field work.
CHAPTER 1: THE RESEARCHER AND THE HUMAN RIGHTS EXPERT IN THE FIELD(S) OF HUMANITARIAN INTERVENTION – FROM INSTITUTIONAL ETHNOGRAPHY TO ACTOR-NETWORKS

This project explores the institutional complex of human rights field work in humanitarian intervention. My interest in this area stems from my own years of work as a human rights lawyer, including two years in post-war Bosnia and Herzegovina and numerous other short-term projects in other ‘field’ locations. Like the human rights officers who participated in this project, my work was also situated in the field of humanitarian intervention with respect to both the ‘field’ of (human rights) law and the ‘field’ as distinguished from home or institutional headquarters. This dual field location frames the everyday work of human rights professionals in humanitarian intervention, and it prompted for me the questions that guide this research: How do human rights experts use law in their everyday work in the context of international humanitarian interventions? How is law’s multi-dimensionality engaged in ‘establishing the peace,’ ‘rebuilding the nation,’ and ‘restoring the rule of law’ in post-conflict situations? More specifically, how is human rights law characterized, invoked or deployed by experts in the field and in the larger institutional context of the IGO? How is expertise – in law, human rights, or otherwise – established and sustained in the field?

Based upon my own experiences (which were outside of, but closely connected to, the work of human rights officers in inter-governmental organization missions), I knew these were important questions to pursue in developing a meaningful understanding of the actualities of humanitarian intervention. Law and expertise are key features of and entry points for examining humanitarian intervention as a ruling relation. Consequently, this project begins with the everyday practices of ‘international’ human rights experts in UN and other IGO human rights field missions, and it examines the central texts of humanitarian intervention to trace the social
relations that coordinate everyday work in the field. This research uses an institutional ethnographic approach to understand the dynamics of human rights field work in IGO peace missions, and my problematic intends to recognize “the real interpenetration of the present and immediate with the unknown elsewhere and elsewhen and the strange forms of power that are at once present and absent in the everyday” (Smith, 2005, p. 41).

The goals of institutional ethnography (IE) are to ‘map’ ruling relations, specifically through their institutional complexes, and also to “build knowledge and methods of discovering the institutions and … ruling relations of contemporary Western society” (2005, p. 51). As such, IE is a particularly suitable approach for investigating human rights field work in humanitarian intervention. This methodological approach attends to relations of power and allows for an exploration of the interplay of actors and texts that comprise human rights field work. In fact, Dorothy Smith has suggested that IE may be particularly useful for exploring “the forms of organizing power and agency that are characteristic of corporations, government, and international organizations” (2005, p. 44). The IE approach is driven by inquiry and discovery. It seeks to explore how everyday practices “are articulated to and coordinated by extended social relations that are not visible from within any particular local setting.” (2005, p. 36).

Drawing from very different vocabularies Bruno Latour advocates a similar methodology in his Actor-Network Theory (ANT) approach (2005). Latour frames ANT as “a direct descendant of Garfinkel’s ethnomethodology … a hybridization of Garfinkel for humans and Greimas for non-humans” (Latour, 2003, p. 40). Latour describes ANT as a “sociology of translation” or “sociology of association” where the researcher concentrates on mapping matters of concern with precision and clarity rather than on reaching ultimate conclusions or certainty about the realities of a situation (2005, pp. 106, 160). ANT shares institutional ethnography’s rejection of prior interpretive or theoretical commitments – the focus is on careful, even cautious tracing and description. It embraces “uncertainties” or areas of indeterminacy in analysis and
traditional factors of causation and explanation, is used to trace associations among and between
mediators – human actors and non-human actants – to develop an account of the network under
consideration (2005, p. 108). ANT offers “a conceptual framework for an investigation of
complex activities that take place across temporal, institutional and spatial boundaries”
(Tummons, 2010, p. 348). However, we need IE’s focus on texts as active mediators and
coordinators of everyday work to put it into research practice.

By virtue of their different political commitments, with Smith’s IE grounded in her
explicitly feminist work and Latour’s ANT rebuffing a broader political project, these two
approaches may appear somewhat mismatched. In terms of connecting research to a larger
emancipatory project, they likely are. However, they share much in outlining a cautious,
exploratory and descriptive approach to investigating complex problematics of contemporary
life. It is no surprise that both rely heavily on the idea of ‘mapping’ as a conceptual metaphor
for the work of the sociologist and also require the researcher to locate herself in the field of
analysis. Although Latour does not share Smith’s interest in ruling relations, and Smith is less
interested in uncertainties and indeterminacies, they both are interested in the connections
among various forms of actors – human and otherwise – and the coordinating practices that link
them together in particular social projects. Smith foregrounds texts as essential non-human
actors while Latour conceives of the non-human more broadly (and, at times, conceives of texts
more narrowly). However, in his own work on law, he has adopted an approach very similar to
institutional ethnography, examining the text (and the legal ‘file’) as an active object
coordinating the work of people (Levi & Valverde, 2008). The present project adopts a
comparable methodology, using institutional ethnography informed by ANT, to allow for a
cautious tracing of relations of power among participants and texts and across borders and
scales, from the global to the local.
I. THE FIELD AS NETWORK: CONNECTING RESEARCHER AND EXPERT INFORMANTS

An institutional ethnography maps the social relations and coordinating practices at work in an institutional complex. Like most other qualitative methods, IE is interested in the people engaged in the practices under study. Institutional ethnography begins “in the actualities of the lives of some of those involved in the institutional processes” and explores the institutional regime they confront from their perspective (2005, p. 31). It is not the people themselves that are the focus of inquiry, but rather “the aspects of the institutions relevant to the people’s experience” (2005, p. 38). Analysis centres on “tracing the social relations people are drawn into through their work … to show how people in one place are aligning their activities with relevances produced elsewhere, in order to illuminate the forces that shape experience at the point of entry” (DeVault, 2006, p. 294). IE calls for starting research in the everyday actualities of people, often through interviews intended to elaborate and use participants’ “work knowledge” of their own everyday practices as a source of data (Smith, 2005, pp. 153-155). This starting point recognizes “the authority of the experiencer to inform the ethnographer’s ignorance” and thus unsettles traditional notions of power (and expertise) in the research relationship (2005, p. 138). Of course, the researcher’s controlling interest does not disappear, but it is balanced by “deference to the informant’s experiential authority and by a commitment to discovery” (2005, p. 141).

This project differs from more traditional research (including many IE and ANT projects) in that both the researcher and the participants claim related forms of overlapping experiential and professional expertise. We share the field of humanitarian intervention, though my location in that field was more remote by the time of the research, and that connection both facilitated and shaped the research in numerous ways. In the end, the research itself, but also the methodological challenges it presented, illuminated the links and nodes of the network of human rights field work and humanitarian intervention. That network and this research comprise both
human and non-human (text) actors. For clarity and ease of discussion, this section will focus upon the human components of that network, the participants as human rights experts and myself as both researcher and human rights expert. The texts of humanitarian intervention, non-human actors in the network, are discussed in the following section.

**A. The People in the Field(s): Researcher and Human Rights Experts**

In this project, I conducted fifteen interviews with human rights experts to begin the process of mapping the social relations operating in the local context of field work in humanitarian intervention. These interviews covered basic background on the participants, their education and human rights training, experiences in human rights fieldwork, work within the IGO, and professional relationships in the field. To be eligible as a participant, the person must: be trained in human rights law (as a lawyer or otherwise); be working or have worked with a human rights portfolio in an IGO field mission within the last ten years for at least one year; and be working or have worked outside his or her country of origin as ‘international’ staff in the mission. I selected these criteria to allow for a diversity of experiences in types of training, years of professional work, specific field missions and IGOs, and other features of background. However, my goal was also to commence the research by focusing on key actors and authorized voices in the context of humanitarian interventions in post-conflict situations.

IE conceives of the interview as a collaborative under-taking or dialogue in which “the researcher evokes and consults others’ experience” (Smith, 2005, p. 149). The emphasis is on the experiential knowledge of the participants; they are, in essence, experts on what they do and how they do it, as well as on the contexts and conditions of their work. Smith identifies this expert knowledge as ‘work knowledge’ with ‘work’ broadly reflecting a wide range of everyday

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3 Additional details of the research process are provided in Appendix A. The interviews were semi-structured interviews of 1-2 hours. Although my questions framed the interviews, participants were invited to (and often did) raise or prioritize particular topics and make suggestions for other important avenues to pursue in the research. A copy of the Interview Guide is attached as Appendix B
practices. Work knowledge incorporates the individual’s experience of and in that work and “the implicit or explicit coordination” of that work with the work of others – the actualities of how people plan, what they do, and how they think and feel about it (2005, p. 151). However, the collaborative process of generating participants’ work knowledge is not the end of the research in itself; the researcher must also trace the associations, the relations, the sequences of action in which the everyday is embedded and “which implicate other people, other experience, and other work in the institutional process” (2005, p. 158). Social relationships, relations of power and rule, do not begin and end in a particular person’s experience; they appear in the interlocking character of the work knowledge(s) of people differently located in the institutional complex. Each participant contributes to the effort to map the institutional order.

Here, the expertise of the interview participants was professional as well as a feature of the research process. I relied upon my own professional expertise in human rights to begin locating the participants. I drew upon contacts from my past professional work, including contacts at the United Nations and other human rights organizations, to identify participants and other avenues for data collection. I also circulated information about the research through relevant professional organizations. Interestingly, there are few formal professional networks or associations for ‘human rights experts,’ but there are extensive informal networks. In fact, many participants discussed their own entry into the field (both professional and locational) through personal contacts. In the end, I was far more successful in recruiting participants through these informal networks (my own and those of other human rights professionals) than through more formal or institutional means. As discussed further in the next section, my success in recruiting participants through informal networks and the difficulties in recruiting through formal networks suggests that the interplay of professional and locational field may operate to

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4 The recruiting email and call for participants are attached as Appendix C.
constrain, as well as enable, connections within those field(s). (Figure 3 represents the recruiting process.)

Figure 3: Network of Participant Recruitment

It was my original intention to conduct interviews in person, wherever possible. I had expected that some participants would be clustered in areas that are global centres for human rights work (for example, New York and Geneva). Because of my focus on field work, I also considered that participants would likely be located in various locations around the globe. To ensure access to a variety of participants, I therefore also conducted interviews by telephone and through the on-line technology of Skype (internet calling) as necessary. The interviews took place between January and July 2010, and each lasted between 1-2 hours. The participants were all from North America or Western Europe, and most were formally trained as lawyers. Six had specialized or advanced academic training in human rights (e.g. LL.M. or Ph.D.). More than half of them (eight) were still working in some capacity for an inter-governmental organization. Most of the interviews (fourteen) were conducted via phone or Skype, with the remaining
interview conducted in-person. At the time of the interviews, participants were located in Bosnia and Herzegovina, Canada (two), Colombia, England, France, Israel, Italy, Nepal, Slovakia, Switzerland, Uganda, and the United States (three). Tables 2 and 3 provide an overview of the participants and their field experience; participants are not identified by their specific history of field mission experience to preserve confidentiality.

Table 2: Interview Participants

<table>
<thead>
<tr>
<th>Participants</th>
<th>Home Region</th>
<th>Lawyer/Other</th>
<th>Specialized Training</th>
<th>Current work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andreas</td>
<td>W. Europe</td>
<td>Lawyer</td>
<td>Yes</td>
<td>IGO</td>
</tr>
<tr>
<td>Anthony</td>
<td>N. America</td>
<td>Lawyer</td>
<td>No</td>
<td>IGO</td>
</tr>
<tr>
<td>Cristina</td>
<td>W. Europe</td>
<td>Lawyer</td>
<td>Yes</td>
<td>Academia</td>
</tr>
<tr>
<td>Evan</td>
<td>N. America</td>
<td>Lawyer</td>
<td>No</td>
<td>IGO</td>
</tr>
<tr>
<td>Gwen</td>
<td>W. Europe</td>
<td>Public Policy</td>
<td>Yes</td>
<td>NGO</td>
</tr>
<tr>
<td>Jessica</td>
<td>W. Europe</td>
<td>Lawyer</td>
<td>No</td>
<td>IGO</td>
</tr>
<tr>
<td>Kevin</td>
<td>N. America</td>
<td>Lawyer</td>
<td>No</td>
<td>IGO</td>
</tr>
<tr>
<td>Marcus</td>
<td>N. America</td>
<td>Social Work</td>
<td>No</td>
<td>Private</td>
</tr>
<tr>
<td>Nathan</td>
<td>N. America</td>
<td>Lawyer</td>
<td>Yes</td>
<td>Academia</td>
</tr>
<tr>
<td>Nicholas</td>
<td>N. America</td>
<td>Lawyer</td>
<td>No</td>
<td>IGO</td>
</tr>
<tr>
<td>Paul</td>
<td>N. America</td>
<td>Lawyer</td>
<td>No</td>
<td>Private</td>
</tr>
<tr>
<td>Rafael</td>
<td>W. Europe</td>
<td>Lawyer</td>
<td>Yes</td>
<td>IGO</td>
</tr>
<tr>
<td>Stephen</td>
<td>N. America</td>
<td>Lawyer</td>
<td>No</td>
<td>Consultant</td>
</tr>
<tr>
<td>Suzanne</td>
<td>N. America</td>
<td>Lawyer</td>
<td>Yes</td>
<td>IGO</td>
</tr>
<tr>
<td>Valerie</td>
<td>N. America</td>
<td>Lawyer</td>
<td>No</td>
<td>Consultant</td>
</tr>
</tbody>
</table>

Although I had originally hoped for more participants, the participants I did have provided a rich picture of the everyday work of a human rights officer in an IGO field mission. The participants included both experienced officers and relative newcomers, and they had participated in various different field operations in a range of capacities. (Table 3 below lists the range of human rights field experience.) For the most part, participants were happy to share not only the mundane actualities of their work experiences but also their reflections upon the work they had done, their role in the larger peace mission or missions in which they had participated, the connections between that work and the work of the inter-governmental organization overall, and over-arching questions about human rights and international law. In many cases,

5 All names are pseudonyms to preserve participant confidentiality.
participants also offered their own writing (published or not) on these and related issues. These interviews and related resources of the participants’ work knowledge laid an important foundation for examining the second dimension of the institutional complex, focusing on the texts of human rights fieldwork, as well as for the analytical work of the project.

Table 3: Participants’ Human Rights Work Experience

<table>
<thead>
<tr>
<th>Human Rights Work Experience</th>
<th>Number of interview participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>IGO Field Mission (UN or OSCE)</td>
<td>15</td>
</tr>
<tr>
<td>• Angola</td>
<td>1</td>
</tr>
<tr>
<td>• Afghanistan</td>
<td>1</td>
</tr>
<tr>
<td>• Bosnia and Herzegovina</td>
<td>6</td>
</tr>
<tr>
<td>• Croatia</td>
<td>2</td>
</tr>
<tr>
<td>• East Timor</td>
<td>2</td>
</tr>
<tr>
<td>• Kosovo</td>
<td>9</td>
</tr>
<tr>
<td>• Liberia</td>
<td>1</td>
</tr>
<tr>
<td>• Macedonia</td>
<td>2</td>
</tr>
<tr>
<td>• Rwanda</td>
<td>1</td>
</tr>
<tr>
<td>• Sierra Leone</td>
<td>1</td>
</tr>
<tr>
<td>Multiple IGO Field Missions</td>
<td>8</td>
</tr>
<tr>
<td>NGO Field Work</td>
<td>9</td>
</tr>
<tr>
<td>Other Field Work^6</td>
<td>9</td>
</tr>
<tr>
<td>IGO Headquarters Work</td>
<td>5</td>
</tr>
</tbody>
</table>

As with all research, this project involved issues related to the research process and relationships. It is an advantage of both IE and ANT that the interactions and ‘uncertainties’ of research themselves offer insights on the associations and coordinating practices of the institutional network under investigation (Smith, 2005, Latour, 2005). This project presented familiar issues of researcher location and power; however, because of the nature of the participants as ‘experts’ in their work, these issues arose in somewhat less typical ways. All of the participants had worked as experts in human rights or human rights law and, thus, had a

^6 Other Field Work includes work away from home and headquarters for a governmental agency (e.g., USAID, CIDA, etc.), for an IGO in another capacity (e.g., field office or specialized agency), and other short-term or consulting work.
level of higher education similar to mine as the researcher, as well as professional experience that was comparable to or more extensive than my own. Although I retained much of the control over the research, this parity in education and experience ameliorated the power imbalances often found in research relationships. The participants generally expressed significant interest in discussing their experiences in human rights field missions and providing ideas and information that might contribute in assessing field missions and improving their future work.

Nonetheless, researcher reflexivity remains an important element of the research process and relationship. The goal of reflexivity and locating oneself in the work is to “reveal to readers how our research agenda, political commitments, and personal motivations shape our observations in the field, the conclusions we draw, and the research reports we write” (Kirsch, 1999, p. 14). Reflexivity and awareness of location should not serve as ends in themselves, but rather should lead to changes in practice – making research “more reciprocal, non-hierarchical, and beneficial for participants” (1999, p. 83). To that end, researchers must examine how aspects of identity shape their research – their theories, relationships with those they study, and interpretations of data (1999, p. 80). Moreover, the choices researchers make should be transparent to readers, as well as to participants (1999, p. 85).

There are related concerns regarding the researcher’s role as ‘insider’ versus ‘outsider’ on a topic and researcher ‘objectivity.’ Traditionally, distance, neutrality and objectivity were considered essential characteristics of the researcher and appropriate research practices (Smith, 2005, p. 56). As a result, research often establishes a “one-sided relationship of observing and telling” (Smith, 1989, p. 114). The power asymmetries in the relationship are apparent: The participant “does not tell the sociologist what questions to ask … [and] is not a participant in the textually mediated discourse to which the sociologist will return” (1989, p. 116). However, critical methodologists have problematized the role of the researcher as objective, expert
observer, and recognized that the researcher is never really ‘outside’ the relations being observed, analyzed or interpreted (Smith, 1989, McCorkel & Meyers, 2003). In most instances, the researcher’s status as insider or outsider shifts as relationships are developed and negotiated during the course of the research (McCorkel & Meyers 2003, p. 204). The researcher should be mindful of how “multiple dimensions of the researcher’s identity take shape in relations with her respondents and influence the researcher’s perceptions of and access to power and privilege in the setting” (L. Smith, 1999, p. 207). Thus, reflexivity involves both self-awareness and greater transparency.

In this project, my previous experience as a human rights lawyer and law professor undoubtedly has influenced my research interests, as well as my data generation, interpretation and analysis. On the one hand, it provided important points of connection with participants and allowed us a certain familiarity and ‘short-hand’ in our interview conversations. In fact, the early portions of the interviews were typically directed towards identifying these aspects of shared background as part of establishing rapport and credibility with one another. In some cases, this was facilitated by common field experiences or a personal connection through the contacts who assisted me in recruiting participants. For example, I began my interview with Anthony, who had worked in several field missions in the Balkans, by identifying a point of connection:

Elizabeth: [Anthony,] how long were you in Bosnia? Looks like you were there longer than I was.

Anthony: I was there in and out. I was there for the first two elections in ’96 and ’97, and I was in Croatia for a year and a half, and then I was back in Bosnia with UNMIBH for about a year and a half, and in Kosovo for about a year.

In a sense, I was establishing my own credentials in the network, even as I was seeking to build rapport and launch the discussion of Anthony’s field work, and I pursued similar strategies with other participants.
Another participant, Jessica, and I spent even more time tracing our connections through human rights work (in the field and otherwise). After going through three or four contacts we had in common and sharing personal news, we laughed about the interrelated nature of the human rights community:

Elizabeth: So it’s a small little interconnected human rights world.

Jessica: Bloody incestuous, I can tell you, it’s just dreadful. … It feels like being a mason (laughter).

My participants and I were all mindful of the ‘network’ of human rights professionals, in part because it brought us together for this project, but also more generally, for its impact on the nature of human rights field work, both positive and negative (as discussed further in chapters 4 and 5). Numerous participants noted personal connections as the means by which they became interested in or involved in human rights field work. In addition, this attention to networks and connections may have been further enhanced by the fact that most of the interviews were conducted by phone or internet calling; without the added personal dimension of a face-to-face meeting, it is possible that we were especially focused on making ‘connections’ with one another to increase a sense of familiarity.

At the same time, however, the shared ‘short-hand’ we used to establish connections also reflects the power of institutional discourse that Smith describes (2005). Institutional discourses structure everyday work, but also the ways in which people think and talk about those everyday experiences. Institutional discourses tend to “subsume or displace descriptions based in experience” (2005, p. 155); through their operation, agents and subjects become institutional categories and the particularities of everyday lived experience become instances or expressions of those categories. When both the participants and the researcher are familiar with the institutional discourse, the challenge becomes to resist its influence and return to the actualities of what people are doing – “to their thinking and feelings as well as to the circumstances,
means, time, and other resources of that activity’’ (2005, p. 157). In this project, my participants and I used the institutional terminology of law, human rights, and field work, and this likely led to assumptions about each other’s level of understanding or about certain shared perspectives that prevented us from pursuing the particularities of an incident or practice in greater detail.

Despite our connections in the field of humanitarian intervention, there were also aspects of my identity and experience that differed from those of my participants. I did not work directly for an inter-governmental organization in my own field work, and I have been out of field work for over ten years as I have pursued a career in academia. Thus, it is possible that I (and some participants) overestimated those points of connection or that our sense of shared experience may have obscured some actual differences in understanding. Issues of race and gender (or other axes of ‘difference’) also did not present themselves in obvious ways in this project, in part due to the use of technology discussed below. Although I asked participants for their citizenship and country of origin, I did not ask about race or ethnicity specifically. All of the participants are North American or Western European (and all English-speaking, though for some, English is not a first language); to a large extent, this reflects the imbalance in the demographics of human rights experts deployed in IGO field missions, but it may also be a limitation of the research. In addition, I was mindful of my own status as a U.S. citizen, although this may have been obscured for some participants because of my current location in Canada. Although both the U.S. and Canada are active in global human rights policy and practice, they are involved (or at least, perceived to be involved) in different ways based upon geopolitical dynamics. This did not arise directly in the interviews but may have had an effect on participants in the course of our discussions.

Overall, because of our shared background, education and professional experience – our co-involvement in the field(s) of humanitarian intervention – my relationship with participants did seem to be structured on more collegial lines than may be common in other types of
research. I invited participants to continue to stay in contact with me and offered them an opportunity to provide feedback as the research progressed. Some participants also shared with me their own professional or other writing on human rights field work or related issues (discussed further below), and I have read and been influenced by some of that work although I have declined to cite it to preserve confidentiality. Moreover, as I have written this dissertation, I have remained aware of our co-involvement in the field. I feel both personally and professionally accountable for the impact of this project, and this has undoubtedly influenced my analysis and conclusions.

B. Making Connections

The network(s) of human rights work and humanitarian intervention facilitated this project in many ways. Nonetheless, like all research, this project faced challenges as well as opportunities, and yielded both expected and unexpected outcomes as it progressed. It is an advantage of both institutional ethnography and ANT that the ‘uncertainties’ of research themselves may offer insights on the associations and coordinating practices of the institutional network under investigation (Smith, 2005, Latour, 2005). Many of the opportunities and expected outcomes of this project appear throughout the analytical discussions in the following chapters. However, some of the challenges and unexpected issues arose in the methodological context. In particular, there were issues related to the role of technology and difficulties in recruiting participants that also illuminate the field(s) of humanitarian intervention. In some ways, challenges with technology and recruitment are common to contemporary qualitative research although they are manifested differently across projects; however, the methodological approaches of IE and ANT also suggest that these issues may operate distinctly in the context of this project – facilitating, constraining, and contouring relations within the field(s).

As I have suggested, this research relied heavily upon the use of technology, particularly
the use of email as a primary means of recruiting participants and internet calling as a primary means of conducting interviews. Although technology has long mediated social science research (from phone surveys, to tape recorders, to hidden-camera surveillance), the prominence of face-to-face interviews and direct (even participatory) observation has tended to obscure its role in qualitative research. With the explosion of computer-based technologies in recent years – including social media sites, as well as instant messaging, and internet calling and chatting – researchers have begun examining more closely, or at least discussing, the role of these technologies in research (Murray, 1997, Mann & Stewart, 2000, Seymour, 2001, Irez, 2007).

There are obvious practical advantages of allowing interviews outside of typical temporal and spatial boundaries, access to a (potentially) wider range of participants, lower costs, increased flexibility, and so on (Seymour, 2001, Irez, 2007). Potential disadvantages in comparison to in-person methods include difficulties in building rapport, and failures or other limitations of the particular technology (Seymour, 2001, Irez, 2007).

Computer-mediated research may also influence data generation more profoundly. For example, Seymour conducted research through an on-line threaded discussion website; this “release[s] the interview from its imprisonment in time and place [and] addresses the issue at the core of the critique of quantitative research – its detachment from the vitality and the vagaries of people’s lives” (2001, pp. 158-159). A discussion site that is open for an extended period of time allows for an on-going dialogue between researcher and participant(s), which affects the data produced, allowing for revision, clarification and more collaboration. Seymour also notes the (dis)embodying effects of technology. On the one hand, data generated is freed from “the constraints of the visible body,” but on the other hand, this can contribute to a false sense of neutrality in research (2001, pp. 160-161).

The technologies I primarily used – email communication and internet calling – are now widespread and familiar media of communication, and their effects on the research appeared
similar to the practical advantages and disadvantages cited by other researchers. Email became my primary means of contacting and communicating with participants (outside of the interviews themselves). It is possible that this deterred some individuals from participating, but it is also likely that it allowed me to reach a wider pool of participants than would have been available through more traditional means. At the time of the interviews, participants were widely dispersed, located in North and South America, Europe, the Middle East, Central Asia, and Africa; most of those interviews would have been impossible were it not for the technology. However, even as it facilitated the interviews, the technology also contoured them and influenced by findings.

In almost all of the interviews, I spoke to participants from the comfort (and constraints) of my home, often in the early morning or late evening to accommodate the practicalities of time zone differences and child care needs; in turn, six of my participants also spoke to me from their homes, often for the same reasons. This was usually acknowledged in the opening and closing remarks as we discussed logistics and made small talk, but it also sometimes appeared when an interview was interrupted by the needs of a child or another demand of domestic life. My remaining participants spoke to me from a professional setting in the field or otherwise, and this too had consequences in terms of timing, and perhaps focus and candor. Andreas, a former field officer now working for an IGO, and I spoke early one morning before he started work:

Elizabeth: Do you have any questions before we get started?

Andreas: No. Don’t worry, I haven’t got my coffee yet this morning, so I might be a bit sleepy (laughter). So for the time being, I don’t have any questions in my mind. So don’t worry.

Elizabeth: Okay, that’s good. I’m a little sleepy, too, so I think we’ll do all right.

The early morning and late evening interviews (and, in some cases, the time zone difference made it both), in particular, seemed to take on a more personal and reflective tone. In each case, however, we were embedded in the “vitality and the vagaries” of our lives – and the ‘field’
extended its reach accordingly (Seymour, 2001, Smith, 1989). This sometimes became its own point of connection between us.

Although my participants and I all inhabited our respective actual spaces, our conversation seemed to occur outside of or in between those particular locations. At times, this created a sort of intimate anonymity that seemed to free participants to speak more to themselves than to me. Kevin, one of the participants still working in a field location, was contemplating leaving his post after five years:

*Elizabeth:* Okay, and is it, has it been what you had hoped for – (interruption) – Sorry, that’s my one-year-old. Has it been what you hoped for?

*Kevin:* Ah, that sounds delightful. It’s been intensely rewarding. I mean, it’s been an absolutely wonderful post in many respects. Um, it’s coming to an end soon for me, though, and I will be moving on very soon, but it has been everything I wanted it to be. I, you do bring up a sore point for me, and that is that I think I have for rather a long time needed a break, to use the terminology of espionage thriller, that sooner or later the spy needs to come in from the cold, and that’s how I feel right now. I really feel like I need a break. I feel like I need a chance to come and reflect on my experiences, and it’s that lack of a break has definitely taken its toll over the years.

He continued on to explain that changes in leadership within the mission were going to result in disbanding the department he had worked with others to create. Although he and his family (including two young children) had been in the field for so long, he said “I don’t want to dismantle what I’ve created over five years, I’ll leave that up to someone else.” His dilemma and his reflections on it were both personal and professional, and I responded to them the same way. As researcher and former human rights lawyer, I thought about the features of field work revealed (temporary, creative, subject to personal and political whim, etc.), and as a person, I could empathize with the struggles in reconciling personal, family and professional needs and demands.

The use of technology in the interviews enabled greater access to participants who were widely dispersed and constrained by their domestic responsibilities. It brought us together across distances of time and space, but it also obscured those differences in location (actual and
metaphorical) that might have been revealed in a more traditional setting. A more traditional in-person interview in a carefully selected and shared setting might have given me more control as a researcher and it would have generated other data. For the most part, I have no idea what my participants look like, how they dress or what their age or ethnicity is, for example (I did not ask those questions, and they only arose in a few interviews indirectly). However, a more traditional in-person interview might also have resulted in a less intimate atmosphere with participants more willing to constrain themselves to the ‘professional’ setting of the interview.

Finally, despite the strengths of doing interviews this way, one of the largest challenges (and disappointments) of this project was the overall difficulty in recruiting participants. It is perhaps a limitation of the study that I have chosen to focus solely on experts working with human rights law and on those working in the field for an inter-governmental organization. There are many other participants in field missions and human rights work (both within the field and outside it), and there are many human rights experts attached to governmental and non-governmental organizations. However, other research has addressed many of these actors (peacekeepers, policymakers, activists), but the practices of inter-governmental human rights experts has not attracted comparable attention (Goodale & Merry, 2007, Keck & Sikkink, 1998, Kennedy, 2004, Kurasawa, 2007). It was my intention to add to the existing research by focusing on this relatively under-researched group.

As I have described above, I relied heavily on the use of personal networks to recruit participants, and this seemed to be the most effective method of recruitment. I decided early on not to recruit directly through the formal channels of particular inter-governmental organizations (such as the UN or OSCE) to avoid lengthy (and I thought likely unsuccessful) negotiations and potential limitations on the research, but I did pursue other more formal institutional avenues for recruiting. While one might expect ‘expert’ participants to be more easily accessible through this sort of institutional network, that was not the case on this project. Moreover, even the
relatively more successful strategy of recruiting through informal networks was unable to
generate a larger number of participants. It is difficult to know why it was so challenging to
recruit additional participants, and I did not get any clear indications from either my participants
or from those who received information and decided not to participate.

It may be that human rights field officers – or IGO personnel more generally – are a sort
of ‘global elite’ that are difficult to access for research purposes, especially without an extensive
travel budget or institutional endorsement (Conti & O’Neil, 2007). My own more distant
position in the field may also have hindered by access to participants. Alternatively, it may be
the fact that human rights field work is still an emerging field in many respects, uncertain of its
own status in the broader juridical or ‘global professional’ field (Bourdieu, 1987, O’Flaherty,
2007, O’Flaherty & Ulrich, 2010). As a practical matter, many of the professional networks of
human rights field officers are not long- or well-established means of communication for many
people. Even the ‘professionalization’ project launched by former field officers and discussed
in Chapter 4 included relatively small numbers of participants (e.g. an initial survey sent to 80
with 45 respondents) (O’Flaherty & Ulrich, 2010). It may also be that the demanding nature of
human rights field work limits potential participants’ interest in adding yet another ‘work-
related’ task. Such participants might be more willing to take on the same commitment when
presented through a ‘personal’ network, given the (sometimes) heightened desire to maintain
personal connections while working in a field location.

These possible explanations or influences appear in various forms in the analysis that
follows – the role of international elites, the efforts to professionalize field work, the demands of
everyday work in the post-conflict environment, the functions of informal networks and the
value of personal connections, and so on. For this project, the number of participants (and the
strength of their contributions) was ultimately sufficient to generate work knowledge(s) of
human rights field work as an entry point for tracing the social relations of that institutional
complex. These interviews, combined with examination of the fundamental texts of human rights field work, illuminate the relations of power embedded in the everyday practices of humanitarian intervention.

II. COORDINATING THE FIELD: INSTITUTIONAL TEXTS

As important as people and their ‘work knowledge’ are in an institutional ethnography, it is their relation to texts that most clearly reveals the relations of power that operate in institutional complexes. The ‘local’ of people’s experience that emerges in interviews launches the exploration of how ‘translocal’ social relations rely on, determine and organize their everyday activities. From that starting point, IE seeks “to enlarge the scope of what becomes visible from that site, mapping the relations that connect one local site to another,” and texts are essential to that process (Smith, 2005, p. 29). Texts, like individuals, become coordinators or actors in ruling relations – in the contexts in which they are created and used, as well as in the networks of social relations “extending both temporally and spatially beyond the moment of the text’s occurrence” (2005, p. 103). Texts occupy multiple roles – as components of the ‘work knowledge’ of informants, as coordinators of local practices, and as extralocal organizers of social relations. They operate “at that key juncture between the local settings of people’s everyday worlds and the ruling relations” (2005, p. 101).

In this project, I primarily examined the roles of three types of texts of humanitarian intervention: human rights treaties, which are the formal texts of international human rights law; UN Security Council resolutions, which are the official texts that authorize humanitarian intervention; and reports, which are the quotidian texts of human rights field work. Based upon my own experiences, I began this project with an idea that these categories of texts – particularly the formal laws – would be significant in the context of peace missions, but this initial sense was both confirmed and reconfigured through the interviews with human rights
field officers. They highlighted the over-arching role of “the mandate” (as formally represented by Security Council resolutions) and the more mundane but ubiquitous “report” as significant to their everyday work. These key texts – treaties, resolutions, and reports – are active in the networks and institutional complexes of humanitarian intervention, and they coordinate the everyday practices of human rights field work.

**A. Active Texts**

The textual dimension of IE operates in a similar manner to the exploration of individual experiences and knowledge through interviews. The texts are not a focus in and of themselves, but rather they are significant for how they “enter into and coordinate people’s doings” (Smith, 2005, p. 170). As a starting point, they are “inseparable from the accounts of people’s work based on the informant’s work knowledge that the interviewer and informant create together” (2005, p. 170). In the interviews, participants often described the texts they used or created as a part of their everyday practices; this is the second component of ‘work knowledge’ that extends that knowledge beyond the participant’s own experiences to coordination of that work with the work of others. The coordinating role of texts is dual or dialogic – they are active first “as they enter into how the course of action in which they occur is coordinated” and again in how they connect “a local and particular course of action with social relations extending both temporally and spatially beyond the moment of the text’s occurrence” (2005, p. 103, original emphasis). Individuals become involved in a “text-reader conversation;” the reader both activates the text and becomes its agent (2005, p. 104). And the text coordinates the work done by different people not only in the local setting but in other settings elsewhere and at other times.

This project examines three types of institutional texts that coordinate across scales from the local to the global in humanitarian intervention. Human rights work is heavily textually-mediated, from the international human rights treaties that overarch the work of institutions and
individuals in the field, to the policies and mandates of inter-governmental bodies and particular field missions, to the memos and reports generated in the everyday work practices of the human rights experts in the field. While human rights field work may be somewhat removed from the formal legal processes and mechanisms of domestic law or of international law in global centres such as New York, Geneva, and The Hague, key human rights texts nonetheless shape local practices, and in turn, are shaped by them. For this project, I have focused on texts that not only ‘codify’ but also reflect the uses of human rights law in the work of human rights experts. (Figure 4 illustrates the key categories of texts in humanitarian intervention.)

Figure 4: Central Texts of Humanitarian Intervention

As a starting point, these documents include the formal ‘law’ of international human rights – the major international human rights instruments, other international treaties on specific human rights, and regional human rights treaties. The formal, positive law of international human rights is actually a fairly discrete body of texts. For the most part, it comprises three dominant texts – the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural
Rights (collectively known as the International Bill of Rights). However, it also includes several specialized international human rights treaties and comparable regional human rights treaties. This project primarily traces the coordinating practices of the major texts of the International Bill of Rights, but it also discusses regional treaties to the extent they are relevant in the work of particular field officers and missions. For example, the European Convention for the Protection of Human Rights has been especially significant to peace missions in the various former Yugoslav Republics, such as Bosnia and Herzegovina, Croatia, Kosovo and Macedonia.

In addition, this project discusses several peace agreements brokered and negotiated to end conflicts where field missions are later sited. The formal texts of law – human rights treaties – are often brought directly into domestic law through these agreements. However, it is the primary international human rights instruments that most clearly represent ‘Law’ in the field.\(^7\)

At another level, the UN Security Council Resolutions that authorize and create peace missions in conflict or post-conflict settings represent a second and equally significant set of documents. These Resolutions provide the mandate of the mission and shape the work on the ground. This project examines key Resolutions that authorize what are now long-standing missions in various contexts. For example, Security Council Resolution 1244 (1999) regarding Kosovo is the culmination of a series of previous resolutions – Resolutions 1160 (1998), 1199 (1998), 1203 (1998) and 1239 (1999) – and establishes a peace mission in Kosovo with expansive powers to administer and govern in place of national authorities. Similar resolutions (or, often, series of resolutions) have served to create, maintain, extend or, ultimately, terminate the work of missions in East Timor (Resolution 1272 (1999)), Bosnia and Herzegovina (Resolution 1035 (1995)), Liberia (Resolution 1509 (2003)), Sierra Leone (Resolution 1270 (1999)), and elsewhere.

\(^7\) Other positive law, such as domestic law of the affected nation states or related international law, is also sometimes relevant to human rights field work and is discussed in appropriate contexts.
While these resolutions do not become law in a formal sense, the mandate they establish is often equally (or more) powerful in the context of field missions. Such resolutions sanction the use of force, create administrative authorities with extensive powers of governance and provide a substantive framework for the work of the hundreds or thousands of international staff that comprise the field mission. The mandates they establish contour, facilitate and limit human rights work in the field. Like the human rights treaties, these texts are created elsewhere – in centres of power outside of the ‘field’ – but they organize the work that occurs in the local setting of the field. This project traces the coordinating practices of some of these texts in the everyday work of human rights field officers.

Finally, as a third category of key texts, I consider the documents created and used in the everyday work of the field. These are primarily the numerous reports written, revised and circulated in the context of the field mission. In the interviews for this research, participants describe daily, weekly, monthly and periodic or topical reports as a major element of their everyday work. These reports are themselves shaped in many ways by other texts, such as human rights treaties and Security Council Resolutions, as well as other documents such as the mission statements and field policies of the UN and other IGOs and the domestic laws and regulations in the host country. In addition, participants describe extensive processes of revision as these reports circulate within the field mission and between the field and headquarters of the IGO. For example, a “Background Report” on the treatment of minorities in the judicial system, prepared by the Legal System Monitoring Section of the OSCE Mission in Kosovo (the OSCE is a regional IGO partner in the UN-led mission in Kosovo) references both daily and weekly reports from other mission components; cites to the authority of the OSCE mandate, the UN mission’s regulations, the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international treaties; and offers the careful description of its authors as “independent, unbiased monitors” that “do not represent the civil administration, any
defendant, or any other group or individual.” Some types of reports have increasingly become available on-line (such as the Background Report), and I primarily make use of these examples to surface the interplay with other categories of texts, as well as the relations of power they reflect. I rely primarily upon the participants’ descriptions of the everyday work to trace creation of these texts and their local coordinating practices.

The materiality, replicability and constancy of texts are essential to their coordinating role in institutional complexes. The text is, thus, both constant and active. In one sense, the text (short of amendment or modification) remains always the same, fixed and non-responsive. It produces for those in the institutional complex “a standardizing vocabulary, subject-object structure, entities, subjects and their interrelations, and so forth” that regulates the discourse among them (Smith, 2005, p. 108). Although different people may interpret or read the text differently at different times, these differences presuppose a constant text, and it is this constant text that allows for the standardization of work across time, distance and location. Through the standardizing mechanism of institutional discourse, institutional texts “impose an accountability to the terms they establish” (2005, p. 118). Institutional discourse objectifies and depersonalizes the actualities of individual experience. The “textual real” displaces the actualities of experience (even for those who may have been a part of it) (2005, p. 28). This displacement and accountability are deliberate; institutional texts are designed, and it is by tracing these processes that relations of power are uncovered.

**B. Tracing the Network**

Different texts, of course, extend their reach in different ways and to varying extents. The first two categories of texts examined in this project – international human rights treaties and Security Council Resolutions – are comparatively limited in number and readily publicly available as institutional texts. They are written in centres of institutional power, but they
appear and are used in the everyday work of the field. In contrast, the human rights reports from the field are apparently ubiquitous and yet also less accessible. They are written and used in the field but are still contoured and constrained by institutional headquarters. These categories of texts – and the individual texts themselves – represent important nodes and links in the networks of human rights field work and humanitarian intervention.

In many ways, documentary research presents (or appears to present) fewer challenges and unexpected outcomes than research with individuals. As Smith suggests, it is easy to consider the text as inert and, consequently, predictable and manageable (2005). From a research perspective, that seems true to a large extent. Nonetheless, there were several ways in which the texts in use in this project were complicated, unwieldy or unpredictable actors in the network and field(s) of humanitarian intervention. The volume and accessibility of the texts of intervention extend its reach far beyond any particular field mission and even beyond the whole complex of field operations. In this project alone, they directly extend its reach to include the study and critique of humanitarian intervention. With each engagement with a particular text or set of texts, I became yet another reader involved in the “text-reader conversation” that Smith describes, and in that sense this project is imbricated in the network of social relations that it seeks to trace.

In this era of the internet, many texts of humanitarian intervention that were previously difficult to locate are now accessible on-line from the comfort of home. This can be both practically helpful and methodologically problematic. As a researcher, I found it extremely useful that both the treaties and Security Council resolutions were easy to access (if not always easy to work with). All of the Security Council resolutions (and many other documents) are available at the UN website; and many field missions also have websites that provide mission-specific documents. Comparable to my participants’ ‘easy’ availability via Skype, I could log-on to the internet at any hour of the day or night and explore in detail the UN treaties and
resolutions. Such ease of access simplifies research and also creates a sense of intimacy with the text. However, this intimacy and ease of interaction with the texts can serve to obscure the many actors involved in the creation and circulation of these documents, the axes of inequality that structure the practices of the UN and the development of international law, the overt politicization and far-reaching power of the Security Council and the life and death consequences of a resolution authorizing the use of force, and the material and other privilege that allows me such familiarity (from the taken-for-granted computer and internet access from home to the educational and other advantage that has taught me where to look and how to read these particular texts).

Moreover, the easy access to the ‘international’ texts of treaties and Security Council Resolutions must be juxtaposed to the inaccessibility of the internal and ‘local’ texts of the field missions. Many, if not most, of the quotidian reports that participants described are simply not publicly available – not to me, and not to the persons who are most directly affected by or who may have been the subject of such reports. These individuals become doubly obscured – first, through the processes of institutional discourse that transform individuals into instances and second, through the institutional processes that keep these reports out of the public realm. I resolved the practical research problem by relying on reports participants provided or that were made publicly available by the IGOs. Traces of the many other reports created and used in the field appear in the public documents that have cleared extensive processes of vetting and editing, and I have used those traces as well. The larger issue of access to these texts of local coordination remains, and I have discussed that further in the chapters that follow.

In terms of the volume of documentation, this was an issue in the project in several ways. First, as with much research, the problem here was a matter of abundance as much as scarcity. There are numerous human rights documents at the international and regional levels; if specialty treaties and ‘soft law’ documents such as declarations, recommendations and similar
are included, the numbers multiply further. However, there is also a clear hierarchy of human rights instruments that makes it easier to prioritize, and I have focused on the most significant human rights treaties as discussed above. There are also multitudinous Security Council resolutions, even if the search is limited to those that directly relate to humanitarian interventions. Nonetheless, it is possible here too to focus on those most directly involved in creating contemporary field missions and setting the parameters of their mandates. Such prioritizing is more difficult at the level of the report. Because they are a primary product and outcome of the daily work of field officers and of the mission as a whole, there are many to choose from even when the scope is limited to those reports that are publicly available. I have relied on my own experience and familiarity with human rights field work to select reports that I think are illustrative of the everyday practices the participants describe. As always, however, such selection and prioritization inevitably reflects my own judgments about relative merit and ignores texts that others might consider equally significant or more accurate exemplars.

Finally, during the course of the research, another ‘set’ of texts materialized as significant – the written works prepared by participants and by other field officers about their work in the field. As the texts of humanitarian intervention extend to include this project, they also encompass the work of the participants and other field officers. This includes documents that participants offered to me (their own articles, speeches, blog comments, and even a few ‘profiles’ written about them by others) on some of the issues raised in this research, as well as several books that have been written, in whole or in part, by human rights field officers or former field officers, including both personal memoirs and edited volumes of essays on field work. The published texts written by or about participants present some ethical concerns, and I have generally in this project erred on the side of protecting confidentiality and relying on texts
authored by others.\textsuperscript{8} The texts authored by field officers who are not participants do not present these same ethical issues, and I find them another useful source of insight on the everyday practices of human rights field officers. I have used these sources as appropriate in the following chapters to supplement the data generated in the interviews and through the texts.

The networks of texts in this project and in human rights field work reveal them to be active mediators in the institutional complex of humanitarian intervention. The texts of formal law and Security Council authorization enable intervention, outline its scope and set in motion the work of the multitudes of individuals in the field. Past interventions serve as models (and/or cautionary tales) for subsequent interventions, and texts transmit the lessons of the past as often (or more often) than individuals. And in the everyday practices of the field, new texts are created and existing texts are deployed to manage, critique and accomplish the work of human rights and the rule of law.

\textbf{III. Conclusion}

Institutional ethnography has emerged in the last decade as an effective approach for exploring the relations of power in institutional complexes. At the same time, actor-network theory has illustrated the importance of considering the networks of action and association, including both human and non-human mediators, that are involved in ‘social’ complexes. An institutional ethnographic approach that draws from ANT is well-suited for this project for several reasons. Human rights field work represents a relatively recent configuration of ruling relations; however, it has become an increasingly common tactic of geo-political maneuvering and international governance. As an institutional complex, it operates at multiple scalar levels – from the ‘local’ of individuals and offices in particular field missions to the ‘national’ of post-

\textsuperscript{8} Although these documents have been published in some public forum, I have provided confidentiality to my participants. Relying on their public work in this research risks revealing their participation; alternatively, if I disconnect authors from texts in using the work in my project, it risks misrepresenting actual relationships that may be meaningful.
conflict nation-states to the ‘global’ of international organizations. At each level and across scales, key texts coordinate and standardize everyday practices. With their appreciation of the interplay of individuals and texts in social relations, institutional ethnography and ANT allow for a careful tracing of these institutional networks of power.
CHAPTER 2: THE FUNCTIONS OF LAW IN HUMANITARIAN INTERVENTION – VIOLENCE, BUREAUCRACY, AND GOVERNMENTALITY

This chapter begins with a triangular understanding of law’s multi-dimensionality – law as violence, law as bureaucracy, and law as governance – and explores these angles in the context of international law supporting humanitarian intervention conducted in the name of human rights and the ‘rule of law’ (See Figure 5). Typically in humanitarian intervention, a group of nations (often under the aegis of an inter-governmental organization such as the United Nations) uses force or the threat of force against another nation in the interest of protecting that nation’s citizens based upon a judgment that the nation is either unwilling or unable to do so itself (Marchak, 2008, Charlesworth & Chinkin, 2000). This is law’s violence; it serves both to counter and constrain violence considered outside the law, as well as to establish and maintain a new legal order. Once the international presence has established itself by force or the threat of force, it begins to (re)build the nation through an on-going presence or field mission in the host nation. This is law’s bureaucracy, which imports both a new legal system and a range of experts to administer and enforce it. The goal of such an intervention is the management and reform of the local population – law as governmentality – first by international administrators and increasingly in conjunction with a range of governmental and ‘civil society’ organizations, until the nation has been determined to be capable again of self-governance.

Although this description suggests a certain chronology to the interplay of violence, bureaucracy and governmentality in humanitarian intervention, in practice these dimensions of law are dynamic, shifting in influence, merging and separating. At times, one dimension may predominate – for example, law’s violence may be foregrounded in the early days of intervention, during peace negotiations, or when the conflict resurges. Similarly, law’s

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9 An earlier version of this chapter has been published as “Is International Law Really Law? Theorizing the Multi-Dimensionality of Law,” Akron Law Review 44(2) (2011), 333-373.
bureaucracy and governmentality may appear to prevail in questions of expertise or institutional relationships in the field. However, the apex of triangular law is in constant motion in the everyday of human rights field work in humanitarian intervention.

Figure 5: Triangular View of Law

In the field, international policymakers and advocates typically adopt an approach that attempts to blend pragmatism with idealism (Kennedy, 2004, Keck & Sikkink, 1998). Law appears in its familiar guise as a tool to be wielded in the interests of the greater good. While this may reflect intentions (if not always reality), it seldom allows for a more critical or nuanced view. Instead, it leads to an understanding of intervention based on human rights or humanitarian grounds as, at best, an attempt to (re)establish the ‘rule of law’ and to (re)build the nation, and at worst, as a well-intentioned choice to avoid the greater evil of ‘doing nothing’ in response to crisis. But there remain more fundamental questions to examine. What does it mean to establish law (and human rights) through forceful intervention? What is the ‘rule of law’ in such a context? How is law deployed in international projects of governance?

This chapter examines law’s dimensions in humanitarian intervention, beginning with law’s relationship with violence. It problematizes the force that supports international
intervention at both the micro-level of the legal (and other) institutions at work during and after intervention and at the macro-level of the geo-political dynamics of the intervention itself. It next turns to dominant understandings of law – among practitioners and other participants in the legal system – as a bureaucratic, rational realm of experts, working to use the law as a tool for the attainment of social goals. In the context of international interventions, it elaborates the importation of ‘rational’ international legal regimes and the deployment of ‘objective’ international experts to establish and manage such regimes. Finally, it focuses on the deployment of law as a technique in projects of governance and the roles of experts in creating, facilitating, and maintaining networks and practices of reform and management, as well as in training local participants in these new procedures and practices. This section discusses relations among IGO human rights experts and other actors in the field, such as local governmental actors and non-governmental organizations and their staff, involved in projects of governance.

I. The Force of Law: Law as Violence in Humanitarian Intervention

Conventional views position law in opposition to violence, as a restraint upon violence, or, at most, as a deliberate and impartial dispenser of violence. In many circumstances, for many participants in legal processes and institutions, those views may be accurate and adequate. However, critical voices have challenged conventional understandings, both to problematize more benevolent views and to articulate the complicated ways in which law and violence are enmeshed. Although domestic examples of criminal law, as well as more exceptional moments of revolution and emergency, are typically used by theorists to illuminate law’s violence (e.g. Derrida, 1990, Cover, 1992), humanitarian intervention provides an equally compelling example of law’s violence in the international realm. Nonetheless, the analysis and critique of humanitarian intervention, human rights, and human rights law has typically focused on its
bureaucratic and governmentalizing tendencies. Although post-colonial scholars in particular have traced the connections between early colonialism and the foundations of international law (Anghie, 1999, 2005), in the legal literature and practice that predominates in human rights, the role of violence has seldom been discussed.

This silence on law’s violence occurs usually for one of two primary reasons. The first is grounded in international law’s crisis of identity – is it really law at all? As suggested by conventional views of law and violence, the most frequent reason that is given to undermine international law’s status as law is that, simplistically put, there is no international judiciary, police force or even standing military to enforce it; international law is fundamentally a consent-based regime (Orford, 2003, Goldsmith & Posner, 2005, Koh, 2006). Nation states become subject to international law primarily through voluntary ratification of treaties or customary practice.10 Particularly in the area of human rights, advocates are generally left to rely on strategies of persuasion and shame to ensure first participation and then compliance (Goodman & Jinks 2004). Because international law is often viewed as lacking in enforceability – necessary force – the absence of force or violence has typically been bemoaned and brushed aside.

Despite its perceived absence, a massive international institutional structure – in the United Nations and its subsidiary agencies and regional counter-parts, including many international tribunals (such as the International Criminal Court, the ad hoc war crimes tribunals, the International Court of Justice, and so on) – exists that is responsible for implementation, at least, if not enforcement, of international law. Moreover, and more directly related to humanitarian intervention, although there is not a single, unified international police or military, there are numerous alliances and instances of cooperative policing and use of force

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10 The formal sources of international law comprise treaties, custom, and general principles of law. Treaties are the most comprehensive. Custom relies upon continual practice by states under a sense of legal obligation. (Statute of the International Court of Justice).
(Interpol, NATO, and the various military coalitions ‘authorized’ to intervene by the United Nations Security Council) aimed at similar ends. Therefore, the second and somewhat contradictory reason that law’s violence has not been commonly examined in international law is that the force that initiates and supports humanitarian intervention is viewed in isolation, rather than as part of an institutional complex, and justified as well-intentioned and necessary to avoid a greater violence (Marchak, 2008, Razack, 2004, Kennedy, 2004).

With the question of violence sidestepped or compartmentalized, analyses of international law in humanitarian intervention typically turn to the work of capacity- or nation-building and the establishment of the ‘rule of law.’ The somewhat ambivalent status of international law serves as both incentive and justification for ignoring the role of violence or force in humanitarian intervention and human rights. It may be frequently overlooked, of course, but that does not mean it is absent. Drawing upon conventional as well as critical theories of law and violence, this section first considers the distinctions drawn in international law and practice between unauthorized violence and authorized force that justifies international intervention. It then discusses the ways in which that distinction endures and is reinforced in subsequent international efforts to maintain the peace.

A. Intervention: Authorized Force

To understand the relationship of law and violence in the international realm, it is useful to recall the ‘law-making’ violence that is the foundational origins of the United Nations and contemporary international law. The United Nations, the foremost international organization and major promulgator of international law, was created in 1945 in the wake of World War II in a multi-national effort led by the victorious nations. The UN Charter, the constitutional legal text of the organization, alludes to that origin in its preambular recognition of “the scourge of war” and in a commitment “to unite our strength to maintain international peace and security,
and … to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest.” (UN Charter, Preamble). Article 1 of the Charter lists as the first purpose of the United Nations:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace (UN Charter, Art. 1(1)).

The new institution reserves to itself the legal and authorized use of force (with the only exception of imminent self-defence until the UN can act), and the body within the UN that is charged with that responsibility is the Security Council.

Despite the UN’s foundational commitment to the principle of “sovereign equality” of all of its members, membership in the powerful Security Council reflects its origins in World War II (UN Charter, Art. 2(1)). The five permanent members, who have ‘veto’ power on Security Council actions, are the United States, the United Kingdom, France, Russia (formerly the USSR) and China; the other members are elected by the UN General Assembly on a rotating basis and serve limited terms (UN Charter, Art. 23). This institutionalized power imbalance has thus far resisted all efforts at reform. Under the Charter, the Security Council both determines “the existence of any threat to the peace, breach of the peace, or act of aggression” and decides what measures – forceful or otherwise – must be taken “to maintain or restore international peace and security” (UN Charter, Art. 39). Over time, the Security Council has come to view some situations involving massive human rights violations as threats to international peace and security. It is in this context that law’s violence reemerges as the texts of international law – the UN Charter, Security Council Resolutions and human rights treaties – “authorize particular violent acts as legitimate” when supported by humanitarian rationales (Orford, 2003, p. 50).
Collective humanitarian intervention is a “willingness to use force in the name of humanitarian values” (2003, p. 2).

It is possible to trace the process whereby international force is authorized through the key texts of the Security Council, its formal Resolutions. The mission in East Timor provides an interesting example. East Timor was held under colonial rule by Portugal for centuries, beginning in the 16th century and enduring until Portugal unilaterally withdrew in 1975 as part of larger processes of decolonization. Indonesia almost immediately invaded. This violent history – and the UN’s complicity in colonial rule – is cloaked in the diplomatic language of Security Council Resolutions from that period. Resolution 384 characterizes the Security Council as:

- Gravely concerned at the deterioration of the situation in East Timor,
- Gravely concerned also at the loss of life and conscious of the urgent need to avoid further bloodshed in East Timor,
- Deploring the intervention of the armed forces of Indonesia in East Timor,
- Regretting that the Government of Portugal did not discharge fully its responsibilities ad administering Power in the Territory under Chapter XI of the Charter (Res. 384 (1975), original emphasis).

The Resolution calls upon all states to “respect the territorial integrity” of East Timor, upon Indonesia to “withdraw without delay all its forces,” and upon Portugal to “co-operate fully with the United Nations so as to enable the people of East Timor to exercise fully their right to self-determination” (Res. 384, para. 1-3). Little more was done – other than a few subsequent resolutions and statements – and Indonesia held power in Timor until 1999.

In 1999, in the wake of escalating violence in East Timor and at a time of increasing support for humanitarian intervention more generally, the international community turned its attention back to East Timor (Figure 6 below shows the current UN presence). The Security Council issued a series of resolutions that first express its increasing (and increasingly serious) interest in the situation in East Timor and its support for a popular referendum on independence, then authorize a peace-keeping force, and then establish a ‘transitional administration’ for East
Timor. The first in the series, Resolution 1236, in May 1999 again obscures the violent history (and present) of East Timor by simply (and apparently not at all ironically) noting “the sustained efforts of the Governments of Indonesia and Portugal since July 1983, through the good offices of the Secretary-General, to find a just, comprehensive and internationally acceptable solution to the question of East Timor.”

Figure 6: United Nations Mission in East Timor (Image courtesy of the United Nations, Cartographic Section)

In June 1999, in Resolution 1246, the Security Council established the UN Mission in East Timor (UNAMET) for a limited time – until the end of August – with limited personnel – up to 280 civilian police and 50 military liaison officers – and with a mandate limited to facilitating the popular referendum. In an August Resolution, the Security Council extended the mandate of UNAMET until November, and in a September Resolution, “[d]eeply concerned by
the deterioration in the security situation in East Timor, and in particular by the continuing violence against … East Timorese civilians,” the Security Council authorizes the deployment of a multinational force to East Timor (Resolution 1262 (1999), Resolution 1264 (1999)). In Resolution 1264, the Security Council:

Reaffirming respect for the sovereignty and territorial integrity of Indonesia,

Expressing its concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor …

Determining that the present situation in East Timor constitutes a threat to peace and security,

Acting under Chapter VII of the Charter of the United Nations, …

3. Authorizes the establishment of a multinational force under a unified command structure, pursuant to the request of the Government of Indonesia conveyed to the Secretary-General on 12 September 1999, with the following tasks: to restore peace and security in East Timor, to protect and support UNAMET in carrying out its tasks and, within force capabilities, to facilitate humanitarian assistance operations, and authorizes the States participating in the multinational force to take all necessary measures to fulfil this mandate (1999, original emphasis).

In a few short paragraphs, the Security Council authorizes the presence of an ad hoc multinational force in East Timor, putatively at the request of Indonesia, until replaced by a United Nations peacekeeping force and transitional administration for East Timor.

In October in Resolution 1272, the Security Council completes the process of (textually, at least) replacing unauthorized violence with authorized force – both military and civilian. It

11 The resolution also:

6. Welcomes the offers by Member States to organize, lead and contribute to the multinational force in East Timor, calls on Member States to make further contributions of personnel, equipment and other resources and invites Member States in a position to contribute to inform the leadership of the multinational force and the Secretary-General; …

8. Notes that Article 6 of the Agreement of 5 May 1999 states that the Governments of Indonesia and Portugal and the Secretary-General shall agree on arrangements for a peaceful and orderly transfer of authority in East Timor to the United Nations, and requests the leadership of the multinational force to cooperate closely with the United Nations to assist and support those arrangements; …

10. Agrees that the multinational force should collectively be deployed in East Timor until replaced as soon as possible by a United Nations peacekeeping operation, and invites the Secretary-General to make prompt recommendations on a peacekeeping operation to the Security Council.

begins with familiar diplomatic language, characterizing the situation in East Timor and the work of the UN in the interim period and reaffirming the existence of a threat that justifies the exercise of power. It then proceeds to the operative provisions that create the transitional administrative authority. The Security Council:

1. **Decides** to establish … a United Nations Transitional Administration in East Timor (UNTAET), which will be endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice; …

3. **Decides further** … that its main components will be:
   (a) A governance and public administration component, including an international police element with a strength of up to 1,640 officers;
   (b) A humanitarian assistance and emergency rehabilitation component;
   (c) A military component, with a strength of up to 8,950 troops and up to 200 military observers;

4. **Authorizes** UNTAET to take all necessary measures to fulfil its mandate; …

6. **Welcomes** the intention of the Secretary-General to appoint a Special Representative who, as the Transitional Administrator, will be responsible for all aspects of the United Nations work in East Timor and will have the power to enact new laws and regulations and to amend, suspend or repeal existing ones; …

17. **Decides** to establish UNTAET for an initial period until 31 January 2001 (1999, original emphasis).

The transitional administration and peacekeeping forces in fact remained until 2005, when they were replaced by a subsequent UN mission, smaller in both size and mandate, which is currently still present in East Timor (Burgess, 2007).

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**12** The introductory language provides:

Commending the United Nations Mission in East Timor (UNAMET) for the admirable courage and determination shown in the implementation of its mandate,

Welcoming the deployment of a multinational force to East Timor pursuant to resolution 1264 (1999), and recognizing the importance of continued cooperation between the Government of Indonesia and the multinational force in this regard, …

Deeply concerned by the grave humanitarian situation resulting from violence in East Timor and the large-scale displacement and relocation of East Timorese civilians, including large numbers of women and children, …

Expressing its concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor, …

Determining that the continuing situation in East Timor constitutes a threat to peace and security, [and]

Acting under Chapter VII of the Charter of the United Nations,

Although humanitarian endeavors linked with force are not new, they are increasingly common (though controversial) at the international level. In many ways, that popularity reflects the influence of the discourse of ‘the West and the Rest’ and its dialectical impulses towards violence and governance. For example, the idea of a “responsibility to protect” has increasingly gained prominence at the international level.\(^{13}\) This doctrine suggests that “where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect” (ICISS, 2001). It is based on a belief in a disinterested, Western humanitarian impulse to establish the ‘rule of law’ with little recognition of Western self-interest in intervention (or even complicity in the situations of conflict or transition that serve to justify intervention). As in earlier imperial endeavors, a central theme that underlies the rationale for such intervention is the “absence of law, including international law, and a lack of sustained engagement by international organizations” in areas of crisis (Orford, 2003, p. 15). Law, in this context, serves to distract from the violence of the intervention and restore a sense of innocence in both intention and action.

The field missions with an explicit mandate to govern, such as those in East Timor and Kosovo, most clearly illustrate this justification of force as governance. There remains the “paradox of humanitarian goals accomplished by force,” which is often legitimated by the language of human rights and democracy (Razack, 2004, p. 40). The interventions in Kosovo and East Timor both began in 1999 and have similarly expansive mandates. In East Timor, as discussed above, this extensive international involvement follows a long history of colonial occupation (first by Portugal and later by Indonesia). Although Kosovo’s history is different, it has also never existed independently as a nation-state; its territory was governed by various

\(^{13}\) The ‘responsibility to protect’ is discussed in greater detail in Chapter 5 (Law in the Field) as a manifestation of law’s violence and governmentality in the ongoing relationship between field and headquarters.
European empires (e.g., Byzantine, Ottoman) before it became part of Serbia and then Yugoslavia. With the breakup of Yugoslavia, it once again became part of Serbia, and the conflict in Kosovo arose out of the same ethnic violence that plagued other former Yugoslav republics. In Kosovo, the lines of ethnic conflict were between ethnic Albanians (a majority in Kosovo but a minority in Serbia) and ethnic Serbs (a minority in Kosovo but a majority in Serbia). NATO forces launched a bombing campaign in 1999 to end the conflict, and the UN-led mission was established shortly thereafter. (Figure 7 shows the UN Mission in Kosovo).

Figure 7: United Nations Mission in Kosovo
(Image courtesy of the United Nations, Cartographic Section)
When I asked Paul, a human rights officer who worked for several years in Kosovo, whether he felt any concerns about the extensive powers of the international administration there, backed by military force, he reaffirmed his confidence of the need for international intervention in light of the ethnic conflict and violence in Kosovo. He offered a rationale that distinguished contemporary international administration from other forms of intervention:

*Paul:* Even from day one, it’s clear that we’re not, this is not our new territory that we’re now occupying, it’s now ours. This is a temporary situation. As to how long it takes and what steps we will follow to leave and to have it in the hands of the local people and hopefully in a democratic system, that was open but that was always clearly the goal. It was never the sense we’re in power now to hold on. It’s like we’re in power to let go as soon as is reasonably possible.

The intervention in Kosovo is clearly justified in the name of a greater good, most especially for the good of the people there, building democracy and supporting the development of local capacity. It is temporary and benevolent, rather than violent and power-seeking.

This type of narrative is common in support of intervention and reveals “deeply internalized myths about our civilizing mission” in the West (or, now, the Global North) (Razack, 2004, p. 44). Another human rights field officer, Gwen, who worked in several different missions, thoughtfully recognized the potential complicity of an ‘international’ presence in a conflict situation, such as in post-genocide Rwanda:

*Gwen:* It was obvious that Rwanda was already involved in Eastern Congo before Mobutu fell … And I think we all somehow felt complicit in rebuilding Rwanda as we feared we were actually contributing to that conflict in the Congo by helping, by supporting the Rwandan government in rebuilding and stuff. Because on the one hand we, the Rwandan government was, had been, a victim of this terrible genocide; on the other hand, they were also contributing to this potentially completely disastrous situation in the Congo. It's a situation where the victims become the perpetrators, and we could see that happening, and it was a bit difficult to not control and not contribute to that conflict.

The conflict between Rwanda and the Democratic Republic of Congo reflects the complex history of European colonialism and ethnic conflict in the region, and commentators have suggested that the belated (and in many respects failed) international intervention in Rwanda in
the 1990s enabled the subsequent fighting between Rwanda and the Democratic Republic of Congo (Prunier, 2008). The potential complicity by the international community (or leading states within the international community) in conflict situations is not unique to Rwanda and Congo, of course, and international involvement often shifts the balance of power in a county or region. Indeed, intervention is generally intended to do exactly that by ending the conflict. However, international complicity and self-interest complicate the notion of the international presence as benevolent outsiders, working on behalf of local victims, without their own stake or interest in the conflict or its resolution and with no complicity in creating or maintaining the conditions that are used to justify forceful intervention and governance.

Like the force that underlies international law generally, this problem of potential complicity and self-interest is side-stepped and the originating and supporting violence of intervention becomes justified through “the narrative of choice” – where nations (again, usually of the West or Global North) must either stand by as atrocities occur or intervene militarily to establish a new legal order (Razack, 2004, p. 150). In her interview, Gwen continued her reflections on the international community’s role in Rwanda and grappled with the potential conflict she raised and the dilemma it presented for her work. She resolved that dilemma through a similar narrative of choice:

*Gwen:* It was difficult because the whole international community was involved in supporting the [Rwandan] regime, so it was a very difficult situation to stand up to with any strength. Because the alternative, none of us were certain what the alternative was as well. What's the alternative? The genocide [could] come back. There was a difficult situation. Is democracy really desirable if it leads to genocide because that's what happened before. So it was a really tricky one to face.

The risk of (returning) genocide is sufficient to justify international involvement, which may be problematic but ultimately acts for the sake of the greater good (or, at least, the lesser evil). Framed as choice, “[v]iolence helps establish who is, in fact, in control” (Razack, 2004, p. 156). However, it remains a self-denying violence, distinguished from the local violence of the
conflict as an authorized enforcement for the sake of democracy and the rule of law; this juxtaposition of illegal violence and authorized force justifies and thereby renders invisible the force exercised in the name of humanity.

Humanitarian intervention and the international law that is deployed in its support, thus, operate with law’s violence. From the early history of colonialism to contemporary projects of international intervention, it is possible to trace that violence historically and systematically. Like revolution, humanitarian intervention establishes a new law. Often, a new state is born – or an existing state is reconfigured – out of this violence. It is a forceful violence that intervenes militarily to establish and to preserve a new legal order. It enforces the rule of law at both the national and the international level. Although the originating violence in this context is typically cloaked in legality (or, at least, justice), it is a contested rather than a stable legality. It is an interpretive violence that recognizes only certain forms of law as law and that remakes existing regimes in its image. This interpretive violence supports both the decision to intervene and the subsequent practices of the institutions that operate the new legal regime. It also legitimates itself in the new law – international human rights law or, more broadly, the ‘rule of law’ – that it establishes. However, the new legal order remains vulnerable, perhaps more obviously so than more established states; there is always the threat of a new revolutionary moment that will destroy the existing (national and international) legal order and install yet another new order. This threat, then, justifies continuing international involvement, even force, to (re)establish the rule of law.

B. Maintaining the Peace

As the texts of international intervention illustrate, conventional views of law as domesticator of violence, in fact as both civilizer and evidence of civilization, are embraced by many advocates of humanitarian intervention and human rights practitioners. This view of law
is manifest not just in the initial intervention but also in subsequent efforts to maintain the
‘peace’ and rebuild the nation. Historically, it served as a rationale in support of the extensive
and aggressive interventions of colonialism, which were often justified by a perceived absence
of law and a prevalence of (uncivilized, barbaric) violence among the colonized (Gott, 2002,
Hall, 1992). Law became a ‘gift’ from the colonizers, the generous civilizers, to the colonized
(Fitzpatrick, 2001). In fact, law was brought to the uncivilized through the overt violence of
forceful occupation as well as through the indirect violence of the importation of a new legal
framework. Similarly, in the context of contemporary intervention, the initial intervening force
is transformed into an underlying force that supports efforts to ‘maintain the peace’ and
establish the rule of law.

Outside the direct context of intervention, this view of law’s violence underpins the
many international or quasi-international institutions that are modeled on domestic institutions,
such as the international courts or treaty-monitoring tribunals. These standard mechanisms of
implementation and enforcement of international law are often replicated or made authoritative
in the field. Although there may be some recognition of the power disparities in these
processes, they are reconciled with law’s role as domesticator of violence. This view
simultaneously acknowledges the violence of law and yet also justifies it; law’s violence, if not
exactly benign, operates for the greater good. Gwen draws a parallel between the expansive
intervention in Kosovo and earlier colonial endeavors:

Gwen: We had all the power in the world really in Kosovo as foreigners as we could
issue [decrees] all the time. But with that comes all sorts of responsibility and a lot of
expectations.

Elizabeth: [I wonder] how you felt about that given kind of your interest in the post-
colonial and so on. It’s quite something to be –

Gwen: Become a colonizer (laughing). It’s a very strange thing. I’ve never got over that
guilt of my [being a] new colonial. … We did have to remind ourselves that we did have
a lot of responsibility in terms of remembering the history of the province and that we
were just there as go-betweens really, between Albanians and Serbs, and that it wasn’t a
UN province for the UN to do what they wanted with it. That was the interesting bit, but it also [was] really the frustrating aspect of working [in] Kosovo, knowing that its actually a political problem and that the long term solutions wouldn't come until they would find their own solution, and the outsiders really had a limited role to play, and the main role really was to be the arbiters between the communities.

Perhaps because Kosovo has long been considered part of Europe, the colonial echoes in the extensive powers of the international administrators are less obvious (and less of a concern) there than they would be in Rwanda or East Timor. Although Gwen makes oblique reference to the history of the province and earlier noted the potential for international complicity in contemporary conflicts, this sort of contextualization of intervention was generally uncommon among field officers. None made explicit reference to the longer historical issues that made contemporary intervention a possibility. Even for those who recognized the contradictions in practice of intervention for the sake of human rights and the rule of law, the view of the international community as ‘arbiter’ or ‘go between’ obscures the real violence wielded by the international military forces deployed in support of field missions.

Paul offers a more typical (and conventional) view of international law as a constraint upon violence when he tells a story of his work in the early days of the field mission in Kosovo. He first sets an evocative scene of the situation he encountered upon his arrival in the field:

Paul: When I got there, every, it was in a hotel, and every night there was an 8 o'clock curfew. The place would be totally blocked. There would be no electricity, and all you would hear would be the American Blackhawk helicopters flying over the city with their search lights looking for Albanians who were going to burn down Serb property. And they would be flying around, and you'd hear their troops marching around, but you'd also hear every half an hour or so a grenade going off, a target had been hit.

With ethnic Serbs fleeing and ethnic Albanians still destroying property, the conflict essentially appears on-going. It is the American/international presence that is attempting to reestablish some sort of order, and Paul elaborates on the distinction between the local violence and the authorized international force:

Paul: The rules of engagement for the mission, to start with, my understanding was that, no, we were going to lead by example. We were not going to demonstrate the
viciousness and the sort of the brute force that they were use to. We were going to lead by example. We were going to be a modern sort of police force. In other words, if somebody commits a crime, you treat them as a criminal. You don't treat all people who are from that ethnic group or age group as criminals. You find a criminal, and you prosecute them.

Paul juxtaposes the use of force by the international community that is intended as an example or model of a ‘modern’ use of violence with the ‘vicious’ and ‘brute’ force based on ethnic grounds that was used by the Kosovar Albanians. He concludes that this ‘lead by example’ approach was ineffective:

Paul: The reality was when you got 1,000 general Albanians out there trying to destroy Serb property, even if the forces were able to identify them, they would arrest someone and there would be no witnesses. ‘I didn't see anything.’ Nobody saw anybody doing anything. And people would just sort of disappear into the woodwork as they were about to be arrested. They would go into some house and they would be treated and protected by whoever was there. And the result was that it was totally ineffective. … and all these Serbs left, but that was still the model that we followed.

The ‘modern’ international approach fails in the face of entrenched, parochial violence and insular alliances to protect the ethnic community.

Although other field officers conveyed similar conventional views of violence, Paul spoke on it at some length. He was in Kosovo with his family when riots erupted several years into the mission in 2004, and this was a defining moment of the intervention for him. During the riots, the international forces continue to try a ‘more modern’ approach but ultimately have to resort to ‘shoot first’ rules of engagement:

Paul: You have a bunch of Albanian rioters go on towards a Serb village. You have KFOR riot police with their batons and their big shields blocking the road. You see the rioters go up to this barricade and simply walk around it in the fields and then proceed to the village to murder and burn the houses down – with NATO sort of standing there with their riot shields. The next day, about 36 hours into this, there were announcements all over the local radio and television stations that KFOR had changed its rules of engagement, that if an individual from a different ethnic group was seen approaching the city of another ethnic group, the rules of engagement now were to shoot first, and they would then have an appropriate investigation later. Within 24 hours all the riots were over. The ramifications lasted for years but the riots were over.
He concludes that an approach that limits or eschews force is a weakness – both actual and perceived – in this context:

Paul: They used essentially the weakness of KFOR for their more modern rules of engagement to advantage to permit them to attack their Serb enemies. But as soon as they realized that, oh, boy, there may, in fact, be a threat to us if we do that, they have no interest whatsoever. It wasn't worth that much to them. Now, that's not something that's nice to know or to say. But it's real. And to some extent, we'd have to work with what works rather than necessarily with what one would hope is right, or at least you have to have a longer term picture of what is right.

Elizabeth: It kind of it sounds like your take-away lesson was that that was kind of the right choice to make, right? That there’s a role for law but there’s a role for force as well?

Paul: Yes, in fact, the proper judicial use of force, in fact, saves a lot of lives. The force Paul describes as ‘shoot first, investigate later’ may not be morally ideal – what is ‘right’ – but it becomes ‘judicial’ (as well as practical and effective) only in the hands of the international community, when faced with the intransigent and persistent ethnic violence of the local Kosovars.

Far from being a relic of the past, then, the “discourse of ‘the West and the Rest’ is alive and well in the modern world” (Hall, 1992, p. 318) as it echoes through current humanitarian interventions. At times, such as in Rwanda or East Timor, the imperial legacy that is often the cause of conflict and supports the contemporary intervention is direct and obvious; in other situations, such as Bosnia and Kosovo, it may be a more indirect legacy of form and structure. In each of these examples, however, the ‘international community’ takes on an imperial role, forcefully intervening for the sake of establishing the rule of law; this rule of law replaces, domesticates and redeploy violence for its own ends. However, law’s violence remains connected to and integrated with its other dimensions. In humanitarian intervention, it is the force of law that enables and supports the development and work of international administrators and their subsequent efforts to protect human rights and restore the rule of law for the local population.
II. THE RULE(S) OF LAW: BUREAUCRACY AND EXPERTISE IN PROJECTS OF HUMAN RIGHTS

The bureaucratic dimension of law is perhaps its most readily apparent aspect. Law’s quest for objectivity and rationality underscore the importance of bureaucracy, from the massive administrative apparatus of the ‘justice’ system to the extensive and wide-ranging codification of legal doctrine. These features are evident not just in the practices of law, but also in the work of individuals and institutions, the various experts in law and otherwise, that participate in its processes. This bureaucratic dimension of law – especially the rationalization of law and the significance of expertise – manifests itself in humanitarian interventions and the human rights legal regimes they establish. Although social scientists have begun to examine human rights and human rights law only relatively recently, in their analyses, bureaucracy and instrumentalism have emerged as common themes. Riles suggests that “an instrumentalist conception of law is the agreed theoretical and political basis of modern U.S. law,” and this in turn has greatly influenced the development of international law, including human rights law (2006, p. 59).

In familiar language, Riles contends that the “understanding of [international] law as a tool or instrument also provides the concrete, day-to-day form of legal knowledge practice – that of thinking in terms of relations of means to ends” (2006, p. 59). This bureaucratic, “technocratic” approach in everyday practice has resulted in a view of human rights as “a set of problem-solving institutions and of legal techniques deployed and managed by international bureaucrats” (2006, p. 59). These institutions and the international experts who manage them appear most obviously in the bureaucracies of the United Nations and its subsidiary agencies and institutions (and the regional inter-governmental organizations that are their counterparts). However, similar institutions and models of expertise are also found in the international field presences established in humanitarian interventions.
A. Rationalizing Law

After an initial intervention, the international community typically establishes a formal bureaucracy and begins a process of governance of the local population, using ‘objective’ experts to accomplish its work. The human rights bureaucracies created in field missions under the auspices of inter-governmental and multi-state interventions aspire to and, at times, reflect familiar characteristics of objectivity, efficiency, rationality, and distance. Often, they import with them a new and ‘rational’ legal system, typically modeled on international law or standards. The processes of isomorphism that proliferate within bureaucratic systems (and lead to the reproduction of such systems themselves) are at work as these new, internationally approved frameworks are adopted or imposed in the name of (re)establishing the ‘rule of law.’

For example, the General Framework Agreement for Peace (also known as the Dayton Peace Agreement) that ended the war in Bosnia and Herzegovina in 1995 was negotiated after NATO military intervention and drafted under the auspices of international negotiators. The war in Bosnia was the one of the longest of the conflicts that accompanied the disintegration of Yugoslavia, and it also featured the pervasive ethnic violence that characterized other conflicts in the former Yugoslav republics. The Peace Agreement is a very active text: it comprehensively imports the existing body of international human rights law and its systems for implementation into the newly reformed Bosnian legal system. Through the Agreement, the formerly warring parties essentially ‘consent’ to every major human rights treaty and incorporate them directly into Bosnian law, an extraordinary feat and one that can only happen in such exceptional circumstances. The Agreement does most of this through “Annexes” attached to the main agreement. Annex 4 contains the new Bosnian Constitution and in Article 2(2), entitled “International Standards,” states:

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.
This provision alone is extraordinary. At that point, Bosnia was not a signatory or party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the major regional human rights treaty for Europe, or to its Protocols, supplementary treaties. In fact, Bosnia was not even eligible to become a party to those agreements, which are only open to signature for member states of the Council of Europe; Bosnia did not become a member of the Council of Europe until 2002. Nonetheless, the new Constitution, drafted as an Annex to the Peace Agreement, gives that treaty supremacy over all other law in the country.

Later in that same article of the new Constitution, Bosnia also agrees to become party to a long list of existing international agreements\(^\text{14}\) and to “cooperate with and provide unrestricted access” to:

any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in Annex I to this Constitution; the International Tribunal for the Former Yugoslavia (and in particular shall comply with orders issued pursuant to Article 29 of the Statute of the Tribunal); and any other organization authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law (Art. 2(8)).

Again, the scope is quite extraordinary. In one paragraph, the new Bosnian government submits itself to the oversight of a wide range of existing international bodies, as well as any other organization authorized by the Security Council – a clear anticipation of the international field mission to follow.

Annex 6 to the Peace Agreement, the Agreement on Human Rights, follows a similar approach. The Parties agree to “secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex” (Annex 6, Art. 1). That list mirrors the list in the new Constitution. Annex 6 also creates a Human Rights Commission, including a Human Rights Ombudsperson and a Human Rights Chamber – both with predominantly international personnel – to enable the new country to fulfill its obligations.

Historically, the idea of the rule of law has been linked to a democratic framework and self-governance, and in field missions, the development of such a framework has generally been the stated goal. However, in practice, there has been an approach of “externally imposing a rights framework outside the political process of debate and consensus-building” in the affected nation (Chandler, 2006, pp. 128-129). Often the importation of a rights framework happens in internationally facilitated peace agreements or in the mandates provided to transitional international authorities. This is typically seen as unproblematic given the ‘universal’ and ‘progressive’ nature of human rights. Nonetheless, an imposed or imported framework creates a “rule of law paradox,” where the importation of a rationalized legal regime to protect human rights and the rule of law may actually undermine both – at least in process, and potentially, in effect (2006, p. 121).

This rule of law paradox is not a hidden mystery. It is apparent not only in the fundamental texts of intervention, but also in the everyday work knowledge of human rights field officers. Anthony, a field officer with years of experience in several missions in the Balkans, explains:
"Anthony: That is the weird part too about doing human rights. You're in this weird position sometimes where you're really violating everything you say. Like in Bosnia, there were decisions issued to protect human rights, and yet they're not reviewable by anybody whatsoever. They're just promulgated by this guy who's given power by the Peace Implementation Council. Who the heck is that? Where did they come from? And it's that whole thing about kind of transitional justice, which as one of my former colleagues put it, as it's how to get to rule of law without having it. And it's like we have to get to rule of law, but to get there we have to cut a bunch of corners.

In Bosnia, the international community took an expansive approach to importing a rights framework in the Peace Agreement and in its subsequent implementation through the Peace Implementation Council, an ad hoc group of nation-states and international agencies that essentially tasked themselves, with Security Council support, to oversee the peace process in Bosnia. However, as Anthony suggests, an imposed or imported rights framework is also a characteristic (if 'weird') feature of human rights work in the field, where the admirable end goals of human rights protection and the establishment of the rule of law justifies means that do not live up to those standards. The approach of 'cutting corners' through the imposition of an international framework is not unique to any particular field context but rather endemic in international intervention. Once again, as with force, the 'international' is exempt from the same level of scrutiny as the local. Irrational and subjective domestic law must yield to objective and rational international law, and the good intentions of the international community and the universality of its standards are sufficient to overcome the democracy deficit in its adoption and implementation in contemporary interventions.

B. International Experts

The imposition of the new legal framework, and often its initial work, is managed by international administrators, bureaucrats, and experts. Returning to the illustrative case of Bosnia, the Peace Agreement establishes much of this administration. In Annex 10 to the Agreement, on “Civilian Implementation,” the signatories agree to the establishment of an international administrator (and administration):
In view of the complexities facing them, the Parties request the designation of a High Representative, to be appointed consistent with relevant United Nations Security Council resolutions, to facilitate the Parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement by carrying out, as entrusted by a U.N. Security Council resolution, the tasks set out below (Article 1(2)).

Under the Peace Agreement, the High Representative is given expansive and final authority regarding civilian implementation of the Agreement (as opposed to military implementation).

This already significant authority was further expanded in 1997 by the Peace Implementation Council, the ad hoc group of nations-states and international agencies that oversee the peace process in Bosnia. The Council ‘authorized’ the High Representative to remove from office public officials who violate legal commitments and the Dayton Peace Agreement, and to impose laws if Bosnia and Herzegovina’s legislative bodies fail to do so (PIC, XI(2)). With these powers, the High Representative – always an ‘international’ or non-Bosnian official – was essentially given sovereign authority. This sovereign authority extended to the High Representative’s administrative staff, as well. Over its years in Bosnia, the Office of the High Representative employed hundreds of staff to administer its responsibilities. Initially and through the early years of the mission, all professional staff were ‘international,’ and support staff were generally Bosnian. Over the years, OHR has attempted to employ more national staff although senior positions continue to be held by ‘international’ personnel.

There is often a sense that international personnel bring an expertise, grounded in their bureaucratic ‘objectivity,’ to the administrative work in the mission. However, like all

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15 The High Representative is directed to: “Monitor the implementation of the peace settlement; Maintain close contact with the Parties to promote their full compliance with all civilian aspects of the peace settlement and a high level of cooperation between them and the organizations and agencies participating in those aspects; Coordinate the activities of the civilian organizations and agencies in Bosnia and Herzegovina to ensure the efficient implementation of the civilian aspects of the peace settlement; Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation; Participate in meetings of donor organizations, particularly on issues of rehabilitation and reconstruction; Report periodically on progress in implementation of the peace agreement concerning the tasks set forth in this Agreement to the United Nations, European Union, United States, Russian Federation, and other interested governments, parties, and organizations; [and] Provide guidance to, and receive reports from, the Commissioner of the International Police Task Force established in Annex 11 to the General Framework Agreement.” (Annex 10, Article 2 (1)).
bureaucracies, the transitional administrations of field missions fall short of the ideals of rational, impartial and expert work. Nathan, a human rights officer in Kosovo, talks about his work reviewing and drafting legislation:

*Nathan:* One of my co-workers … her strategy for legislation was cutting and pasting from Canada's legislation. … She just cut and pasted it, and I'm like, well, you know, maybe we should think this through a little bit first. And then we had this internal debate with the OSCE mission. You know, we got into this huge debate over whether there should be a crime of domestic violence at all, and you know, and some American lawyers were saying, that's ridiculous. You know, there's just assault and battery. There's no specific [crime], and these are women's rights, allegedly women's rights people, saying you know, you have to mainstream it, you don't create a separate crime of domestic violence. And I'm like, I was just doing this, you know in law school … really, it does exist in US law, in state law.

Supposedly rational and impartial ‘international’ expertise turns out to be parochial and grounded in subjective experience, and the resulting laws reflect the particular approaches of Canada, the United States or other domestic contexts.

Similar stories – and concerns – about ‘cut and paste’ approaches by international staff, experienced or otherwise, were offered by numerous field officers. Kevin, who also worked in Kosovo as well as several other missions, also addressed some of the partial and particular foundations of ‘international’ law and expertise:

*Kevin:* It was quite sobering to find that on criminal justice matters, the worst interlocutor you could possibly have were any French attorney, umm, or any French prefecture judge, because they believed that the French system was 100% human rights compliant, and that meant things like defense counsel did not get access to suspects. … It meant that you could, umm, delay hearings, you know, the initial hearing of a suspect before a judge for quite a long period of time, if there was a threat to public order. There were things like that that just absolutely drove you mad … And, um, and it began, it really made you question at times how standards were derived (laughs).

Kevin’s description reveals the tenuous nature of international standards and international expertise, where the presumed consensus reflected in the ‘international’ label often serves to mask fundamental differences in values and approaches among national systems. Despite its potential parochialism, ‘international’ expertise nonetheless essentially displaced domestic authority during the period of transitional administration in Kosovo and elsewhere:
Kevin: At that time heads of municipal departments and mayors, they were all essentially internationals, they were all UN personnel, umm, they, the local political structures were just at that point being put in place, and at that time the nationals were co-heads, they were not given full governmental responsibly in their own right. So at times you would try very hard to work with domestic institutions, and domestic politicians only to have them be completely sidelined, even once you'd reached an agreement with them because the internationals completely occupied the available political space.

Kevin and the other field officers interviewed expressed frustration and discomfort with the ways that domestic authority was side-lined by international personnel, especially when so-called ‘international’ expertise was revealed as very domestic – French, Canadian, American – after all. However, these frustrations remained tied to particular stories or incidents, for the most part, and did not ultimately undermine their confidence in the larger goals of human rights field work in establishing the rule of law.

As with law’s violence, closer interrogation of law’s bureaucracy and objective expertise complicates traditional understandings of the functions of law in ways that have significance for evaluating contemporary bureaucratic practices, including the everyday practices of international administrators in humanitarian interventions. These practices raise important questions of what the ‘rule of law’ means and how human rights are advanced when international administrators impose (or import) new (or old) legal frameworks outside of traditional democratic processes. It is also fair to question what ‘international’ expertise is and what it offers to ‘national’ or ‘local’ beneficiaries in situations of conflict or transition. Similar questions also arise in law’s third dimension – law’s governmentality – in humanitarian intervention, which also relies heavily on international expertise to manage projects of nation-building and reform.

III. TECHNIQUES OF LAW AND LAW AS TECHNIQUE: HUMAN RIGHTS AS GOVERNANCE

Although law’s bureaucratic rationality is a significant dimension of its nature and work, in both domestic and international arenas, law’s reach extends beyond the confines of any
particular legal system(s) or set of legal processes. This section considers law as
governmentality, as law expands its scope and transforms itself to discipline, shape, produce,
and govern the members of society – local, national, or global – in countless ways. For
Foucault, governmentality provides the third side of the triangular view of power as
sovereignty-discipline-government (1994). This section is grounded in the contentions that
governance or ‘governmentality’ has displaced more traditional forms of power in society and
that law reconfigures itself as a result of that move; here, governmentality is the third side of the
triangular view of law as violence-bureaucracy-governmentality. As with the other dimensions
of law, the context of humanitarian intervention provides stark illustration.

Humanitarian interventions begin as the projects of states and inter-governmental
organizations but, like other projects of governance, expand to include a larger and more diffuse
network of actors. Because there is no global sovereign, international law has long struggled
with questions of power. In this milieu, a Foucauldian understanding of power is especially
useful, where power is “employed and exercised in relations between people, rather than
existing as a commodity that can be monopolized by a single entity,” such as the state or even
an inter-governmental organization like the United Nations (Orford, 2003, p. 75). Instead, a
defining feature of humanitarian intervention is that an ‘assemblage of actors’ come together –
nation-states, inter-governmental bodies, non-governmental organizations, and individuals – to
urge forceful intervention in the name of human rights and to manage the aftermath of that
intervention. International law is not just forceful or violent; it does not simply represent a
(re)turn to the rational and objective rule of law. It also serves as a form of pedagogy, a
discipline, and a project of reform.
A. Transitional Administration

Humanitarian interventions have come to underpin the self-image of both the international community and (international) law “as a guarantor of peace, human rights and democracy” (Orford, 2003, p. 19). In humanitarian intervention, the international community – broadly defined – “constitutes itself in these texts of intervention and reconstruction as a designer of new worlds, a solver of problems, and a saviour of suffering peoples” (2003, p. 142). This self-identification as problem-solver and guarantor of peace is most obviously the case in the most extensive interventions, such as East Timor, Kosovo and Bosnia, where the international community, through the UN or otherwise, sets itself up as a transitional governor for the nation or territory in conflict. It embarks on a massive project of reform, drawing in (and developing) a range of governmental and non-governmental actors as partners in governance.

The intervention in Kosovo is perhaps the most extensive intervention to date, and provides a useful example, with the UN establishing itself as the de facto government of Kosovo within the territory of Serbia (though not in any way subject to its oversight). After a 78-day bombing campaign by NATO to end the ethnically-based conflict between Kosovar Albanians and Serbs, the UN Security Council decided to deploy in Kosovo both an international military presence and a civilian presence to provide basic civilian administrative functions. The language of the Security Council Resolution encapsulates the project of governance undertaken:

[The Security Council] [a]uthorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo (Res. 1244 (10)).

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16 Paragraph 11 enumerates the main responsibilities of the civil presence: (a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo ….; (b) Performing basic civilian administrative functions where and as long as required; (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections; (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other
The mission is transitional, temporary, on behalf of the local population, and designed to cultivate local democratic government. To accomplish these goals, the UN mission in Kosovo (UNMIK) initially organized itself in four “pillars.” A mission summary on “UNMIK at 18 Months” explains:

In a first-ever operation of its kind, UNMIK initially brought together four “pillars” under United Nations leadership. With the emergency stage over, Pillar I (humanitarian assistance), led by the Office of the High Commissioner for Refugees (UNHCR), was phased out at the end of June 2000. The other pillars are:

Pillar II: Civil Administration, under the United Nations

Pillar III: Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE)

Pillar IV: Reconstruction and Economic Development, managed by the European Union (EU)

This unique partnership has made it possible for the mission to set in motion the development of Kosovo's democratic institutions and lay the foundations for medium and long-term social and economic reconstruction even while the urgent phase of humanitarian assistance and emergency relief was taking place. (UNMIK, Background)

In this partnership, the ‘project’ of Kosovo is divided among the various international bodies – the UN, the UNHCR (a UN agency), the OSCE (a regional inter-governmental organization of Europe, which also includes the United State and Russia), and the EU (a regional inter-governmental organization of Europe).

In December 1999, the UN mission created the Joint Interim Administrative Structure (JIAS) to deliver administrative services.17 This structure further reflects the ‘assemblage of peacebuilding activities: (e) Facilitating a political process designed to determine Kosovo’s future status …; (f) In a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement; (g) Supporting the reconstruction of key infrastructure and other economic reconstruction; (h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid; (i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo; (j) Protecting and promoting human rights; (k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo (1999, p.3-4).

17 UNMIK lists the component pieces of JIAS and their various roles as follows:
actors’ common in projects of governance, though here the emphasis is on demonstrating partnership between international and local authorities. The head of the UN mission also heads the JIAS and retains an absolute authority. However, each administrative department has shared leadership, with two co-heads, one Kosovar and one UNMIK international staff. Moreover, the Kosovo Transitional Council – whose members are “a microcosm of Kosovo’s political, religious, ethnic and civic communities” – offers consultation and “a testing ground for democratic procedures and tolerance-building.” The JIAS also includes an advisory council, municipal assemblies and boards, and various other UNMIK administrators. Here, the ‘international’ begin acting in (unequal) partnership with the ‘local’ in crafting and implementing the project of reform.

Hammer (2007) notes a trend in international law to reshape the human rights regime to a broadly defined human security regime, which more closely exemplifies Foucault’s notion of governmentality, and which is reflected in the most broadly mandated field missions. In that context, the relationship with the sovereign – here the international administrator(s) rather than the state – alters from one of function to one of transaction, and “the area in which the human dwells is the focus, with the task falling on the government, international organizations, non-

- JIAS is headed by the Office of the SRSG [the UN Head of Mission, the Special Representative of the Secretary General].
- The Kosovo Transitional Council (KTC), the highest-level consultative body of JIAS, provides Kosovo-wide oversight. Its 36 members are a microcosm of Kosovo’s political, religious, ethnic and civic communities. The KTC’s weekly discussions about day-to-day concerns of Kosovars serve as a testing ground for democratic procedures and tolerance-building.
- The Interim Advisory Council (IAC) serves as an advisory cabinet for the SRSG and as an executive board for the JIAS. It makes recommendations to the SRSG to amend applicable law and frame new regulations. It also proposes policy guidelines for the 20 Administrative Departments.
- Each of the 20 Administrative Departments, each led by two Co-Heads, one Kosovar and one UNMIK international staff. Under a formula designed to reflect the diversity in Kosovo, the local Co-Head positions are shared among the three main Albanian political parties, three national communities (Serb, Bosniac and Turk) and an independent.
- At the Local level, 30 Municipal Assemblies were elected on 28 October 2000. In compliance with UNMIK regulations and supervised by their respective UNMIK municipal administrators, they subsequently appointed professionally qualified Chief Executive Officers and members of their Municipal Boards.
- The Municipal Boards act as the executive bodies at the local level and are responsible for the day-to-day running of services.
- UNMIK Administrators represent the SRSG and ensure compliance with UNMIK regulations and Security Council resolution 1244 (UNMIK, UNMIK-JIAS, Joint Interim Administrative Structure).
governmental organizations and the populace at large to become active producers within the overall political system” (2007, pp. 110-111). Even a quick review of the Official Gazette of the UN Mission in Kosovo, the official and lengthy list of regulations and administrative directives promulgated by the international authorities, reveals intervention on a wide range of topics from ‘private practices in health’ to the free movement of persons to animal welfare. This wide reach illustrates the scope of intervention beyond keeping the peace, or even implementing the rule of law, and into the realm of managing the population.

**B. Capacity-Building**

From one perspective, it is possible to view humanitarian intervention and the importation of an international human rights legal framework as a means to reform the nation (and its population) into an idealized, modern, even rationalized form of society. However, if “human rights are a means to engage the social discourse in providing a shape and context to society,” then the relationships of power and the actors multiply (Hammer, 2007, p. 95). Because of this diffusion of power, another perspective contends that human rights may also be used as a counter-hegemonic tool of social struggle (2007, p. 93). The role of law in such projects of governance is, thus, more ambivalent. For many advocates and activists, and many scholars, human rights work turns away from the (violent and bureaucratic) law and becomes a project and vision of ‘global civil society.’ Others have suggested that the turn away from law shifts the focus to broader notions of justice (Kurasawa, 2007, Fraser, 2005).

Whether in a framework of human rights or human security or justice, an approach centered on governance moves away from the state-centric and law-centric approach that is traditional in international law and incorporates other actors, including non-governmental organizations and other actors of global (and local) civil society. Nonetheless, some are skeptical about the increasing role of civil society and the emancipatory potential this
transformation may represent. When a shifting combination of government and non-governmental actors increasingly deploy governmental and disciplinary technologies, the interests of civil society and the state (or other sovereign) may become more and more aligned. Civil society, then, becomes one more “domain for the articulation and formation of the people’s interests through governmental technologies” (Cheah, 2006, p. 256). Human rights, in particular, are often “pedagogically induced” through efforts to promote rights protection and (re)train the population (2006, p. 232).

This same process is at work at the international level. Whether they are the benign force some imagine or more problematic, the organizations and networks of global civil society are significant in both the development and the implementation of international law, and especially human rights law. In humanitarian intervention, non-governmental organizations and other actors of global civil society work in partnership with governmental and inter-governmental authorities to monitor human rights violations, build local capacity, and transform the legal and regulatory landscape. As such, they reflect “emerging forms of governmentality” that wield power through knowledge, information, advocacy, and expertise (2006, p. 126).

In fact, the distinctions between governmental and non-governmental work become particularly blurred in the international arena generally and in humanitarian intervention specifically. Many human rights officers begin their work in the field through more easily accessible jobs with NGOs before transitioning to work directly for an IGO field mission. The field officers’ descriptions of the differences in the daily operations of the two types of organizations reveal the continuing influence of the authorized voices of law and power in the field, despite the growing influence of civil society. Nicholas discusses the changes he noticed in moving from an NGO to the IGO field mission in Bosnia:

Nicholas: We had money in the IGO. We had cars and radios and working computers, and a budget. An NGO is constantly a struggle with money. And it was really a relief not to have to constantly worry about the financial side and actually be able to focus on
work. And have everything else taken care of. … I could really just focus concretely on the work and get really involved in policy and discussion. And then the second big thing was access. In the NGO you do not have access to the president of the courts and/or the police chief or whatever local leader or politician you need, whereas in the IGO, it was pretty good access. Whether we were more effective, I don't know, but certainly having that access in my view was very important and a stark difference between the NGO and IGO world.

Inter-governmental organizations offer substantial material benefits to staff – money, equipment, personnel and so on – and those benefits increase the appeal of the work, as well as the perception of its prestige. IOGs also offer stature and access, information and power, as the authorized representatives of the international community in the field.

Cristina, a human rights officer who also moved from an NGO to an IGO field mission in Afghanistan, at first felt removed from the local population in her everyday work due to heightened security procedures for UN personnel (living in a secure compound, using drivers, etc.). In light of the on-going conflict in Afghanistan, those security procedures are even more extensive than those typical in post-conflict missions. However, she notes that the tradeoff comes in increased access to local (and international) decision-makers:

Cristina: For me it was a shock to the system mainly because by working with the UN and especially being based in Kabul you actually had access to a lot of information in terms of political information as well. And you understand much better which you don't have in an NGO. I mean, you can have an idea or conspiracy theories but you don't have direct access to political developments and what's happening. … It removes you physically, but on the other hand because you are in a field office, your job is actually to go out to the field. … So basically actually engaging with governments, actors and with the various actors there that affect human rights situations in those areas. And I don't know with the provincial councils with the, you know, it's actually having interactions with the, if you want, with the local authorities which I didn't have before as an NGO.

Interestingly, this change in role from NGO to IGO also alters the nature of her interaction with the local population:

Cristina: [The NGOs] were doing mainly development and water and sanitation work. And so of course you have much more access to people. … Whereas with the UN, I suppose, yes, you do, you have access to the people because they report cases to you, but it’s more in context with victims. So they come to you because they are a victim of human rights abuses.
The power to govern, to manage, shifts with the role rather than with the individual in these cases, from advocate to authority, but, whether in IGO or NGO role, the work continues to share a focus on (re)shaping and (re)building the local population.

Humanitarian intervention, like other projects of governance, administers the local population “through countless, often competing, local tactics of education, persuasion, inducement, management, incitement, motivation and encouragement” – all deployed by ‘international’ experts (Rose & Miller, 2008, p. 55). For human rights officers in field missions, this often takes the form of training and mentoring:

*Stephen*: I made it my point to do external training, not internal, I didn't want to get involved in training human rights officers. First, I really thought that in Kosovo, I really had to get out there and figure out, you know, what was in people’s heads with regard to ideas like human rights, and democracy and so on, and how does it all fit together. … I probably did over 80 trainings for everything, NGOs, civil servants. I trained 500 civil servants in all day trainings on human rights. I worked with social protection officials, I worked with um, elections, human rights in elections, anybody who wanted a human rights training in relation to their work. I did a lot of work with a democratization department, um, because we try to shed the light between democracy and human rights, how it relates to each other, so every time I got a chance to do a training, I did one.

Training and capacity building are common features of field work, and most of that training is focused on local authorities and institutions, as well as local staff of the field mission. As in law’s bureaucracy, it is the ‘international’ expert who offers the education, persuasion and motivation. However, here too, the idealized notion of ‘international’ expert often seems hollow in the field, with capacity-building left subject to the political and personal whims of mission staff. Like other field officers, Cristina notes the importance of capacity-building, but she contrasts different approaches among international staff:

*Cristina*: People who are left behind doing the work for their own country … have to be able to do the work better than you, and if you haven't been able to bring them to a level, unless they already are, to bring them to a level that they can actually argue the same way and obtain the same results then you haven't done your job properly really, I don't think. … it’s very hard work to make sure that you're, first of all, to motivate, second of all on the issues that might be a little bit difficult, like freedom of religion or freedom of expression, sometimes you have to spend a lot of time with them [national staff] to actually discuss things through. Not preaching to them and telling them this is what you
have to say because this is what you have to say, but actually sit down with them … It takes a lot of effort and a lot of time and not everybody is going to do that. Not everybody sees that as a part of the job.

Tellingly, as she provided examples, Cristina variously characterized different approaches to ‘capacity-building’ as professorial, managerial and supervisory. This language of professional hierarchies underscores the relations of power implicit in such activities.

The simultaneous engagement in and disquiet with the project of governance that is illustrated by Cristina’s comments was echoed by other human rights officers. Anthony, who worked in missions in the Balkans and elsewhere, explains:

*Anthony:* I was very uncomfortable in kind of forcing my view of judicial reform onto a country that I don't understand, that I have never spoken to an elected official of, or an unelected official, or civil society. But a lot of people had, so you had to rely on them. … And you have to figure out what the people who, in the system, one, are let's say are right thinking, or the ones who you know are using the human rights approach and these sorts of things, or understand what good government is. You find them. You have to identify them, and you have to work with them and help strengthen them. Not necessarily through anything political, but also just build them up and give them the resources and try and support the nationals working on these things. And also when you are working in working groups and so forth, the more you can have it be nationally led, I mean as much as it can be, and still remain on track and meet the international standards, then it's much more palatable to the public as a whole I think in the longer term. I mean, it sticks.

As Anthony’s comments reveal, projects of governance do not exist independent of law’s force and bureaucracy. Human rights officers are often uncomfortable with this co-existence, particularly the forceful imposition of the international regime of human rights protection. It does not fit with their own sense of the law and their role in developing and implementing it. Moreover, it does not always appear helpful to their larger goals to adopt or be affiliated with those approaches. Instead, officers prefer to find the ‘right thinking’ local actors, support and develop their capacity, and establish partnerships. This strategy is both more palatable to the officers and to local actors, and ultimately, appears more effective.

In humanitarian intervention, in the space created and maintained by violence, the international community then creates government as the “matrix within which are articulated all
those dreams, schemes, strategies and manoeuvres of authorities that seek to shape the beliefs and conduct of others in desired directions by acting upon their will, their circumstances or their environment” (Rose & Miller, 2008, p. 54). These tactics or techniques of governance include law, and often it is a dominant feature, but it remains difficult to disentangle governing law from forceful and bureaucratic law. International efforts to establish ‘the rule of law’ and protect human rights are consequently also framed as projects of reform and (re)education. Formal governmental, inter-governmental, and quasi-governmental institutions manage and direct these projects, but they do not do so alone. They work in cooperation or partnership with a vast network of other actors that operate at all scalar levels, from the local to the global. Not just the nation, but also the population, become subject to a project of reform and management in the name of human rights and the rule of law.

IV. Conclusion

The pervasiveness and embeddedness of law in the everyday can render its multi-dimensionality opaque, if not invisible – both domestically and internationally. In the case of international law, fundamental questions, such as whether international law is really law at all, encourage deeper inquiry and a closer view. Drawing upon contributions of theorists from a range of disciplines, a triangular view of law emerges. Law is enmeshed with bureaucracy and rationality, with governance and reform, and with violence and force. If that is law’s nature, then international law is indeed law, and humanitarian intervention reflects that multi-dimensionality. However, even as law’s multi-dimensionality responds to one major question, it raises new, and perhaps more difficult, questions. If law exists in relationship with violence, what is the significance of that relationship for international human rights law and humanitarian intervention? If international law is rational and bureaucratic, what are the implications and human costs of the imposition of this framework in post-conflict settings? Finally, if law and
governmentality are implicated in one another, what are the consequences of the increasing power of inter-governmental and non-governmental actors in projects of intervention?

Humanitarian intervention offers a revealing contemporary example of law-making and law-preserving violence as well as the processes of bureaucratization in post-conflict areas. Related human rights endeavors, especially efforts in nation-building, illustrate the pervasiveness of governmentality and the ways in which it affects power relations at the global level. These are important questions that are not easy to answer but that suggest avenues of inquiry in tracing the relations of power at work in humanitarian intervention.
CHAPTER 3: THE TEXTUAL MEDIATION OF HUMANITARIAN INTERVENTION –
FORMAL LAW, MANDATES AND REPORTS

Law in all its dimensions is textually-mediated, and this holds true for international law as well. Law may often ‘speak’ through its experts – judges, lawyers, legislators and administrators – but it represents itself and accomplishes much of its work through the texts it produces – court decisions, legislation, regulations, memos, briefs and other documents. In humanitarian intervention, these familiar domestic legal texts appear in the local context as international interveners and their domestic counterparts work to (re)establish the ‘rule of law’ and rebuild domestic institutions. However, these local texts of law are profoundly shaped and coordinated by and through the international legal texts of intervention such as treaties, peace agreements, Security Council resolutions, and reports. Humanitarian intervention requires the massive mobilization of personnel and resources from around the world in complex projects of peacekeeping, nation building, protecting human rights and re-establishing the rule of law. This substantial undertaking is authorized, set in motion, coordinated and concluded through texts.

The texts of international intervention are active, dynamic mediators; they exist in networks of connection and creation. Texts beget other texts, establish institutions, and mobilize individuals, agencies, and armies. This chapter examines the significance of texts in structuring practices and relationships in humanitarian intervention. It follows the triangular dimensions of law in tracing the networks of texts, beginning with the formal law of human rights (and other) treaties, situated between law’s violence and governmentality. Formal law becomes effective in the field through the law-making force of intervention, but it imports a normative framework for the new (or newly conceived) nation. The mandate, reflected in UN Security Council resolutions, is positioned between law’s violence and bureaucracy, drawing upon the authoritative force of the UN and empowering the creation of civilian administration in
the field. Finally, the reports prepared in the everyday work of the field are located between law’s bureaucracy and governmentality, as they fulfill institutional objectives and monitor the local population. (Figure 8 illustrates triangular law as text).

**Figure 8: Triangular Law as Text**

The formal texts of international law – international treaties – enable, authorize and bound humanitarian intervention. Through these multi-lateral treaties, the international community of sovereign states (and, to some extent, other actors) set a normative framework that extends from the global to the local and that serves to justify forceful intervention in situations of conflict to maintain peace and protect human rights. Peace Agreements, often negotiated under international auspices and under threat or actual force, typically manifest a form of sovereign consent and ‘invitation’ to international intervention. Increasingly, these agreements also approve the creation of a new legal framework, a hybrid of international and national norms and institutions. The intervention itself is then coordinated through Security Council resolutions that establish the mandate of the mission and set in motion the networks of action that create a field mission and accomplish its work. These top-down coordinating texts – treaties, agreements and resolutions – generate responsive texts in the form of field reports.
Such reports purport to represent the local situation on the ground, and often, attempt to evaluate that situation in light of the coordinating texts of law and mandate.

All knowledge is socially organized, and social theorists have long argued that its “characteristic textual forms bear and replicate social relations” (Smith, 1999, p. 94). Texts do not exist outside of social relations, including relations of power, but are created within, reflect and reproduce those relations. Consequently, texts are essential to the implicit or explicit coordination of individuals, groups and institutions. In short, texts are important not just for what they say, but also for what they do. The coordinating role of texts is dual or dialogic (Smith, 2005). A text is active first in the local setting of its own creation, where it is both a reason for and a product of a larger course of action. It is again active in other settings elsewhere and at other times each time the text is read, cited, circulated and published, researched or otherwise encountered. In each encounter, the text is active as it conveys its meaning(s) and generates responses.

In one sense, a text (short of amendment or modification) remains always the same, fixed and non-responsive. Although different people may interpret or read the text differently at different times, these differences presuppose a constant text, and it is this constant text that allows for the standardization of work across time, distance and location (Smith, 2005). Through the standardizing mechanism of institutional discourse, institutional texts “impose an accountability to the terms they establish” (2005, p. 118). Institutional discourse objectifies and depersonalizes the actualities of individual experience. In law, this has both a neutralizing and a universalizing effect (Bourdieu, 1987). The “textual real” displaces the actualities of experience (even for those who may have participated) (Smith, 2005, p. 28). In turn, “the text becomes autonomous” – “[i]t is commented upon; it interposes itself between the commentaries and reality” (Bourdieu, 1987, p. 845).
The materiality, replicability and constancy of texts are essential to their coordinating role in exercising institutional power. The text is, thus, both constant and active. Different texts, of course, extend their reach in different ways and to varying extents – they exist on different scales, operate unevenly, overlap and conflict with one another, demand interpretation, and are transformed through these processes. This chapter considers the central texts of humanitarian intervention in field missions and the networks and interconnections they produce as they coordinate the field. All of these central texts – from the international treaties, to the institutional resolutions and the quotidian reports – are characterized by the institutional discourse noted by Smith (2005) and Bourdieu (1987). Authors and actors disappear behind nominalizations, generalizations, expressions of ‘the factual,’ and impersonal and passive language. Consequently, the expert interpreters of these texts take on significant discretionary authority as they navigate the indeterminacies and explore the opportunities and limitations of the texts (Bourdieu, 1987). Together, the texts and experts of humanitarian intervention expand triangular law into the prism of law in the field. (Figure 9 situates triangular law as text at one end of that prism; see Figures 11 and 12 in chapter 4 regarding expertise).

![Diagram of Texts of Humanitarian Intervention in the Field](image)

Figure 9: Texts of Humanitarian Intervention in the Field
This project examines three types of institutional texts that coordinate across scales from the local to the global in humanitarian intervention. Because of their apparent stability, texts seem to offer certainty in uncertain contexts, particularly authoritative texts such as the texts of the law and official proclamations of IGO institutions. That certainty has even greater appeal in humanitarian intervention, a context often characterized by instability, insecurity and indeterminacy. However, careful attention even to these most ‘certain’ texts reveals an embedded indeterminacy in language and meaning, an indeterminacy that may both support and undermine existing relations of power. The international experts who are deployed by and who create and use the texts of humanitarian intervention thus appear in some aspects of this discussion, however fuller elaboration of their roles is left until the next chapter (Chapter 4). Instead, this chapter focuses on the dominant texts – and networks of texts – in international law to examine the textually-mediated relations of power that underpin humanitarian intervention.

I. **Law and Peace**

The texts of law are formal and authoritative texts. They present themselves and are presented as official directives of the state, author-less and enduring (if not timeless), with the power to mobilize and direct not only the apparatus of justice but wider systems of administration. “The power of law is special,” and it reflects and reinscribes the established order by enshrining that order in its texts (Bourdieu, 1987, p. 843). For its effectiveness, it relies on a form of ‘faith’ in the law by both laypersons and its professionals, those who are dominated by it and those who wield it, a “belief in the neutrality and autonomy of the law” (1987, p. 844). Legal texts are then centrally connected to formal relations of ruling – and their status as texts, as written and replicable texts, plays a decisive role. Their constancy and transmissibility allows for standardization – even ‘universalization’ – across time and space (Bourdieu, 1987, p. 844, Smith, 2005, p. 166). And of course law is often backed by force.
In the context of international law, their formal status as law may be contested at times, but they remain centrally connected to relations of power. National sovereignty and human rights are both enshrined in international law, and that law is invoked whenever any intervention into the ‘sovereign’ affairs of a nation is contemplated or authorized. This section focuses on the uses of major human rights treaties, often brought into domestic law of nations in conflict through peace agreements, as representations and manifestations of the law in humanitarian intervention. It provides an overview of the existing framework of international law and its key texts, and it traces operations of power through the indeterminacy of language and the contested universality of international standards.

A. The International Legal Framework

There is a degree of uncertainty in international law that is not equally visible in domestic law in light of the recurring questions about its status as law. In many respects, international law is developed and enforced in ways similar to (if not identical with) domestic law, but the lack of a global sovereign raises lingering doubts about the effectiveness, even the force, of international law (Orford, 2003). International law relies more conspicuously upon a shared consensus and normative framework for enforcement than domestic law. Perhaps because of the lack of a global sovereign, international law sometimes seems preoccupied with the sovereignty of nation states. In fact, the sovereignty of nation-states forms a bedrock principle of public international law (Orford, 2003, Brownlie, 2003). Sovereignty in this sense is integrally related to principles of equality and autonomy and to the idea of territorial integrity. As understood in international law, sovereignty comprises the authority both to undertake international obligations and to determine how best to implement them at the domestic level.
(Heller & Sofaer, 2001, Koh, 1997). This understanding is enshrined in the UN Charter, the constitutional document of the United Nations.¹⁸

Consequently, contemporary international law operates primarily as a voluntary, consent-based regime. States take on obligations either by formal, written agreement through the treaty process or by customary practice.¹⁹ Although sovereignty continues to be a foundational principle of international law, understandings of its scope and meaning have evolved over time, and the state-centric focus at the international level has been counter-balanced to some extent by increased recognition of the individual as a subject of international law. The development of international human rights law has been fundamental in shifting the balance in this way. Nonetheless, for the most part, international human rights law operates in the same manner – through voluntary consent of nation-states – as other areas of international law.

The formal corpus of human rights law is actually quite discrete and largely treaty-based. The protection of internationally recognized human rights has been enumerated as a basic purpose of the United Nations in its Charter since its founding in 1945, and in 1948, the UN General Assembly adopted the Universal Declaration of Human Rights. Shortly thereafter, drafting committees were tasked with developing a binding treaty on human rights, and ultimately, two treaties were drafted. These three texts – the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976), and the International Covenant on Economic, Social and Cultural Rights (1976) – are considered the ‘International Bill of Rights.’ The Covenants are both binding treaties with widespread ratification. Although the Universal Declaration of Human Rights is not a binding treaty, many

¹⁸ Article 2 of the Charter states that the UN “is based on the principle of the sovereign equality of all its Members” (United Nations 1945). It also prohibits the use of force against the “territorial integrity or political independence” of any state (Id. at art. 2(4)).

¹⁹ For example, the constitutional treaty of the International Court of Justice (annexed to the UN Charter) identifies the sources of international law as international agreements, customary law, and general principles of the major legal systems of the world (Art. 38(1)).
scholars and practitioners believe it has achieved the status of binding customary international law (Sohn, 1982).

Customary international law and developing ‘soft law’ supplement the primary formal texts of human rights law. These are somewhat unique features of international law that do not have exact counter-parts in domestic law and that contribute to the indeterminacy of human rights law. Customary international law is a small and unwritten body of law based on state practice under a sense of legal obligation (opinio juris); it is generally considered binding on states. ‘Soft law’ is the term used to describe emerging international law, especially in the area of human rights (Chinkin, 1989). Because international law is not developed in a formal legislative process with an arguably clear line between law and not-law, there is some recognition of law-in-the-making. Declarations, statements, and other non-binding texts proliferate in human rights and are considered an indication of emerging norms and rules.

A degree of indeterminacy is therefore embedded within human rights law, and it is apparent even within the most stable texts of law, the international human rights treaties. Although their effectiveness may frequently be challenged, the authoritative status of these central texts is seldom questioned. Like many legal texts, treaties reflect an “extraordinary elasticity … which can go as far as complete indeterminacy or ambiguity” (Bourdieu, 1987, p. 827). For example, a key feature of many human rights texts is the predominance of general statements or lists of rights. This is most clear in the Universal Declaration, which enumerates rights in general aspirational language, such as:

Everyone has the right to life, liberty and security of person (1948, art. 3).

Everyone has the right to freedom of movement and residence within the borders of each State (1948, art. 13(1)).
Such language, while perhaps stirring and inspirational, raises immediate questions of meaning and practice. For example: What is life or security? What is the scope of liberty? Or even, who is a person? Movement to where, and how?

The two Covenants, as binding treaties, attempt to more clearly outline the parameters of enumerated rights, but the language often remains very general. For example, article 6 of the International Covenant on Civil and Political Rights addresses the right to life that is also articulated in the Universal Declaration (article 9 addresses liberty and security of the person).

The Covenant states:

> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (1976, art. 6(1)).

This provision is followed by five additional subsections that further elaborate the scope of the right (primarily by addressing issues related to the death penalty). Nonetheless, the scope of a ‘right to life’ remains indeterminate and contested, protected by law (in this case, domestic law) that reflects the priorities and values of the particular sovereign order.

Domestic law, particularly constitutional law, may contain similar general and ambiguous provisions regarding rights. In that context, the uncertainty is bounded by other domestic legislation, administrative regulation or court decision that also reinforce the established relations of power. As Bourdieu suggests, this ambiguity in law augments the power of legal professionals, who categorize and ‘reveal’ rights (1987, p. 833); in fact, the facility with negotiating such ambiguities or uncertainties is a common characteristic of expertise (Latour 2005). The indeterminate and elastic texts establish the basic vocabulary and framework of legal rights and mobilize the professional experts to interpret and implement them. In international law, this indeterminacy functions along equivalent lines. However, the relations of power stretch, expand, and layer as the authoritative voices of the international community are both multiple and more diffuse.
These relations of power reinforce and challenge national sovereignty, even as they seek to expand human rights. Under international law, once a state has undertaken human rights obligations, either by treaty or under customary international law, the state has a responsibility to respect and ensure those rights. The scope of state responsibility has been the subject of decisions by international tribunals and is also addressed explicitly in the treaty language of the two Covenants. For example, the general language of obligation in the International Covenant on Civil and Political Rights requires each state party “to take the necessary steps, in accordance with its constitutional processes … to adopt such laws or other measures as may be necessary to give effect to the rights” enumerated (1976, art. 2(2)). More specifically, state parties agree to provide effective domestic remedies for violations of rights, including a hearing before a competent domestic authority (judicial, administrative or legislative) and the enforcement of such remedies (1976, art. 2(3)). There is, essentially, a commitment to change the domestic legal system in order to comply with, implement and enforce the international obligations undertaken.

In addition, there are international mechanisms to monitor states’ compliance with international human rights obligations – both ‘treaty bodies’ such as the Human Rights Committee (created by the International Covenant on Civil and Political Rights to monitor compliance with the Covenant) and ‘non-treaty bodies’ such as the Human Rights Council (a subsidiary body of the United Nations to monitor general compliance with international human rights obligations). However, these international mechanisms are generally considered to be

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20 The provision provides a fuller elaboration of the scope of state responsibility:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant (1976, art. 2(1-2)).

The language of obligation in the International Covenant on Economic, Social and Cultural Rights is similar but more focused on ‘progressive realization’ of rights (1976, art. 2).
avenues of last resort. Their role is primarily to establish and develop normative standards that are then implemented by the domestic sovereign.

Thus, while sovereignty is not without its limits, particularly in the area of human rights, it remains a fundamental feature of the international legal regime. And the indeterminacy of international law typically operates in the service of sovereignty. States remain the primary actors on the international level, both in developing and implementing international law, and they retain tremendous latitude in managing their domestic affairs and in how they treat their citizens and those subject to their control (Mahoney, 1998, Letsas, 2006). The indeterminacy of international human rights law tolerates a wide range of state practice and permits sovereign challenges to the meaning and scope of human rights and subsequent responsibilities. As happens domestically, advocates who seek to expand rights and challenge the status quo have, at times, embraced and strategically engaged this indeterminacy. While this has facilitated the diffusion of power to multiple sites of interpretation, advocacy and management, it has also served to reinforce the existing regimes of power that give dominance to the law and its experts. It has also given new energy to old forms of ruling relations at the global level.

**B. Negotiating Peace and Law**

International law, including human rights law, may coordinate and be coordinated by traditional understandings of sovereignty. However, even with traditional understandings of sovereignty, the rhetoric of state equality and autonomy has been belied by the realities of geopolitical power relations. Not all sovereigns are equal. At the time of the creation of the UN and the adoption of the UN Charter, colonialism was still in formal existence (Anghie, 2005). Even as it asserts sovereign equality, the UN Charter contains provisions relating to non-self-governing territories and territories held under trusteeship (UN Charter, Chs. XI, XII). Despite its language of inclusiveness and equality, the United Nations and the current international
human rights legal regime profoundly reflect the values and priorities of the “West” (or now the “Global North”) (Mutua, 2001, Zifcak, 2009). This power imbalance is reflected in both procedure and substance. Procedurally, there is the failure to include Other (“non-western”) perspectives in the process of developing the initial human rights normative and legal standards and system of protection that remain dominant today; substantively, there is the enduring claim that the existing standards and system reflect their “western” philosophical and theoretical origins and priorities (An-Na’im, 1990, 2001). Most African and Asian nations were not founding members of the United Nations due to the persistence of colonialism, and they did not participate in the formulation of the Universal Declaration of Human Rights. When they did subsequently participate, the basic framework with its embedded assumptions was already firmly in place. The powers of the West/Global North remain dominant throughout the UN, most obviously in the Security Council, but as a practical matter throughout its institutions and agencies, and consequently, in its authoritative texts (Zifcak, 2009).

Nonetheless, substantively, many of the human rights instruments – and most human rights professionals – assert the universality of human rights standards. For example, the universality of rights is explicit in the documents of the International Bill of Rights:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (UDHR 1948);

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms (ICCPR 1976).

In 1993, the principle of universality was also re-embraced at the United Nations World Conference on Human Rights. 21 Many of the human rights field officers interviewed for this project offered a similar understanding. Anthony explained:

21 Its official outcome document proclaims: “The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other
**Anthony:** I am still uncomfortable saying anything other than you have to make sure they meet all the highest standards. I also know for a fact that that has never worked. But I mean, I can’t bring myself to say, well, if we just make them a little less pretty that would be okay. And we'll let somebody else worry about it later. I just can't say that. … It's like some of the standards don't count. You can't protect a few of the human rights. They're human rights because they're all right, not a couple of them.

Anthony elaborates an uncompromising set of the ‘highest’ standards as definitional for human rights in an echo of the language of many human rights texts that assert the universal, inalienable and indivisible nature of human rights.

This claim of universality is typically said to derive from the very nature of human rights, which are premised on a common and shared humanity, and a recognition of entitlement to basic human dignity equally available to all regardless of distinctions such as race, gender, religion, and other fundamental characteristics. That is the purported normative basis for the claim to universality in human rights, but the claim of universalism is also a characteristic feature of law (Bourdieu, 1987). Because law relies on symbolic power as much as upon actual physical powers of enforcement, it depends on the complicity or acquiescence of those it dominates. The “seal of universality” works to ensure its effectiveness by generalizing its practice and expression (1987, p. 845). This quest for universality is simply more explicit and overt in the context of international human rights, which relies so heavily upon symbolic power to extend its reach across geographical and social space.

However, international and domestic human rights practitioners often struggle with incorporating these purportedly ‘universal’ values into particular national contexts. Sweeping claims to universality are sometimes resisted in the name of ‘culture,’ often by governments that seek to avoid international human rights obligations (Mutua, 2001, Powell, 1999, Sen, 1997). These governments – like all sovereign governments – have the opportunity to act on that claim by declining to participate in a particular human rights treaty or by excluding the application of instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question” (World Conference on Human Rights 1993, para. 1(1)).
portions of the treaty through formal ‘reservation.’ But increasingly, the idea that ‘international’ is the same as ‘universal’ has been challenged more broadly by those who problematize or dispute the hegemony of the contemporary Western/Northern view of international human rights (Anghie, 1999, Hyndman, 2000, Razack, 2004). While these critiques have increasingly gained traction in scholarly discussions, they seldom penetrate the institutional discussions – or texts – of human rights and humanitarian intervention. In a context of humanitarian intervention, where debates about sovereignty, universality and inclusiveness should take on heightened urgency, there has been a growing trend towards aggressive intervention in the name of international human rights.

In humanitarian intervention, traditional concepts of sovereignty and the rule of law are subverted. Human rights law becomes binding on the purportedly sovereign nation not through typical processes of consent and ratification, followed by domestic implementation, but rather through peace agreements and the coordinating practices of international field missions. In theory, a negotiated agreement involves the consent of the parties, but such ‘consent’ is not the sovereign autonomy generally assumed (and assured) by international law. In fact, sovereignty in such contexts is contested or even over-ridden; consent may be generated, at least in part, by force or through an interim international administration authorized by Security Council resolution. The formal legal status of peace agreements – both domestically and internationally – is unclear, perhaps even “dubious” (White & Odello, 2007). In practice, however, they are often authoritative. Moreover, it has become standard to include specific human rights provisions in peace agreements and, in many cases, to link those standards to particular international human rights treaties and texts (White & Odello, 2007, Hannum, 2008).

For example, the peace agreement that framed the end of the conflict in East Timor is concluded between Indonesia and Portugal (the former occupying state, and the former colonizing state) and also signed by the UN Secretary General. It includes a specific section on
“Promotion and Protection of Human Rights and Fundamental Freedoms” that enumerates protected rights

as set forth, inter alia, in the Universal Declaration of Human Rights, the 1993 Vienna Declaration on Human Rights and the Decree of the People's Consultative Assembly No. XVII/MPR/1998 Concerning Human Rights (Part IV, Art. 46).

The peace agreement involved in the Kosovo conflict is structured differently but seeks to import international human rights standards into domestic law more extensively. The agreement references international human rights in its framework provisions, but it also establishes a new constitution for Kosovo in Chapter 1 (although Kosovo’s political status remains contested, with Albanian Kosovars claiming independence and the Serbian government considering it still part of Serbia). That new constitution provides:

1. All authorities in Kosovo shall ensure internationally recognized human rights and fundamental freedoms.
2. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Kosovo. Other internationally recognized human rights instruments enacted into law by the Kosovo Assembly shall also apply. These rights and freedoms shall have priority over all other law.
3. All courts, agencies, governmental institutions, and other public institutions of Kosovo or operating in relation to Kosovo shall conform to these human rights and fundamental freedoms. (Article VI).

This approach of directly incorporating international human rights treaties into domestic law and, in fact, giving them priority over domestic law echoes the approach adopted in Bosnia and Herzegovina, another former Yugoslav republic under international administration (the Dayton Framework Agreement for Peace in the Bosnian conflict is discussed more extensively in Chapter 2).

In the field, peace agreements and the human rights regimes they create or empower have substantial authority and act as law. However, the administrators charged with implementing them also face resistance to these ‘universal’ rights despite the ‘agreement’ of domestic authorities. This resistance comes in myriad forms – at times framed as arguments
about ‘culture,’ but more commonly framed in terms of the post-conflict context or in terms of an underlying double standard (Howen, 2007, Line, 2007). Several human rights field officers recounted experiences with local counterparts or trainees that raised these tensions. Stephen, a human rights field officer who worked in Kosovo after the NATO bombing campaign that led to the international administration, tells a story of working in an area of Kosovo dominated by ethnic Serbs:

*Stephen:* I had to give a human rights training for civil servants in February of 2000 – the conflict ended, you know, basically July of 1999. The wounds were still fresh on both sides of the river. … When I went to the Serbian side, you can imagine an American going [in after the bombing] trying to talk to these people about human rights. … At the end of the day, there was one civil servant, he was sitting across from me all this time, and he looked at me and he looked at me, and he said, you know, I think you mean well, but he said he checked the universal declaration and he said, your country did this and this and this …

Although the conduct of the NATO campaign has been widely critiqued, the concern expressed by a local inhabitant about the double-standard embedded in claims of universality is dismissed as a feature of the ‘fresh wounds’ of the conflict, rather than engaged as a meaningful criticism of the structural and normative standards offered in the training. Nicholas, another human rights field officer who worked in various missions in the Balkans, discussed that tension in applying universal/international human rights standards in the post-war context of Bosnia:

*Nicholas:* The text was the Dayton Agreement. … As I recall, it was really Dayton, Dayton, Dayton, at least at that time.

*Elizabeth:* Was that, did you find that was useful?

*Nicholas:* Yeah, I think it was early enough in the conflict there that local politicians were still a little bit unsure what it all meant … and weeks later they recognized that their political leaders had signed up to uphold this stuff, but, of course, there was still a lot of war trauma and people were still pretty much on a war footing. So I think they felt like, yeah, that's good, that’s important, human rights of course, but not right now. It's too early. … That was the main line I got. Yes, they believed it, but later. That was going to come later. There was still too much pain and .... people are too traumatized. For me, it was just a convenient excuse to avoid the obligation. We felt, in getting back to your question, as an organization our job was to implement, that was to make sure that the human rights [were] implemented.
Nicholas confirms the centrality of the peace agreement as a coordinating text in humanitarian intervention and simultaneously discounts the role that domestic actors might play in implementing human rights commitments. Their concerns are particularized and must yield to the power of the universal. These sorts of summaries and anecdotes were common in the everyday experiences related by human rights field officers, but the embedded assumptions and power relations they reflect are seldom problematized individually or institutionally. The commitment to the ‘universal’ of law and the conflation of ‘universal’ with the characteristics and values of the West/North – in contrast to the ‘particular’ of the Other – reflect long-standing relations of power at the global level.

In humanitarian intervention, in its texts and in the everyday work of its professional practitioners, international human rights law is, for the most part, accepted as unequivocally on the side of justice and the common good. The idea of ‘universality’ asserted in the key texts is taken at face value, neatly extracted from its tangled history and the power relations that enshrine some values and discount others. Human rights and human rights law are then juxtaposed with the violence of the conflict, and their intrinsic connection to the violence of intervention is set aside, even when that law is made effective in peace agreements negotiated under duress. The fact that the international authorities implementing human rights law might have their own ‘unclean hands’ in the context of the intervention or in their own domestic sphere is summarily dismissed. If a local ‘beneficiary’ of international intervention suggests otherwise or argues for deeper consideration of the context, it is likely to be viewed as an attempt to avoid legal obligations. This is not to suggest that these forms of resistance to ‘universal’ law and rights are themselves always benign or unproblematic. It may be true that resistance to human rights law in post-conflict communities may often be motivated by a desire to avoid legal obligations, to continue the conflict, or other similarly troubling objectives. However, the assessment of human rights compliance versus human rights resistance is always
made on a weighted scale; it is an artifact of power to discount all challenges to international human rights and human rights implementation as threats to the law and to peace.

Given the centrality of universalism to the operation of law, it is unlikely that such claims can – or necessarily should – be eschewed, but the relations of power embedded can be illuminated (Anghie, 1999, Tsing, 2005). Tsing suggests it is possible to re-imagine universal claims “not as truths or lies but as sticky engagements” (2005, p. 6). She argues for engagement as a means to counter the disciplinary ambitions of universalism:

Engaged universals travel across difference and are charged and changed by their travels. Through friction, universals become practically effective. Yet they can never fulfill their promises of universality. Even in transcending localities, they don’t take over the world. They are limited by the practical necessity of mobilizing adherents. Engaged universals must convince us to pay attention to them. All universals are engaged when considered as practical projects accomplished in a heterogeneous world (2005, p. 8).

This sort of engagement is framed more aspirationally but is not far from Bourdieu’s assertion that “law can attain its specific power only to the extent that it attains recognition” (1987, p. 844). Some, including many human rights professionals, would suggest that human rights work at its best – where universal rights claims are given traction at the local level by collaborative involvement, or at least recognition, of the sort purportedly envisioned in humanitarian intervention – may reflect this sort of engaged universalism (O’Neill, 2010). This local recognition, complicity and ‘faith’ in human rights law would ease some concerns about the unequal power relations at play in humanitarian intervention in particular; however, the coordinating practices of the texts of international law and the ruling relations they manifest as multi-dimensional law would remain.

II. THE MANDATE

The mandate that supports international intervention is another significant text – or set of texts – in the context of humanitarian missions. The mandate is not the formal law, but it
operates similarly as an official authorizing text, not of the sovereign state but of the international community. It is formally represented by the UN Security Council resolution(s) authorizing the intervention; however, the mandate also takes shape and is negotiated in relationships in the field mission and within the ‘host’ nation. The mandate reflects a particular application of the universal principles of international law; the resolutions often directly reference existing international law, including human rights. The mandate is also an essential node and a point of connection in the networks of texts, actors and institutions of humanitarian intervention. It bridges the global and the local in a more particularized manner and it mobilizes the agents of intervention more directly than the abstract and universal law. This section gives a brief overview of the Security Council processes of authorizing intervention by resolution. It examines the active texts that achieve this authorization and the institutional language that enables and frames intervention. Drawing upon the work knowledge of human rights officers, it then considers how these texts coordinate the everyday practices of the mission in the field.

A. The Security Council Decides

The Security Council is one of the major institutions of the United Nations, and its composition most directly reflects geo-political power distributions with five permanent members accorded veto power (the United States, Great Britain, France, Russia and China) and ten non-permanent members elected on a rotating basis. Under the UN Charter, the Security Council is charged with maintaining international peace and security, and it has authority to act on behalf of all member states of the UN. Although it is small, it is arguably the most powerful institution of the UN; this prestige and its activity has waxed and waned since its creation, but its power has been on the rise since the 1980s, particularly with the end of the Cold War (Mingst & Karns, 2007). Its agenda is selective, driven by political and member concerns and interests, and in the past two decades, it has shown an increased willingness to authorize military force for
humanitarian purposes. This authorization is primarily accomplished through the official texts of Security Council resolutions.

The authority of Security Council resolutions is manifest in both the language of the texts and in the understandings of the professionals who work under their mandate. These resolutions are unique, *sui generis* texts – with the force of law, but not law – more in the nature of executive decree. They are often short in length – usually less than 10 pages and often less than five – and they are highly formal and diplomatic in language. For example, Resolution 1035 (1995) regarding the intervention in Bosnia is only four paragraphs and one page in length; it “recall[s]” the Peace Agreement, “approves” the report of the Secretary-General proposing UN involvement in implementing the agreement, and “notes with satisfaction” and “welcomes” other developments. These resolutions encompass the full power of the UN and its most influential body, and they reflect both that power and the changing rule(s) of politics. Anthony, a field officer with years of experience in several missions, suggested that UN-sponsored peacekeeping missions were most effective “because they get the Security Council backing and … they've got as much authorization as possible.”

Like the symbolic (and violent) power of judicial decisions (Bourdieu, 1987, Derrida, 1990, Cover, 1992), these resolutions determine the facts of a conflict and ‘decide’ the authorized response, including the use of military force and the creation of state-like administrations. In Resolution 1270 (1999) regarding Sierra Leone, the Security Council, in less than five pages, accomplishes both. The conflict in Sierra Leone began in 1991, and the UN became involved in 1995 (although regional IGOs, the African Union (AU) and the Economic Community of West African States (ECOWAS), became involved earlier). After years of ongoing conflict and unsuccessful IGO involvement, the warring parties signed a peace agreement in 1999 that opened the door for an expanded UN role. In response, Resolution 1270 begins by “determining that the situation in Sierra Leone continues to constitute a threat to international
peace and security in the region,” operative language that invokes and engages its authority under the UN Charter. Among the subsequent paragraphs ‘welcoming,’ ‘calling upon,’ ‘stressing,’ and so forth, it then:

Decides to establish the United Nations Mission in Sierra Leone (UNAMSIL) with immediate effect for an initial period of six months and [sets the mandate of the mission];

Decides also that the military component of UNAMSIL shall comprise a maximum of 6,000 military personnel, including 260 military observers …;

Decides further that UNAMSIL will take over the substantive civilian and military components of UNOMSIL as well as its assets, and to that end decides that the mandate of UNOMSIL shall terminate immediately on the establishment of UNAMSIL; …

Acting under Chapter VI of the Charter of the United Nations decides that in the discharge of its mandate UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone and ECOMOG; …

Decides to remain actively seized of the matter. (Paras. 8-10, 14, 27, original emphasis)

These few paragraphs of text are active, mobilizing thousands of individuals, military and civilian, ‘international’ and national, in the creative effort of transforming a monitoring mission (UNOMSIL) into a new and expanded peacekeeping mission (UNAMSIL). This six-month mission was later further expanded, and it remained in place until 2005 (Resolution 1610). In 2005, the Security Council replaced the peacekeeping mission with a peacebuilding office (UNIOSIL) (Resolution 1620), and in 2008, that office was replaced with a new office (UNIPSIL) that remains in place at this time (Resolution 1829). (Figure 10 below shows the current OHCHR presence in Africa.)
Security Council resolutions exist in and often incorporate by reference networks of other texts, formal and informal, public and not public. Resolution 1035 (on Bosnia) refers to a previous resolution (Resolution 1031, which itself “recalls all its previous relevant resolutions concerning the conflicts in the former Yugoslavia”), the peace agreement, and the report of the Secretary General; similarly, Resolution 1270 (on Sierra Leone) refers to five other specific
resolutions and “other relevant resolutions,” as well as to a statement by the President of the Security Council, two reports by the Secretary-General, and a peace agreement. As with legal texts and other institutional texts, there emerges a certain standard form to Security Council resolutions – certainly in terms of format and style – but also in terms of content. This standardization allows the ‘extra-local’ coordination of local work (Smith, 2005). Suzanne, another long-term field officer with experience in several missions, discusses this standardization:

_Suzanne_: You know, I've never compared them, the Security Council resolutions for Kosovo and East Timor, but I think a lot of it was very similar right? … I mean, most of it is about obviously, quelling the violence, enforcing rule of law, so that’s everything from drafting the legislation to training to having the civilian police component, etc., and then to institution and state building.

As Suzanne suggests, there are common components to most field missions – including military and civilian aspects, and often, humanitarian assistance. The examples she provides of East Timor and Kosovo occurred in the same year and reflect this standardization. Resolution 1272 on East Timor creates within the mission a “governance and public administration component,” a “humanitarian assistance and emergency rehabilitation component,” and a “military component.” Resolution 1244 on Kosovo creates an “international security presence” and an “international civil presence.” These standard components of the ‘mandate’ are not limited to Kosovo, East Timor and Sierra Leone. However, it is also evident that this standard form coordinates differently in the particular circumstances of each mission.

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22 The mission’s mandate includes: providing security and maintaining law and order; establishing an effective administration; assisting in the development of civil and social services; ensuring the coordination and delivery of humanitarian assistance; supporting capacity-building for self-government; and assisting in the establishment of conditions for sustainable development (1999, para. 2).

23 The military component is charged with maintaining a ceasefire, ensuring troop withdrawal and demilitarization, establishing a secure environment and ensuring public safety. The civilian component is mandated to perform basic administrative functions, maintain civil law and order, protect and promote human rights, assure refugee return, develop provisional institutions of self-government, and ensure transfer of authority to institutions of self-government once political settlement is attained (1999, para. 11).
The institutional form connects both the universal/international to the particular/local.

For example, Andreas compares his work in Angola with earlier work in the Balkans:

*Andreas:* Well, it’s quite different to the European framework, to the Balkan framework. Angola, it was a different, we were monitoring the demilitarization of UNITA, and it was at the time a guerilla group, it was in 2002 the peace agreement was signed, so they were in the process of demilitarization and returning the soldiers to, and the population was returning to their places of origin. So part of our mandate, it was to keep an eye on the process [Elizabeth: okay]. Second we have a human rights promotion mandate, so we organized some promotion and capacity building courses with administration.

Andreas experiences the two mandates as “quite different” in his local everyday work, with the more immediate focus on demilitarization in Angola, where the conflict had more recently ended. However, the familiar categories of military and civilian administration, monitoring the peace process, human rights promotion, and capacity building still emerge as constitutive elements of the mandate.

The relations of power appear generally in these coordinating practices of standardization, but also more directly in the particularities of each mission. Although the UN is often the head of the field mission, it has become common to include other IGOs and specialized agencies within the mission. As discussed further in the next section, this surfaces conflict between institutions – and among nation states – in the field as each institution tries to reconcile its particular mandate with the overall mandate of the mission:

*Suzanne:* It was all about this integrated mission, so DPKO was sort of at the head, but then all the other agencies are supposed to be integrating in, right? And you’re all supposed to be somehow reporting to the SRSG, which causes no end of conflict because the agencies have their own mandates, and don’t want to be dictated to, etc., etc. But by the same token, the donor member states are demanding that there be this one UN, one UN reform, so we’re all supposed to be talking the same language even though we have totally different mandates. So you have to count on the reasonableness of the people in the mission, which isn't always, you know, isn't always there. …

The Security Council resolutions that solidify those mandates in text reveal the operations of power in their standard forms, formats, language and content. This is the ‘practical universalization’ that generalizes modes of action and expression across geographical and social
space and that extra-locally coordinates those modes of action and expression in the local setting (Bourdieu, 1987). The international law is made effective in the particular context of the intervention through the authorizing text. The mandates reflected in those texts become the sticky engagement between international and local in the context of the field itself.

B. The Mandate in the Field

The mandate as elaborated in the Security Council resolution (or resolutions) becomes constitutional, shaping the development of the mission and the work in the field. It establishes the overarching frame for the everyday work of the international and national staff of the mission, and it offers both possibility and constraint on that work. It is not uncommon to hear field officers refer to the mandate by specific resolution number or use specific operative language. Because the resolution language is sparse and general, however, there is much that develops on the ground. The mandate, as applied, also reveals and reinscribes ruling relations at each level of operation. It is a subject of conflict and negotiation within the mission and among its various components. It also extends its reach beyond the confines of the mission into the local context, setting expectations, establishing a new order, and encountering resistance along the way.

In the field, the mandate also operates in and along networks of texts, actors and institutions. The primary Security Council Resolution (or series of resolutions) begets numerous texts of implementation, coordination and fulfillment. For example, Resolution 1244 (1999) establishes the “international civil presence” in Kosovo in one paragraph, with 11 sub-points explicating the scope of its mandate (civilian administration, capacity- and institution-building, civil law and order, human rights, etc.) (para. 11). A few years into the tenure of the mission, with the political status of Kosovo still unresolved, the mandate became transformed into something called the ‘Kosovo Implementation Standards.’ In the characteristic style of
institutional discourse, it is never clear who created the standards or by what process (though they reflect an unmistakable ‘international’ hand). A ‘fact sheet’ prepared by UNMIK, the international mission, describes the Standards as follows:

The standards for Kosovo were established in 2002-2003 as eight fields seen as priorities for the established Kosovo institutions. The purpose of the standards was to create a fairer and more tolerant society, and improve levels of public sector performance. The eight fields are: Functioning democratic institutions, Rule of law, Freedom of Movement, Sustainable returns and the rights of communities and their members, Economy, Property Rights (including cultural heritage), Pristina-Belgrade dialogue, Kosovo Protection Corps (KPC).

• Within these fields were identified 109 goals, presented to the Security Council in December 2003 in the document ‘Standards for Kosovo’. This document in turn was implemented through the ‘Kosovo Standards Implementation Plan’, (KSIP) finalized in March 2004.
• The SRSG reports regularly to the UN Security Council. These reports include a Technical Assessment on the implementation of the Standards for Kosovo, which covers a range of activities designed to promote good governance and multiethnicity. (UNMIK Kosovo, June 2008).

The general and indeterminate language of international law creating and protecting human rights – such as rights to freedom of movement, property, cultural rights, political participation, equal protection of the law – appears in the UNMIK mandate as “protecting and promoting human rights” and developing “institutions for democratic and autonomous self-government.” This similarly general and indeterminate language of the mandate becomes the eight (somewhat) more specific areas of the Kosovo Implementation Standards in the field.

Each of these, of course, then spawns further texts elaborating the scope of the standards and a network of actors and institutions charged with giving them effect. For example, the Standard regarding “Sustainable Returns and the Rights of Communities and their members” provides that:

Members of all communities must be able to participate fully in the economic, political and social life of Kosovo, and must not face threats to their security and well-being based on their ethnicity. All refugees and displaced persons who wish to return to Kosovo must be able to do so in safety and dignity.

It then enumerates the following regarding “Rights:”
The laws of Kosovo provide a full range of protection for human rights and the rights of communities and their members, consistent with European standards. A comprehensive and effective structure is in place within the PISG [Provisional Institutions of Self-Government] to monitor compliance with human and community rights and to respond to violations. Existing mechanisms within municipalities responsible for protection of human and community rights (Municipal Community Offices, Municipal Assembly Communities and Mediation Committees) have adequate resources and staff, and are functioning effectively. Kosovo participates in the Council of Europe implementation process for the Framework Convention for the Protection of National Minorities and fully implements recommendations resulting from that process. There is fair distribution of municipal and ministerial resources to all communities. The educational curriculum encourages tolerance and respect of the contributions of all communities to the history of Kosovo (p. 10).

This single section of one Standard refers to and incorporates other texts, including domestic laws and international treaties, educational curricula, and municipal and national budgets, as well as a range of local, national and regional institutions. Interestingly, there is even a ‘kiddie version’ of the Standards that explains:

The Standards are a set of goals for the people of Kosovo to achieve. Just as you have homework assignments to complete each day to improve yourself, so the citizens of Kosovo have to work each day, in their own way, towards achieving the Standards which maps out a way for a better future (“Kiddies Standards”).

The reach of multi-dimensional law, made operational through mandate and standards, is expansive. It connects global/universal/international to local/particular/field, even attempting to reach the individual effort towards self-improvement.

Despite its expansive reach, and the appearance of organized and unitary power that may suggest at times, however, the mandate remains a site of contestation and political struggle. Nathan discusses his early encounters with the mandate as a constraint on everyday work:

Nathan: … The drawback of IGO work is that it’s a huge bureaucracy, you know. And you're constrained by the mandate as well.

Elizabeth: Right, right. What was the mandate in the Kosovo mission? Or what, like how did you become aware of the importance of the mandate, let me ask you that?

Nathan: It was from day one. You're constantly running up against mandate issues, especially in the Kosovo mission because it was so complex. You had all the different pillars, and then you had sort of unclear lines of mandate that were alleged to be clear by
the various actors, you know what I mean? So there were constant turf battles, you know, between the different IGOs because there were different IGOs as part of the UN mission in Kosovo. So you had the UNHCR pillar and the OSCE pillar, you had the EU pillar.

The indeterminacy of the language of the mandate – together with its bureaucratic structure on the ground – opens up the possibility for different actors to vie for positions of power in the mission (and with consequences beyond). It has a similar effect even within various institutions as leadership and priorities change. Rafael suggests a variability to the mandate at different layers of the institutional framework and as negotiations occur in the field:

*Rafael:* The general mandate of OSCE to monitor the human rights situation in Kosovo was given by resolution 1244 in 1999 at the end the NATO intervention. So that's the main mandate of the organization was attributed to the Security Council resolution. … After that the OSCE council sort of detailed the mandate of the mission and went into more detail about the issue of democratization and other elements. … And I see in this case the mandate changed more based on internal discussion inside the department than with the head of the mission on what would be the better way to implement the mandate in terms of human rights monitoring and reporting.

Numerous field officers offered similar points about the malleability of the mandate within broad confines, depending on changes in personnel, priorities and the immediate political context. Despite its scope and flexibility (even changeability), however, the mandate may reach its limit of effectiveness in the context of the everyday. It may be constitutional, but like many constitutions, it is not always visible in the mundane work of each day. When I asked Rafael about whether the actual Security Council resolution had an effect on his daily work, he said:

*Rafael:* You know, it did not. … I think it did not. It was just indicating that the issue of human rights monitoring would be one of main pillars of the UN presence in Kosovo and it would be attributed to OSCE.

Rafael could cite the mandate by Security Council resolution number and spoke at great length about the details of field work on human rights issues, but in the end, he saw the mandate only as back-drop to the work of the everyday.

It may have a similar effect on its intended the beneficiaries, the people in the ‘host’ country. Initially, there is enthusiasm, perhaps even relief, at the idea of international
intervention and post-conflict rebuilding, but it is difficult for the particular to fulfill the promises of the universal:

_**Suzanne:**_ The mandates are so fleeting. I don’t know when’s the last time you read a Security Council resolution for any of these missions, but they’re just ridiculous. It’s like, build a new country in a day or maybe a year, and people's patience wears out. … There's this initial euphoria and the UN brings business, people open up restaurants, … and there's new jobs that open up within. There’s excitement, and then of course, there's, I won’t say failure, but there’s certainly, it’s impossible to meet the expectations of the Security Council resolutions over the course of 10 years, never mind over the course of one or two years. And then of course they become disillusioned.

This initial euphoria and subsequent disillusionment appears not only in the local inhabitants, but often in the international personnel as well. Paul also discussed the transformation of local views in the field – from being “ecstatic” and seeing the international presence as “saviors” early on, to more cynical (or realistic) views that developed over time – ranging from “you're occupiers and we can't wait for you to leave, to we love you, thank you very much for liberating us, and then by those people, as time went by, to yeah, thank you, but it's time for you to move on … and if you don't move on we're going to start shooting you, and they started doing that too.” This transformation as a result of the difficulties in ‘implementing’ the mandate on the ground and the on-going international presence was reflected in his own views of the mandate:

_**Paul:**_ I started to think that perhaps the mission was attempting to do too much by completely changing Kosovo society … and if they wanted to do things in some sort of old fashioned, inefficient style, but it was something they were familiar with and comfortable with and they could do together, like, why should we worry about it. They can join the 21st century the next century if they want. But let's just focus on the real, what brought us there, as opposed to needing to have effective and efficient democratic government.

It is difficult for both its agents and its intended beneficiaries to maintain the required ‘faith’ in the new universal law – human rights, democracy, and the rule of law – when the disjunctures between aspiration and actualization remain so profound. The mandate relies upon and reflects multi-dimensional, universal (international) law – it is authorized and backed by force; it emerges from and recreates rational administration; and it embarks on projects of social and
individual reform – but it cannot fulfill its promises in the field. As Security Council resolution it is authoritative, but it remains subject to contestation, challenge, uneven interpretation and implementation, particularly in the local context. Despite its limitations and its reconfigurations in the field, however, it remains a powerful coordinating text and practice, linking formal law and its experts to the everyday of the post-conflict setting.

III. REPORTS FROM THE FIELD

The law and the mandate are texts of power at the macro level that coordinate practices and relations at the micro level. They do so, in large part, through the ubiquitous report, which constitutes the everyday work of the field and field officers, the means of communicating with headquarters and beyond, and a tangible product of the mission (O’Flaherty & Ulrich, 2010). These field reports illuminate relations of power, where the ‘subjects’ of such reports seldom have input or even access to the documents produced although the reports purport both to represent the ‘realities’ of the situation in the field and to evaluate that situation under the law. As international experts evaluate the local everyday through the lens of the law and the mandate, the texts they produce reinforce the dominance of the law and its universal standards and reinscribe the particularity and inadequacy of the local.

These reports circulate primarily to other ‘international’ actors and often have little to offer to those who are their subjects (O’Neill, 2010). There are, of course, numerous reports that operate at all levels in humanitarian intervention, but the focus of this section is the reports generated in the field. Many of these are not public – e.g. the daily and weekly (even hourly) reports of human rights field officers – and remain internal to the mission or institution. In an area such as human rights that nominally enshrines freedom of expression and rights to information, this raises familiar questions of double standards and the power relations involved in knowledge production. Other reports are made public, but similar questions arise here as well.
This section considers the internal circulation of reports within the mission and their strategic use outside the mission and in engagement with the broader public. It examines both the foundation of reporting and monitoring that underlies the creation of reports and the reports themselves as illustrative of relations of power in humanitarian intervention.

A. Negotiating Reports: Strategic Authority

Monitoring and reporting are key functions of human rights field operations and officers (O’Flaherty, 2007). In some cases, these functions are specifically mentioned in the official mandate of the mission or implementing agency, and in others, it is an implied part of the work of human rights protection and promotion, as well as capacity-building. In many, if not most, missions, most reporting occurs within the mission itself or “behind-the-scenes” as a backdrop to more public work (2007, p. 41). There are on-going debates within the UN and other IGOs on how to share reports within the institution and when to release them to the public. The internal reports from the field to heads of mission or to headquarters are not generally available, but they appear in the work knowledge(s) of human rights field officers. Their traces also appear in the public reporting by the mission and institution. Numerous field officers described the significance and predominance of reporting in their everyday work. Reporting practices – from the questions of topic and language, to issues of distribution and use – fundamentally reflect relations of power.

As an initial matter, reporting both relies upon and reinforces expertise within the mission and with local interlocutors. The dominant concepts and terminology used in reporting shapes and, at times, distorts the accounts developed through observation, monitoring, investigation and interviewing. Power relations are reflected even in how investigations are framed and in assumptions concerning the locus of a problem (DeVault, 1999, Smith, 1999, McCorkel & Myers, 2003). Traditional investigative practices, which are intended to be
objective, distant and neutral, in turn lead to texts that reflect the same characteristics. The resulting texts allow, or perhaps even lead, the reporter to conceal his or her standpoint as embedded within the everyday world (Smith, 1989). These reports claim to offer an “authoritative version” that is independent of the “partial and subjective perspectives” of those involved in the action (1989, p. 118). The reporter, thus, not only describes the local context but also constructs and shapes it through text.

This authoritative version of the local is, however, subject to negotiation, contestation, and revision within the mission before it can act outside the confines of the institution. Although, on occasion, the investigative part of the human rights work involved danger or other challenges, more frequently field officers focused on the difficulties of reporting that involved working with other parts of the mission on the report. They described the challenges of navigating within the institutional hierarchy in their attempts to write authoritative reports within the mission to influence other mission participants. Suzanne provides an overview:

*Suzanne:* We would do like regular, and you’re going to ask me how regular, but I don’t remember if it was monthly or bi-monthly, but we would do regular reports of our own. But then in all of these missions there's usually, um, the Head of the Mission, the SRSG, usually does a report to SG or to the General Assembly or the Security Council or whatever it may be. And … what would happen is we would provide input, and what usually happens is in these things is, it always gets cut and rewritten to be put in diplomatic UN language. …

*Elizabeth:* So you’re reporting up, and it goes sort of, it sort of filters its way up through the system, right?

*Suzanne:* Yeah, like it would go from the department, be it Human Rights or Civil Affairs or LA [Legal Affairs], you would make it the mission to the report, and the report is based on the Security Council resolution, right, so you report on the very salience of the Security Council resolution, so we would make our input and then basically, the office at the SRSG would do the cutting and the rephrasing, and then it would go up to New York and DPKO in that case… does even more cutting. And then it comes out to something totally unrecognizable when it's published.

This summary of the process reveals the report as an active text first in the local setting(s) of its own creation, and again at institutional headquarters and beyond (if published). Its path also
illuminates the connections, the associations, between the law, the mandate and the report, as well as between different parts of the mission and of the larger institution of the IGO. The texts of intervention connect and are connected, but they are also points of contestation where power relations are played out in minutiae of monthly reports and diplomatic language.

Field reports are used within the institutional hierarchy – reporting up the chain – but also in work with domestic or local counterparts; this is a second means of being active beyond the immediate time and place of their creation in further encounters with individuals and institutions. This does not mean that the reports were necessarily made public, but rather that they coordinated work ‘extralocally’ (Smith, 2005). Rafael discusses how field reports are used, for example, as a means of evaluating and ensuring (local) compliance with international human rights law:

*Rafael:* So [we] would be tasked every two weeks to draft a substantial report for our region … and we would have to make sort of research, fact-finding in order to be able to draft a report and possible trends and improvements from the previous time the issue was reported … Then my colleagues and then my supervisor would consider it and … it would be brought to the attention of either UNMIK or the local authorities, provisional government. … That would be used to bring issues, to advocate local authorities or UNMIK whether certain issues would have to be changed in order to respect particular international standards as seen by the European Convention on Human Rights, the International Covenant of Civil and Political Rights and or the Framework Convention on Minorities.

These were reports with a purpose – or purposes – assessing compliance by local actors (in this case, even potentially including the mission itself) with the international standards. As a result, the reporting within the mission was more strategic than neutral as it sought authoritative status.

Anthony, one of the human rights field officers trained as a lawyer, describes his tactics in writing of reports for the Head of Mission in light of the ways that the Head would then use the reports outside of the mission:

*Anthony:* I was brought to the regional center because they needed someone who could write 3 to 5 page reports – and even sometimes shorter ones – that the Head of Mission could use in his arguments when he would meet with [the President] and the other ministers. … It was trying to get them to adhere to their standards, to adhere to the
refugee return policies, but in a way that wasn't a 20-page report that the Head of Mission would never read. But it was substantive enough based on what you're getting from all the field offices to back up what you said, but quick enough so that you could read it, and basically what we wanted Head of Mission to read and immediately say I have no option but to do X. A very clear, you basically trying to convince the Head of Mission that he needed do to X and that he had to press the government.

In crafting his reports, Anthony, like many field officers, was mindful of the strategy and advocacy involved as a matter of the internal power relations of the institution, as well as the larger political and social context. Again, the dialogic coordination of the text emerges. It is active in mobilizing (and constraining) Anthony’s work – it must be short, but persuasive, substantive and directive. At the same time, if his strategies work, it is later active in actually coordinating the actions of the Head of Mission, the ministers and other governmental officials, and so on. The instrumentalist view of law (in its many textual guises) that is so common among practitioners is evident. Law is relevant, but indeterminate; that indeterminacy is useful, but equally so to those who might be on the ‘other’ side. Anthony elaborates this point:

Anthony: These were more political pushes … trying to get them to follow [the law], but really, I mean, it was all a little bit much more soft law and really this doesn't meet the, this doesn't really demonstrate a proper commitment, and the agreements here should be followed in a different way. But then, the Croatians were quite smart about how they had signed the agreements, so really they weren’t in violation very much because they'd written the agreements in such a way that they had some good people writing for, not good, let's say very skilled, actually not morally good but you know very, they were quite crafty about things. They'd written this in such a wonderful way that they're not actually violating it, but really you've got to push them.

The indeterminacy of the law and of the subsequent political agreements offers room for maneuvering to anyone ‘skilled’ enough to engage with it, the ‘good’ international actors, the ‘hostile’ administrators, or the ‘crafty’ domestic actors.

Other field officers described similar strategic practices in reporting, and some faced more severe challenges in connecting their local texts with other parts of the mission and institutional headquarters. Kevin, a field officer in several missions, discusses the impact of personnel changes on the ability to report on human rights:
Kevin: We had an SRSG in the mission there at the time who was very hostile to human rights reporting. He felt that it was enough for reports to go to him, and he would sit on our reports because he felt that they created political problems. … That changed [when a new] head of DPKO came and he wanted specific human rights information, and when he found out the reports were being prepared and he wasn't getting them, he started sending a standing order that he get an update on the human rights situation every few days so he started demanding our reports.

Kevin identifies a tension – or, in his example, outright hostility – between understandings of human rights as universal law and as ‘political problems’ that emerges in the intra-mission negotiations over reporting. This serves to limit the capacity of such field reports to extend their reach outside the local to the extralocal of headquarters and beyond. As discussed further in subsequent chapters, this opposition also permeates the broader work of the mission. Here, however, it serves to underscore the connections between the reports as (potentially) mobile texts and the expertise required to activate and deploy them.

The human rights field report forms a link in the chains of texts that coordinate practices in the field. It may begin as an official record of an event or a summary legal analysis, which is used by the field officer and other parts of the mission; it is combined with other basic field reports to identify (“diagnose”) categories of violations; it is used as a foundation for ‘political’ action within and outside the mission. Because of their reliance on law and mandate, as well as their potential ability to reach from the field back into the mission and the broader institutional setting, field reports and reporting practices also are shaped by and reflect the ruling relations of those broader contexts.

**B. Public Reports: Strategic Representation**

The reports that are made public by field missions present issues of the authoritative and ‘neutral’ text camouflaging the strategic practices embedded in the text. In practice, the reporter (or institution) decides the topic, selects the sources, frames the questions and determines the rights violations. The problem and the potential solutions are all filtered through (or even
filtered out by) the language of international human rights law. The reporter then prepares an ‘objective,’ ‘third version’ and authoritative account of the situation that is also shaped by the dominant discourse of international human rights law and that in turn contributes to that discourse. These reports deploy the language of international human rights law, and the reporters offer expert analysis and conclusions: These are the rights violations, these are the victims, and these are the recommendations on how to remedy the situation.

Because of their more public dissemination, these reports also raise issues about representation – the reports purport to authoritatively present the ‘others’ of intervention – always speaking about them, if not also for them. The risk of misrepresentation can never be eliminated – “it is not a question of whether, but how much” (Kirsch, 1999, p. 63). Moreover, beyond the risk of misrepresentation, there is the unavoidable reinforcement of existing power relations: “in a situation where a well-meaning First World person is speaking for a person or a group in the Third World, the very discursive arrangement may reinscribe the ‘hierarchy of civilizations’ view where the [First World] lands squarely at the top” (Alcoff, 1991, p. 26).

Increasingly, field missions are releasing ‘public’ reports on various human rights events or issues. For example, the Organization for Security and Cooperation in Europe (OSCE), a regional inter-governmental organization, has posted on-line a 2000 Background Report on “The treatment of minorities by the judicial system” in Kosovo. This report is typical of human rights ‘issue’ reports from the field. It is a seven-page report with an additional five pages of endnotes. It is organized into the following sections: Introduction, Background, Equality Before the Law, Pre-trial Custody and the Right to Liberty and Security, The Right to Legal Assistance, Trial Observation, Conclusions, and Recommendations. There is no author listed other than the institutional author although the first endnote provides the following information:

This is the fifth in a series of thematic reports released by the Legal System Monitoring Section of the OSCE Mission in Kosovo. The OSCE Mission in Kosovo’s Department
of Human Rights and Rule of Law has the lead role in monitoring, protecting, and promoting human rights in Kosovo. (2000: n. 1)

The endnote goes on to first describe and then characterize the work of the Section and its monitors and the goal of the report:

The Department’s Legal System Monitoring Section has observed court proceedings; met regularly with judges, prosecutors and defence counsel; and has otherwise been in close contact with those involved in the legal system to monitor its functioning. Legal system monitors serve as independent, unbiased monitors. They do not represent the civil administration, any defendant, or any other group or individual. Thematic reports released by the Legal System Monitoring Section have the goal of protecting and promoting human rights, encouraging improvements in the administration of justice, and suggesting systemic changes to the legal and judicial systems as necessary and appropriate. (2000: n. 1)

This is the language of institutional discourse that is crucial to the coordinating practices of texts, where nominalizations and passive voice obscure individual actions and ruling relations. This ‘objective’ tone and institutional voice continue throughout the report, which refers to staff members by title (“Rule of Law Officers”) and other individuals by ethnicity (“Kosovo Albanian,” “Kosovo Serb”).

Its substantive sections are organized around human rights issues, as legally defined, primarily in international human rights treaties. The first section begins by noting the applicability of “international human rights standards,” and each section specifically references treaty law (primarily the European Convention on Human Rights). Interestingly, the report draws upon various forms of formal law – domestic Yugoslav and Serbian law, UNMIK regulations, and European and international treaty law – without interrogating or considering the contested history of the laws or even the legal niceties of reconciling different forms of law. Nonetheless, the analysis follows a general format of quoting the relevant treaty provision, providing a brief overview of the ‘facts’ and reaching a conclusion on the issue. At times, the language is cautious and diplomatic: “Preliminary evidence in other cases indicates there may be a systematic problem within the legal system … The handling of some cases relating to
property issues may reinforce the feeling of discrimination amongst the members of minorities” (2000, p. 4). In other sections, the language is emotional and disparaging: “This case exhibits either gross incompetence by the judicial authorities or utter dishonesty due solely to the victim’s ethnicity. … This case sets a dangerous precedent for future trials” (2000, p. 6).

The report concludes with a series of recommendations that are expansive and scope but rarely directed towards a particular institutional actor. For example, the first and main recommendation states “it is necessary to support in a systematic way the presence and effective participation of minority representative in the judicial system.” The recommendation is apparently directed at an undefined “international community:”

… This highlights the need for the international community to take concrete steps to compensate for the lack of communication and for the isolation of minorities, in order to enlarge on their participation in the judicial system. It may be necessary to not rely only on the local proposals, but to put in place a strategy allowing the recruitment of other potential available candidates. Indeed, the contacts made by the Rule of Law Officers with the Serbian community in the field had permitted in the region Pristina to propose the application of three Kosovo Serb lay-judges (2000, p. 7).

Other recommendations are equally general: “The above cannot be performed without guarantees of security … A comprehensive policy to implement such measures should be set up without delay” (2000, p. 7).

Reports from UN and other field missions, to the extent that they are publicly available for review, typically are similar in tone, language and content. The UN Assistance Mission for Iraq (UNAMI) has also made some of its reports on human rights available to the public. Despite the different nature of the international interventions in Iraq (which was a unilateral US-led intervention connected to the ‘war on terror’ with subsequent UN involvement) and Kosovo (an internal conflict, a NATO-led bombing campaign, and UN-led mission), a UNAMI Human Rights Report for the period of January to June 2008 follows a familiar style of describing human rights violations, analyzing those violations under international law, and providing recommendations. It describes the purposes of the mission and its Human Rights Office as “the
promotion and protection of human rights and the rule of law in close collaboration with Iraqi governmental and non-governmental sections,” and it specifically links that to the authority provided by UN Security Council resolutions (2008, p. 3). It also connects the chain of texts, completing the chain from law to mandate to report:

UNAMI’s regular human rights reports are intended to assist the Government of Iraq and the Kurdistan Regional Government in ensuring protection of basic human rights and respect for the rule of law. Iraq remains bound by both its international treaty obligations and its domestic legislation in taking measures to curb violence and uphold human rights norms. The International Covenant on Civil and Political Rights (ICCPR), is in particular, clear on the basic protections that must be afforded to persons (2008, p. 3).

The monitors, reporters and authors are never identified, except institutionally as UNAMI or by role as monitor or observer. And the report concludes with several paragraphs on the mission’s role in capacity-building and support, neatly juxtaposing local violations with international assistance (2008, pp. 28-30).

This language is characteristic of human rights reporting, and it evokes the highly ‘diplomatic’ language of mandate and law. However, as in those texts, this is not simply a matter of style, but rather a reflection of institutional rule. Some field officers commented on the challenges of reporting in an institutional context of an IGO field mission:

Andreas: When you're in an NGO, if two people … in terms of the Serbian community in Croatia, if they were killed, we were used to report about two persons from the Serbian community have been killed, in this place, in this place, in this place, and according to the neighbors, they, well, Croatian suspect, whatever, nationalist, could be suspect, and could be related with a property occupation, full end stop. While in OSCE, it was a murder has been, or a person has been reported dead in, within a house, apparently, la la la. There are, I don't know, there is no information regarding who could

24 The report provides:
The United Nations Assistance Mission for Iraq (UNAMI), through its Human Rights Office (HRO) engages in the promotion and protection of human rights and the rule of law in close collaboration with Iraqi governmental and non-governmental sectors, in accordance with UN Security Council Resolutions 1830 (2008) and 1770 (2007), paragraph 2 (c), which mandates UNAMI to “promote the protection of human rights and judicial and legal reform in order to strengthen the rule of law in Iraq”. To that end, UNAMI monitors the human rights situation in Iraq and assists, especially through capacity-building activities, in the rehabilitation and reconstruction of state and civil society institutions. It collaborates closely with local human rights groups and seeks to maintain direct contact with victims and witnesses of human rights violations.

be the responsible and so on, quite different. Even though we have access to the neighbors, and we could talk with some people in the community, and even people with the names and Serb names or organizations that could be related with those murders, we couldn't put that in our report. And we have not the chance even to discuss that, with some other security organizations, such as the UN police, for instance, or the US army because we were not allowed to do it. … during those days, we were really taught to, one, to keep that information for us, that it was better.

Institutional interests (whether political, legal or practical) limit the extent of disclosure in field reports and the characterization and amount of information. At times, they completely foreclose any public dissemination. Another field officer described the difficulties she faced internally in getting even general issue reports made public, but that changed with new personnel:

_Cristina:_ That actually improved a lot with our new boss … because she issued a huge number of reports that you can now find. They're all available online. … There's no point in monitoring and internal reporting if you don't report publicly. … Her reason was we need to make sure that this goes out there. We can't just keep all the information inside the UN. It doesn't help anybody.

The irony of failing to publicly release human rights reports on freedom of expression simply underscores the institutional interests that are always present in field reports. On the one hand, there is the interest in offering the ‘authoritative’ account on the field, but at the same time, the account may be ‘authoritative’ without being public.

Other field officers expressed frustrations with the ultimate uses and distribution of their reports, which often served institutional purposes rather than responding to the needs of the ‘local’ informants:

_Rafael:_ We would be seen as somebody sort of interfering with the work or sort of taking the side of the minority particularly when it was a certain minority in every situation because of the fact because most of our reports were going to our supervisor to be sort of combined as a central and unique report and their inspection of our work wouldn't go very much to a specific municipal official unless through our sort of verbal feedback. … for example, if I would go to monitor an issue related to access to education for minorities in their own language, [and I would] give specific data and trends. That information or let's say the way we had arrived at the sort of legal analogies of different international standards would not be brought back to the municipal officer unless I go myself and sort of report it to him as a matter of discussion to sort of see what can be done. But it would be brought to the attention of central authorities, to the minister for example.
Thus, the reports, similar to the mandates, may generate an initial enthusiasm by both field officers and local informants regarding the opportunities they may represent for providing information or drawing attention and resources. They often disappoint, however, and end up viewed as ‘interference’ with the everyday work of the local authorities, offering little except judgment. In any case, law is filtered through mandate and used by international experts as a measure of local progress in reports; this is the extralocal coordination of the work of human rights (and human rights field officers). Although the coordination and chain of influence usually flows from the global to the local, at times the local also extends it reach back along the network to the global (as discussed in Chapter 5). At each level and across scales, the relations of power coordinate the deployment and creation of texts and expertise.

IV. CONCLUSION

International law, human rights law, and humanitarian intervention are mediated, coordinated and authorized by and through texts. The texts of humanitarian intervention may appear static, remote, even peripheral, compared to the urgent action of the conflict and subsequent peace-keeping and nation-building. However, these texts are active, dynamic coordinators and mediators at all levels of the intervention – from the powerful Security Council and bureaucratic IGO headquarters, to the political, practical and mundane work of personnel in the field mission. Backed by force, human rights treaties set the normative framework that authorizes intervention and structures the priorities for governance. The Security Council resolutions draw from that law, authorize and command the forceful intervention, and create the bureaucratic institutions to accomplish the mandate. Within those bureaucracies, field officers and other international personnel practice the everyday work of governance, reflected and reinscribed in the reports of the field. Law travels the globe, to and through the field, via these essential texts of humanitarian intervention.
CHAPTER 4: THE TASKS OF THE HUMAN RIGHTS OFFICER – EXPERT, TRANSLATOR, AND SCRIBE

This chapter looks at the roles of human rights officers in field missions, and their engagements as experts with law and the texts of humanitarian intervention in the context of field work. Human rights officers are called upon in their everyday work to fulfill many roles, grounded in particular forms of expertise. In that sense, their everyday work – and their understandings of it or work knowledge (Smith, 2005) – provides another important set of nodes and conduits in the networks and associations of law and expertise in humanitarian intervention. Much of their work relates to the texts of law discussed in the previous chapter. Human rights officers are essential ‘readers’ engaged in the text-reader conversations of institutional work (Smith, 2005). On the one hand, the texts of intervention – law, mandate and report – and the institutional discourses they reflect regulate and coordinate the practices of human rights field officers. At the same time, however, human rights officers activate these key texts – “without people to read them … such texts would be of little use” (Tummons, 2010).

The experts in the field also reflect triangular law through practices of international expertise, translation and written knowledge production. This chapter begins by considering the features of professional legal expertise and the ways in which they are manifested, challenged and transformed as ‘international’ expertise in the context of human rights field work. International expertise draws upon law’s violence and governmentality, as it is authorized by the forceful intervention and tasked with the project of rebuilding the nation. This chapter next considers the roles of human rights officers, as international experts, who serve as translators and interpreters of the law and of the ‘international’ to others in the mission and in the field. These processes of translation and interpretation, reflecting law’s bureaucratic and governmentalizing dimensions, are neither smooth nor predictable. Field officers engage in
translation as an on-going though uncertain means of reconstituting both law and their own expertise in the field. Finally, this chapter returns to the issue of reporting considered in the previous chapter but examines it as a role of the writing expert. Reporting is situated between law’s violence and bureaucracy, as one of the written forms of expertise deployed by human rights officers, along with drafting legislation and other legal texts; here too, field officers reaffirm law and expertise through authorship of coordinating texts in the field. (Figure 11 illustrates triangular law as expert practices).

![Figure 11: Triangular Law as Expertise](image)

These expert practices, like the texts of intervention, expand triangular law into the prism of law in the field (Figure 12 below situates triangular law as expertise at the other end of the prism of law in the field). The everyday work – and the work knowledge – of human rights officers in humanitarian intervention is discernably (and doubly) field-based. They are embedded in the field in two important respects – first, the ‘field’ of law or the juridical field, as elaborated by Bourdieu (1987) and others, and second, the ‘field’ as distinguished from home or headquarters, as described by Hyndman (2000) and others. To begin, human rights officers are often trained as lawyers or in relevant issues of human rights law. Bourdieu considers the juridical field a social field in which specialized actors compete for the “right to determine the
“law” (1987, p. 817) – these actors include the familiar judges and lawyers, but also other professionals connected to and through law, including in this context human rights officers. In addition, they work in the field in another sense – a sense that is familiar from anthropology and other social science research – work out of and away from the confines of ‘home,’ in terms of home country and community, and in this case also ‘headquarters,’ the main centres of power for IGOs (Hyndman, 2000).

Figure 12: Expertise in the Field

In this project, all but two of the field officers I interviewed were formally trained as lawyers from either a North American or European university or law school (see Chapter 1 for additional details), and the other two had related professional training. Of the field officers trained as lawyers, six had advanced training in law or human rights, and five had actual experience practicing law before they became field officers. All of the participants worked on issues of international human rights in their field work and had some training (either initially or subsequently) in human rights law. In this sense, these human rights officers are (or were) experts at work in the social field of the law.

In addition, they work or worked in the field away from the confines of ‘home’ and ‘headquarters.’ Working outside of one’s own country of origin as ‘international’ staff was one of the criteria I used for selecting participants for this project because that has become a defining feature of human rights field work (and, perhaps, identity) (O’Flaherty & Ulrich, 2010). In fact,
several participants had previous non-legal work experience in a field location – through non-governmental work, Peace Corps or similar – and they identified that as a critical influence in their determination to pursue advanced studies in law (or otherwise) and future work as human rights field officers. For others, it was a personal connection to other individuals working in field locations that attracted their interest or facilitated their entry into field work. Whatever the initial path to expertise, the professional expertise of the legal field becomes magnified as ‘international’ expertise in the context of distant, not-home ‘field’ work of humanitarian intervention. This duality of ‘field’ and ‘field experience’ then frames the everyday work of human rights officers as experts, translators and authors. This chapter explores some of the interplay of the two ‘fields’ at work in human rights practice in humanitarian interventions as extensions of the ruling relations of the interventions themselves.

I. **The International Expert**

In law and in the juridical field, expertise is formalized, ‘disciplined’ and professionalized. It is acquired through specialized learning and experience, with developed methodologies and theoretical foundations, recognized in professional credentials, and centered on examining, explaining and evaluating – even judging – human behaviour in social contexts. It often seeks to generate ‘facts’ and verifiable knowledge about the world, as well as determine ‘rules’ for conduct, and to produce that knowledge in the form of written texts. Social theorists, from Max Weber and Georg Simmel to Pierre Bourdieu and Bruno Latour, have interrogated the nature of expertise and the roles and perspectives of the expert. Typically, in the literature and in the everyday world, the expert is perceived as a distant (but not remote), objective observer of the empirical world, describing and analyzing (even evaluating) that world. In the particular field of law, this distant and objective expertise appears as impartial, neutral and technical competence. From (and with) this impartial viewpoint, the expert not only observes, but also
assesses, interprets, advocates and decides. This section examines the types of expertise valued in relation to global projects intended to promote human rights and the ‘rule of law,’ particularly the notion of an ‘objective,’ outside observer – the international expert. It also considers the ways in which expertise is constituted and reconstituted in the field and problematizes the conflation of ‘international’ personnel with ‘expert’ personnel.

A. The Impartial Professional

There is no doubt that the set(s) of knowledge, skills and practices that qualify as “expert” – and who is able or entitled to possess them – change across time, space, culture, discipline and other social boundaries. However, in each context, the expert has a particular approach to the empirical world, a methodology that relies on objectivity, observation, distance, interpretation, rationality and judgment. Founding sociologist Max Weber makes this most clear in his elaborations of expertise in the social sciences, but it also emerges in his discussions of law, bureaucracy and politics. The expert interprets meaning based on the expert’s view of rationality; that view of rationality establishes the ‘ideal type’ for use in categorization and analysis ([1914] 2007). Facility in creating or using these abstractions or categories, grounded in rationality, is essential for interpretation and a facet of expertise. This interpretation “abstracts from reality,” but that distance is what gives the interpretation its explanatory value (2007, p. 224). In law, this technical competence specifically draws in the text, as law’s experts interpret the authoritative texts that “sanctify[] a correct or legitimized vision of the social world” (Bourdieu, 1987, p. 817). Both texts and experts use language that positions them as neutral, impartial and rational.

Distant, objective professional expertise is contrasted with irrational, common-sense understandings of laypersons (or non-experts). Participation in the juridical field depends upon the “establishment of properly professional competence, the technical mastery of a sophisticated
body of knowledge that often runs contrary to common sense” and that “entails the
disqualification of the non-specialists’ sense of fairness, and the revocation of their naïve
understanding of the facts” (Bourdieu, 1987, p. 828). Expertise is grounded in the ability to
recognize and marshal the indeterminacies of everyday life (and law) and yet organize,
categorize, and make them (differently) understandable to those without expert knowledge.
These operations are relations of power – “granting effective decision-making power to an
agreement among specialists” and excluding the non-specialists (1987, p. 831).

As an extension of the juridical field, human rights field officers hold and wield forms of
that decision-making power. However, human rights field officers are relative newcomers with
uncertain status within the juridical field. The work itself is comparatively new – with the first
such field presence generally considered to be the UN’s El Salvador mission in 1991 – and
human rights field officers have an uncertain status both within the larger humanitarian mission
and in the wider juridical field. Although the professional field of human rights work – and
human rights field officers in particular – is relatively new, it aspires to the (expert) identity of
other professional fields (O’Flaherty & Ulrich, 2010). In fact, beginning in 2004, former human
rights field officers undertook a consultation project on human rights field work, with an eye
towards the professionalization of the field. Adopting traditional definitions of ‘profession,’ – a
set of shared values, a body of scientific knowledge, and systems to apply that knowledge – they
trace a “professional identity” for human rights field officers (2010).

This professionalism includes the objectivity of the expert – “a peculiar quality of
impersonal commitment and obligation that involves acting on the basis of expert knowledge, in
accordance with set principles, and in compliance with established methods and procedures”
(2010, p. 15). Outcomes of the professionalization project include Guiding Principles for
Human Rights Field Officers Working in Conflict and Post-conflict Environments, together
with a Statement of Ethical Commitments of Human Rights Professionals. The Statement of Ethical Commitments provides that:

Human rights professionals are committed to be impartial in the promotion and protection of human rights irrespective of the identity or status of perpetrators and victims. They shall endeavor to ensure that their impartiality is evident to all relevant actors (para. 9).

Impartiality is linked to the end of goal of promoting and protecting human rights, and it must be on display for others in the field.

The Guiding Principles use similar language to frame the professional role: human rights officers provide “independent” analysis and appraisal, of the “highest quality and without errors,” “impartial,” using objective criteria” (2010, pp. 425-428). Under the Principles, the law is foundational to this impartial expertise. Guiding Principle 1 is “The Law” – “[i]nternational human rights law is the basis for the work of human rights field officers” – followed shortly thereafter by the “Mandate” in Principle 3 – field officers “use their mandate, which identifies objectives and tasks and enables special authority to access places and persons, to protect and promote human rights” (2010). The UN Security Council resolutions that frame the field mission mandates also connect law to expertise in some instances. The resolutions relating to the missions in Sierra Leone and East Timor (each launched in 1999, though in very different contexts) both contain language whereby the Security Council:

Underlines the importance of including … personnel with appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions, negotiation and communication skills, cultural awareness and civilian-military coordination (Resolution 1270, 1999, p. 3; Resolution 1272, 1999, p. 4, original emphasis)

The texts of intervention, as well as field officers’ own texts of professionalism, elaborate an expertise that is impartial, informed and skilled.

This sense of expertise appeared in the field officers ‘work knowledge’ descriptions of their everyday work as well. As a starting point, their expertise is grounded in being ‘outside’ the environment of conflict that necessitated the intervention:
Paul: When you end up in a [post-conflict] situation like that basically everybody sees themselves as a victim, and everybody, more particularly, everybody on both sides sees themselves as a victim. So I think they're all really, I don't mean this critically, but I really think that they're not capable at an emotional level of protecting the rights of the other, any more than I'm capable of protecting the rights of some criminal who would assault me.

Elizabeth: And that's why you need sort of someone else, an outsider to come in?

Paul: And in the environments like that, the outsiders really have to be outsiders. This exchange invokes the expertise of the human rights field officer in both senses of the ‘field’ – as outsiders to the conflict environment rather than victims (real or self-perceived), and as professionals capable of protecting the rights of actual victims. Other field officers characterized their work along this duality as well. Cristina commented that field officers “should be perceived as impartial or, if anything, partial towards the weakest, towards the most vulnerable.” And Gwen expanded on a similar point:

Gwen: I think it’s in post conflict situations, it’s very difficult to disentangle emotions and to be impartial in the distribution of assistance or in deciding who's guilty, who's not guilty. It’s much easier from the outside, emotionally neutral, usually, hopefully, to decide who is deserving of assistance, for instance … just the being a neutral eye, having a neutral approach to aid and support.

Cristina and Gwen use the Statement’s language of impartiality, but also qualify it – as the Guiding Principles and commentary do as well – with their understanding that such impartiality is always in service of a broader professional obligation to the shared values and normative commitments of human rights. In fact, several field officers distinguished their ‘impartial’ stance on behalf of human rights from the more political components of the mission and from other colleagues (this distinction extends beyond standpoint as well, as elaborated in Chapter 5).

Human rights expertise becomes compromised when it loses that objective and impartial professional standpoint. In a way, too much experience in the field may be detrimental.

Discussing his decision to leave the field mission in Kosovo, where the conflict occurred between ethnic Albanian and Serb inhabitants, Kevin explains:
Kevin: I developed a view over time, that the international community had been far too soft on the Albanian leadership … Really the political hierarchy of the mission was only interested in process indicators and so, um, they were going to tick boxes and move on to final status talks regardless of how the Albanian leadership behaved. And at that point I decided I had taken a side and that’s when you need to leave. When you’ve taken a side you need to go, so I left.

Although it would possible to view this evolution in his views as a reflection of informed, professional judgment, instead Kevin thinks his expertise is compromised when he feels drawn into the debates regarding the political status of Kosovo shaping the larger context of the mission. Taking sides in defense of human rights is permitted; taking sides in the political conflict is not.

The professional expertise of law and human rights manifests in language and practices that are familiar from other contexts and that frame the work as neutral, impartial, competent and rational. That neutrality and impartiality is always unstable, however, and selective, embedded within relations of power and exercised in the power to decide on behalf of law and human rights. To some extent, this may be true of all forms of expertise, not just in law and human rights, but across a range of professional fields. In the context of humanitarian intervention, however, that instability and unevenness is magnified by the relations of power that exist in the not-home/not-headquarters ‘field’ of the post-conflict environment.

B. Expertise in the Field

The idea of expertise takes on particular significance in the context of the ‘field’ or ‘field work,’ where location itself becomes partially constitutive (and transformative) of expertise. The expert becomes the ‘international expert.’ Early social theorist Georg Simmel first connected this question of ‘location’ with the ‘distant’ standpoint that is often embedded in notions of objectivity and impartiality in expertise ([1908] 2007). Simmel explores the relationship of the stranger to the group and unearths an expertise in the standpoint of the stranger: “[The stranger] is the freer man, practically and theoretically; he examines conditions
with less prejudice; he assesses them against standards that are more general and more objective; and his actions are not confined to custom, piety, or precedent” (2007, p. 297). In part, expertise arises from the mobility and freedom of the stranger, which leads to different types of experiences and perspectives than those of the group. The stranger’s expertise is also grounded in a sort of objectivity, but this objectivity is not based solely on distance, but rather upon a tension between distance from and embeddedness within the group. The stranger is involved with the group, and thus, may have a unique access to the facts as an outsider within the group. Yet the stranger also remains detached, with an objectivity that is not simply non-participation but reflects the lack of ties to the group that may “prejudice his perception, his understanding, and his assessment of data” (2007, p. 297).

Contemporary theorists have further elaborated this tension in expertise as a stranger, or outsider, doing transnational or international work, especially in the ‘field’. Place and location are significant in human rights work, especially human rights fact-finding work in the field. Indeed, where you are may define who you are, as much as who you are defines where you are (Mountz, 2004, p. 336). Human rights workers, like anthropologists and other ethnographers, must grapple with the idea of doing work in the ‘field’ in this sense, as “the spatialization of difference” (Gupta & Ferguson, 1996, pp. 32, 2001). Jennifer Hyndman, a critical geographer, elaborates the significance of the ‘field’ in various forms of transnational work and connects it to other (unequal and oppositional) dualities:

Just as there is tension between discourses of universality and particularity – the shared language and entitlements of human rights versus distinguishing cultural practices – a discursive distance between “here” and “there,” “us” and “them,” confounds any singular understanding of culture. “The field” is a diffuse and problematic term for geographers, anthropologists, and other researchers who travel in a privileged way across cultures. For some, “the field” is a place impossibly outside the power relations that organize “home.” Without home, there can be no field. (2000, pp. 88-89)

In fact, the relationships that develop or are constructed across those boundaries of home and field in transnational work often evolve into distinctions between global “sub-citizens” and
“supra-citizens” (2000, pp. 110-11). This sense of citizenship reflects the hierarchy and status distinctions in international work, including consequences to mobility and authority within and across national borders. The mobility and freedom of the ‘supra-citizen,’ like the mobility of the stranger, leads to different types of experiences and perspectives than those of the ‘sub-citizens.’ However, it also translates into broader distinctions in the asymmetrical relationships of ‘international’ experts and ‘local’ non-experts in the field (Orford, 2003, pp. 119-120).

Human rights work, particularly in the context of humanitarian intervention, raises similar and related questions of expertise, objectivity, and power relationships in the field. As elaborated above, the whole idea of a field mission – and humanitarian intervention more generally – rests on the supposed impartiality of outside observers, strangers, and experts. In many ways, it is through the observation of outsiders that the field itself is constituted. The international expert, like the stranger, is supposed to observe with less prejudice, with few ties to custom, using general and objective (in fact, universal) standards. Gwen, who began her field work in the area of development, grounds the field officer’s impartiality in an emotional distance from the conflict:

Gwen: I think it’s in post conflict situations, it’s very difficult to disentangle emotions … It’s much easier from the outside, emotionally neutral, usually, hopefully, to decide who is deserving of assistance, for instance. That’s one way of looking at it, and the other aspect of it is just naturally human resources and capacity, and I think that those are so often completely depleted after conflicts … The lack of capacity justifies foreign intervention. So there’s two aspects, just being a neutral eye, having a neutral approach to aid and support, and also just being an additional [capacity] rather than a lack of capacity in this conflict justified international intervention.

However, she also mentions the practical point of a lack of capacity and need for support after a population has been devastated by conflict as another facet of expertise. These two components come together in the notion of expertise in the field – providing the ‘missing pieces’ of capacity at the local level, together with the impartiality of an outsider’s view.
Of course, human rights field officers are expected to bring a “professional competence [and] the technical mastery of a sophisticated body of knowledge” to their work in order to replace local capacity and assist with rebuilding that capacity (Bourdieu, 1987, p. 828). The professionalization project identifies five key areas of work for field officers – monitoring, reporting, advocacy, capacity building, and partnership – and in each area, the officer’s competence and knowledge are expected to be grounded in international human rights law (O’Flaherty & Ulrich, 2010, p. 23). However, it may be in this area that the ‘field’ most dramatically reshapes expertise. Time after time in the interviews, field officers recounted stories of their own and other officers’ lack of this professional foundation. At times, they were self-critical of their own limitations, particularly upon initially embarking on field work or when given a level of authority in the field that they would never attain so easily at home:

Kevin: In Kosovo UNMIK was the government at that particular time. It was heading up every ministry, it was heading up, of course, the executive branch and that’s what I was in. I was the, at the time, the only human rights advisor in the executive branch, and I was suddenly expected to weigh in on big picture issues of, that were extremely politically charged. I was expected to suddenly be an expert on many different forms of legislation from everything from, you know, minority rights issues and the extent to which language rights were respected or minority access to institutions and services was respected, to issues of basic criminal justice. … I go in cold turkey and am expected to be a policy advisor, expected to comment on legislation, expected to develop, you know, human rights aspects of policy or strategy, even down to me being included in negotiations for prisoner exchanges between Belgrade [Serbia] and UNMIK. … It was it was just a dizzying array of issues that I was not prepared for at all.

Kevin, in fact, was an experienced (and apparently highly competent) field officer at that point, but he also described a similar expectation of immediate ‘expertise’ from his first job in the field through his most recent posting. This phenomenon has been so common that it is mentioned in a commentary on the Statement of Ethical Commitments:

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25 This list of functions was originally more extensive, with nine work areas suggested: “monitoring, reporting, advocacy/intervention, capacity building, engaging with humanitarian and development partners, support to peace processes and for transitional justice, in-mission sensitization, and participation in UN governance of transitional territories” (O’Flaherty & Ulrich, 2010, p. 23).

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A characteristic aspect of international field operations is a tendency to assign an exceptional level of responsibility to the individuals involved. This is in part a function of the general isolation or marginalisation of conflict zones from mainstream professional working environments. Human rights professionals working in such settings are often assigned responsibilities beyond their ordinary capacity or at a level that they would only attain in their home environments through a gradual process of advancements, subject to ongoing tests and controls (O’Flaherty & Ulrich, 2010, p. 77).

The commentary suggests that the conflict is to blame here, too, not simply for the lack of impartiality and capacity among local citizens (as suggested by Gwen and others) but also for problems with ‘capacity’ among international staff.

Field officers also frequently suggested that institutional politics and priorities may have played a more decisive role in the lack of capacity in international staff. In this sense, the interpersonal networks in operation in humanitarian intervention appear to compromise expertise in the field:

Andreas: I had some of my colleagues working for the UN mission … that had no human rights background at all, and they got those positions because they were within the system, they had the same leader, and that they were moved from one mission to another one and without having even a background training.

Andreas describes a phenomenon of moving from position to position within various field missions (sometimes known as ‘mission-hopping’), where expertise (and connections) in the ‘field’ as location is prioritized over professional background or expertise. Jessica noted a similar phenomenon where international status becomes conflated with professional expertise:

Jessica: I was talking to one woman, and I mean, it's not her fault, basically she's brought in to be an expert on something and then [mission leadership] decided OSCE should take over education. So having been doing a very good job on monitoring court processes and analyzing outcome, which I think OSCE did very well, they suddenly dropped most of that and they had to go work on education. She told me, she said, what the hell do I know about education? And overnight, we've got to take it. And so I'm supposed to now be the expert focal point because I'm an international … It's just ridiculous. … You'd have people who were under-qualified, overpaid, but because they were international having greater authority than a high court judge in Bosnia.
The lack of actual competence in law or human rights was indicated by many field officers as actually equally (or more) characteristic of international mission staff – including human rights field officers – than the sort of professional competence usually associated with expertise. However, the relations of power embedded in this lack of capacity even among the so-called experts are seldom problematized or acknowledged more formally. The Statement of Ethical Commitments does allude to the issues of “power and privilege” that inhere in the position of human rights field officer but is satisfied with a requirement that officers “be aware of any power or privilege that their position commands and refrain from abusing their status, especially in relations with members of the local community” (O’Flaherty & Ulrich, 2010, p. 77).

Andreas followed up his general comments on the lack of professional expertise among international staff with an example that echoed similar stories from other field officers:

_Andreas_: Honestly, I think you need to take into account not only the background of the person that you are sending to the mission but to some extent also the background of the beneficiaries. … You couldn’t put somebody who had no human rights background telling a civil servant, a Kosovo civil servant how to perform his job from a human rights perspective. … I remember one director of the health department in a municipality. He was a doctor, and he used to have a Japanese lady, 28 years old, being a CPO [civil protection officer] for the UN telling him how to fix you up, … and he couldn’t believe it, and its not a matter of gender perspective, it’s a matter of her 28, him 45 years old, being a doctor, and her being young person coming from the university without any real experience … and having a lot of authority because it’s international, and at the end performing the monitoring of that person.

In Andreas’ story, the juxtaposition between the lack of professional experience (or even life experience) of the ‘international’ expert and the abundance of relevant professional education and experience of the ‘local’ beneficiary is particularly striking. However, his overarching concern that mission planning take into account the actual or historical capacities of the population in the ‘host’ country was also repeated by other field officers. In some contexts, such as Bosnia or Kosovo in the former Yugoslavia, there may have existed a highly sophisticated public sector before (and even during) the conflict; in other areas, such as East
Timor, the long-term nature of the occupation that generated the underlying conflict may have more profoundly prevented the development of that same capacity.

Despite their concerns, field officers often expressed in the interviews their sense of the uniqueness and importance of the field and human rights field work. As much as they were at times disillusioned by the everyday realities, many were drawn to the excitement and urgency of work in the post-conflict setting. Gwen, who returned to field work after leaving for advanced studies, explained:

_Gwen:_ I had thought of leaving and of doing something else [after further education] but I was really missing the field work in the end. … I think it’s just the feeling of being involved in such an intense area of work. It was the only thing that could really keep my attention, the field. I find it very difficult to come back to rather France, England or the US. I guess I didn't feel that was where the urgency was. I felt pulled back to working in emergency. Still bitten by the bug.

Other field officers expressed similar sentiments. In an echo of Latour’s expert (2005), Kevin framed it as the ‘uncertainty’ that drew him:

_Kevin:_ I decided that the uncertainty of it all was something that I was very well adapted to … [I started] learning that I responded very well in a crisis situation … Whenever I went back and tried to be a more traditional lawyer and to do more forms of traditional legal research, I kind of decided that I found it tedious and boring … The action environment was much more preferable to the … inaction of research.

The uncertainty and action of crisis in the field are juxtaposed to the inaction of traditional legal practice. That action and urgency, and the sense of uniqueness, are constitutive parts of the ‘field’ that Hyndman and others problematize – the distinction from home and headquarters, from routine, from the mundane.

Some field officers expressed a view that they could add particular value both to and from the field, as interlocutors between field and headquarters:

_Evan:_ For me the field is where the work is done … There's a certain kind of protocol and certain processes that are required. Meeting with local authorities, talking with them at length … Some people come down from headquarters and want to just stop by and say hi and okay I'm going to go off and do my work. No. These people want to know what you're doing in the area. And there’s no reason why we shouldn't tell them and describe the kind of work we're doing and try to garner their support and interest where
possible. … obtaining a positive outcome for a project that we're initiating, what’s required to set that up, to implement it, what local politics are concerned or ethnic implications of working with this community vs. working with that community. How do you negotiate those sorts of obstacles and understandings? So I think the field perspective is very important.

For Evan, experience in the field provides its own form of expertise that is equally important to other professional expertise; it offers a specialized understanding of the local context. Marcus makes a similar point, though he questions whether that field expertise is valued at headquarters:

Marcus: Very rarely does the knowledge and expertise from the ground filter up. I was always a regional guy, I was never a central headquarters guy … With all the politics and all the bullshit, it’s not worth it for me.

In a sense, human rights officers know who they are, become who they are, in the field. The sense of urgency and importance to field work extends beyond the actualities of the post-conflict setting and connects to the rationales underlying intervention in the first place. Orford suggests that the international community constitutes itself through the texts of humanitarian intervention as “a designer of new worlds, a solver of problems, and a saviour of suffering peoples” (2003, p. 142). To some extent, the experts of humanitarian intervention, including human rights field officers, do the same through their everyday work in the field.

Despite embracing their status as ‘outsiders,’ field officers were, of course, located and embedded in the local environment. They live there, they eat there, and some of them have their families with them. This was not a topic explored at length in the interviews, but it did emerge from time to time in ways that further complicated the notion of the ‘field’ as away from ‘home’ and the expert as distant and detached. For example, Paul spoke at length about the renewed outbreak of ethnic violence between Albanians and Serbs in Kosovo in March 2004 although the international mission had been there for almost five years:

Paul: That was the worst time of the whole thing, the whole time I was there.

Elizabeth: Did you think about leaving?
Paul: Yes, well, I thought about, immediate evacuation was on everybody’s mind to start with, and that wasn’t necessary. I actually had my family there at the time, which is an indication of how surprising the whole thing was. So that certainly compounded things. Like if you’re just yourself, you can wave down any passing military vehicle, and you yourself are safe, but you’ve got a wife and two little kids in a Serb enclave, yeah, that’s certainly added to a lot of pressure at the time.

The violence of the field – potential and actual, international and local – became more visible to Paul when his family was present. For other field officers, the blurring of home and field was, perhaps, less dramatic but equally unmistakable. Nicholas met his wife, a liaison officer from the military component of the field mission, during his work as a human rights officer; Jessica met her partner in the field as well. Kevin had his wife and children with him, and Rafael’s wife got pregnant in the field, prompting their return to ‘home.’ These everyday details of ordinary life unsettle the distinctions that define field work.

‘International’ expertise is relational; it requires local ‘demand’ for and beneficiaries of that expertise. Like all expert relationships, it is an unequal relation of power. There are many aspects to and consequences of the power differential between international staff and local staff or inhabitants in a humanitarian intervention. Some are basic and material, such as differences in levels of pay and levels of protection in case of conflict escalation. These are important indicators of professional status and obvious markers between ‘international’ and ‘local’ in the field. However, there are also more subtle but equally significant markers embedded in the idea of expert and complicated by the field context. The ‘work knowledge’ of the field officer participants in this project, together with the professionalization project discussed above, suggest that such ‘international’ experts are as grounded in their own locations, perspectives, interests, and customs as ‘local’ others. Nonetheless, the expert human rights officer is constructed as existing outside of the underlying conflict and therefore impartial, neutral, objective and rational. At the same time, the human rights officer is imbued with an expected level of competence by virtue of this same location, outside the conflict and in the world of the
‘international.’ From this location of impartial expertise, field officers are positioned to serve as translators of the law (and of the international), diagnosticians of the situation in the field, and authors of the new legal framework.

II. THE HUMAN RIGHTS OFFICER AS TRANSLATOR

Translation and interpretation are common metaphors in discussing professional expert interactions with non-experts. Latour theorizes a “sociology of translation” (2005), and Bourdieu positions lawyers as “interpreters of texts” (1987). Post-colonial scholars have also employed the language of translation and interpretation to characterize relationships of power across various cultural and racial boundaries, including those dividing colonizer and colonized (Fanon, 1967, Anghie, 1999, Hutnyk, 2005, Bhabha, 2004). Merry frames the circulation and proliferation of human rights discourses and institutions within and across ‘local’ contexts as both “translation” and “vernacularization” (2005, 2006). These concepts are useful here because they are (both literally in terms of language and figuratively in regards to law) ubiquitous in the daily work of an international mission, and the participants in this research project frequently invoked them (although, interestingly, the field officer professionalization project makes no mention of them).

The translator is in a powerful position, and that role is often “assumed by those who can enforce their way” (Hutnyk, 2005, pp. 86-87). Law’s multi-dimensionality enables as well as demands this form of expertise. The objective of many of these translations in humanitarian intervention is the creation of a new “class of interpreters,” conversant in the language and norms of international law, among the local population (Bhabha, 2004, pp. 124-125). The process of translation is integral to the larger project of governance – (re)building capacity and the nation. This section discusses the human rights officer as translator (and, at times, defender) of the law and the mandate in the field. The field officer mediates relations of power among
components of the field mission, as well as between the mission and local individuals and governmental partners, through law and expertise. These translations and interpretations are inevitably partial, contingent, uneven and subject to various (mis)understandings. They are also embedded in the relations of ruling that authorize and sustain the intervention.

**A. Translating Law**

One objective of international missions is to re-establish the ‘rule of law’ – to translate the purportedly universal international law to the particular local context of the mission – and the human rights components of field missions, including human rights officers, are intended to play a significant role in this process. Often in a post-conflict situation, the familiar institutions of domestic law have been badly damaged or undermined – buildings and records destroyed, professionals politicized or exiled, laws and regulations suspended or ignored. Certainly, these circumstances suggest a lack of capacity in the post-conflict environment and a need to replace and rebuild that capacity. However, this capacity gap is frequently compounded in humanitarian intervention. As discussed in chapter 3, peace agreements increasingly include the sweeping importation of a new legal framework as formative of the new nation. This legal framework displaces (or radically transforms) existing domestic law and replaces it with an international human rights legal regime. Any remaining domestic ‘capacity’ is rendered inadequate and in need of ‘international’ assistance.

Law itself is an interpretive endeavor, but interpretation is “aimed at a practical object and is designed to determine practical effects” – supporting an argument, establishing a rule, deciding a conflict (Bourdieu, 1987, p. 818). Legal texts both demand and reinforce the interpretive power of the legal expert. Words of “ordinary usage [are] made to deviate from their usual meaning by learned usage,” and the layperson must rely on the expert translator (1987, p. 829). This general (and defining) feature of the juridical field is, again, magnified in
the distant, not-home ‘field’ context of humanitarian intervention. An essential feature of the professional expert knowledge of the human rights field officer is knowledge of international human rights law (O’Flaherty & Ulrich, 2010). This knowledge provides the foundation for the key work functions of monitoring, reporting, advocating, and capacity-building. In that work, human rights field officers are continually translating and interpreting both law and mandate for their local contacts and for their colleagues in other areas of the mission. They operate as a “broker between cultural forms” although the translation process is typically one-sided (Hutnyk 2005, p. 86). Field officers speak for law and human rights, but at times, they also must defend the importance – even relevance – of both. Because (human rights) law is foundational to their expertise, these defensive processes of translations are important not just for the meanings conveyed to others but also for the understandings of the officers themselves.

Human rights officers frequently discussed their ‘translation’ work in the context of training local authorities and practitioners. For example, Stephen spent a majority of his time in Kosovo conducting training on various aspects of human rights law. He explained his approach:

*Stephen:* I try to make human rights relevant to their lives. I get the Niemöller, you know the famous Niemöller passage about first they came for the Jews, you know, why it's so important to protect minority rights. … I've been accused of sometimes of proselytizing human rights and that kind of thing [laughter].

Here, Stephen references the well-known quotation from Martin Niemöller, a prominent German Protestant clergyman who was imprisoned in a Nazi concentration camp in World War II, which is often invoked as a caution against complicity through silence in the face of mass human rights abuses.26 When I asked whether local participants ever offered resistance to the law or to the notion of human rights in the training, Stephen elaborated:

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26 The full quotation is: “First they came for the Socialists, and I did not speak out because I was not a Socialist; then they came for the Trade Unionists, and I did not speak out because I was not a Trade Unionist; then they came for the Jews, and I did not speak out because I was not a Jew; then they came for me, and there was no one left to speak for me.” The quotation appears in different versions, emphasizing other groups, but making the same essential point about the complicity of silence. See, e.g., United States Holocaust Memorial Museum, available at http://www.ushmm.org/wlc/en/article.php?ModuleId=10007392 (November 30, 2011).
Stephen: No, not when I explained it to them, I mean it was my goal to make it the law for non-lawyers, so I was taking what I knew was like very advanced legal concepts, and I'd say you know, I'd go through them kind of the legal aspect, … not when you present it in a way that is digestible, when you really thought it through as when you understand the concepts yourself and then you think it through as to how to, how, to translate it, you know. You basically translate it legally into practical ideas and concepts … I think that that's where human rights is doing such a, international human rights is really progressing in that we are really starting to translate this to the ordinary person with no human rights knowledge.

Although expertise relies upon the officer’s own thorough understanding of human rights law, other features emerge as well – the ability to interpret, to link to the practical everyday, but also perhaps a sort of (‘proselytizing’) devotion to the goals of human rights. The expert translation is essential here as prevention, a counter to potential resistance to law and human rights. It moves from the legal to the practical, from the advanced to the ordinary. If it is ‘practical,’ ‘digestible,’ and ‘relevant’ to the local participants, resistance is mitigated or avoided.

However, field officers did not all (or always) share that sense of the value of an appeal to human rights or to law. At times, translation required an explicit move away from the language of human rights, especially framed as demand:

Gwen: It wasn't always the most strategic and effective way to realize those rights by using human rights language. So we often had to just say, listen, these people, we did say these people have the right to this and that, but we often had to help them actually realize it without demand just being there as human rights people just demanding that it be dealt with. … We had barriers we had to overcome before we could make those arguments, especially when you're working on a day-to-day basis with them. It’s different if people would come from Pristina from other areas or outsiders they could come in and make those demands but if you're there on a daily basis the human rights language is less effective.

In other remarks, Gwen picks up Stephen’s theme of making human rights appear ‘practical,’ but she also appears to be reflecting on the limits of expertise in the field. Here, being embedded in the everyday removes some ability to make arguments and demands for human rights. As translator, she understands the claims for remedies through that lens but must make strategic adjustments to be effective with local counterparts.
Although translation of the law and human rights to local participants was a common part of the everyday work of field officers, several officers also discussed the need to translate human rights law within the mission itself and sometimes with other purported human rights experts. At times, the language of ‘human rights’ was particularly problematic, raising conflicts among international personnel from different professional backgrounds, just as it does with local authorities. Anthony noted the tensions between human rights professionals and police officers in response to human rights language:

*Anthony*: You can tell a police officer that you're working on human rights and they freak out. But when you start to talk about what they're doing, good government, proper policing, it's all human rights. They just don't like those. Police officers cringe. It's like human rights officers in Geneva when they heard I was working for the police division were just like, Oh, how could you. … I mean this is the whole point of rule of law. The world without police is not good either. … Yes, this is difficult but ideally that's what police reform should be about. … You talk about international standards instead of saying human rights standards. It's the same thing. You're citing the same documents and it's just they don't, their backs don't go up when you say it.

The issue becomes one of translation, where human rights become good government and proper policing, and human rights standards become international standards, all within the general framework of the rule of law. Suzanne makes a similar point regarding tensions with the political officers in the mission and at headquarters:

*Suzanne*: I do think that the whole human rights issue is really marginalized … a lot of time the political guys pat you on the head and tell you to run along because they know so much better and they’re so much more sophisticated … It’s really the issue of how, how you make human rights workers in the field gain credibility and I think there’s responsibilities on both sides … I think that there is insufficient rigor in a lot of the human rights community, by the same token I think there’s an extremely patronizing attitude by the political um, the political whatever, um, the head of political missions etc. around the world, that don’t treat it with enough respect.

Human rights language can be a red flag to some mission staff – police, military, political officers – hindering the work of field officers. Sometimes this resistance may be grounded in the same sort of rationales that underlie ‘local’ resistance – rights are impractical, irrelevant, or a sort of luxury for better times. Sometimes it is grounded in the normative aspirations and
evaluation reflected in human rights – where the use of force and the compromises of politics seem out of place. As discussed further in the next chapter, these responses contribute to the transformation of human rights law in the field. This transformation begins to emerge, and is in some respects accomplished, through processes of translation.

As they translate, field officers grapple with uneven understandings even among those sympathetic to – and tasked with promoting and protecting – human rights. One significant axis of contestation identified by the field officers I interviewed was the extent of overlap between human rights and human rights law, an issue also significant to the foundations of field officer expertise. Particularly in the early days of field missions, human rights field work did not necessarily mean use of law. Nathan, a field officer trained as a lawyer, explained:

*Nathan:* Virtually no one in the human rights division had a background in human rights law. And so there wasn't really any understanding of what human rights were in the legal sense. It was sort of, I guess this was at the time when they first, when the notion of a human rights professional really started emerging. … There was very little international law capacity of any sort anywhere in the mission, there's really no training. …

*Elizabeth:* … Did you find yourself drawn into a role of being the voice of the law?

*Nathan:* Well, a little bit, except most people didn't care [laughter]. So I was the voice of the law talking to myself. Occasionally I would get an audience, and occasionally my senior human rights officer would latch on to something where he realized that the legal arguments were helpful to advancing a particular goal, political goal.

As with local authorities, translation within the mission, even among human rights personnel, required a connection between the law and the practical or political. Human rights are not necessarily synonymous with human rights law, and the authority and usefulness of both law and field officer are in question.

Nathan later continued on this theme, connecting it to the ambiguities of a human rights mandate. The formal mandate reflected in Security Council resolutions may or may not specifically reference human rights law, but most make general mention of human rights. This distinction sometimes mattered in the field:
Nathan: It was really only the young, young people who had any knowledge of human rights law even as being relevant to a human rights officer job. Awareness that there is this thing out there, human rights international law, and that there are treaties that have these rules in them. … People understood the mandate. What is a human rights mandate for me, naturally, the phrase ‘human rights’ brings in international human rights law. You could argue that it's not exclusively an issue of human rights law. ‘Human rights’ has a broader meaning, but it certainly includes it, you know. … For other people it didn't. They were looking at it, the older notion that human rights [violations are] just bad stuff.

Nathan describes a process of interpretation in this context that is a familiar labor for lawyers, where “the specific power of legal professionals consists in revealing rights – and revealing injustices by the same process – or, on the contrary, in vetoing feelings of injustice based on a sense of fairness alone” (Bourdieu, 1987, p. 833). Here, the expertise in the law confers both the power to interpret the legal texts of the treaties, as well as the legal/political text of the mandate. However, that expertise may be limited in value if the role of law is not appreciated or embraced by other participants in the mission.

Over time, this legal dimension of human rights – and of the expertise of the field officer – has become more pronounced. Like Nathan, several field officers specifically distinguished more general understandings of human rights from legal understandings of human rights – or human rights as law-based. They also distinguished human rights practice and the work of human rights officers along similar lines, with law and legal experience bringing more certainty and rigor to the work and augmenting expertise. This is the point of ‘credibility’ that Suzanne, who was trained and experienced as a lawyer, raises:

Suzanne: I think a lot of people who go on to do human rights don’t really appreciate the fact that human rights are law, … and it’s a body of law that should be treated like a body of law, with respect and rigor. Maybe its sounding a bit too lofty here, but I certainly see as a manager here that people either come into rights a) without a law degree or b) with a law degree and never having practiced … I find that the people who don’t have a law degree and the people who didn’t practice don’t understand the rigor necessary. And they make accusations and rely on misinformation or un-sourced information, um, that, makes them lose credibility … Human rights people don’t need to exaggerate it because there’s enough stuff there.
The frustration field officers described in relation to professional expertise grounded primarily in ‘international’ status reappears here in the debate about the role of law. The human rights officers I interviewed struggled in the geographical ‘field’ to make sense of the contours of their professional ‘field.’ The expertise of human rights officers is somewhat undermined when it is based primarily on ‘international’ status, a general view of human rights rather than an understanding of human rights law, and a lack of professional experience and skill. Instead, expertise in the geographical field requires the connection to the established authority, rigor and credibility of the juridical field. This connection is foundational for the practices of translation of human rights as law.

Metaphorically, language and translation illuminate the operations of law and expertise in the field. Mastery of legal language is foundational for expertise, and translation or interpretation of legal concepts is essential to the everyday work of field officers. This translation draws upon the texts of law and mandate, and it is conveyed in training, reporting and other capacity-building efforts. At times, it is a defensive and strategic endeavor, engaged in demonstrating and solidifying the relevance of law, human rights, the work of human rights field officers and the project of international intervention. Although translation in the field generally appears to operate in a one-way direction, law and expertise do not emerge unchanged. Both are transformed even as they are reconstituted.

B. Lost in Translation

Translation of law, and more generally of the ‘international,’ may be a preoccupation of the field officers and the broader mission. However, it is rarely a smooth or seamless process, and human rights officers also told stories of mistranslations and failed interpretations in the field. In their discussions, however, human rights officers seldom engaged with issues of literal translation of language. The metaphorical translation of law is, however, also dependent in
many cases upon the actual translation of language in the field. This was not a subject that came up often in the interviews, but it did appear on the margins occasionally. One field officer had previously been a professional interpreter, and others noted issues of language that arose from time to time. The ability to translate culture, language, and process – either literally or figuratively – confers its own form of power. In the context of local interpreters in the field, it offers a conditional power, a form of “honorary citizenship” for those subject to ‘international’ authority (Fanon, 1967, p. 38).

Anthony was the only field officer who made a direct connection between the metaphorical translations in the field and literal translations – successful or otherwise. He noted the tendency among international staff – rarely fluent in the ‘local’ language(s) and never expected to be – to assume that that proficiency in ‘international’ language equates to other forms of expertise:

Anthony: Just because you speak two languages doesn't mean it's the person who knows the most. I mean like we had a lawyer, her English wasn't that good when she joined OHCHR. … If you did this typical kind of, ‘we need people who all speak perfectly fluent English, blah, blah, and the mission language,’ she wouldn't have passed the interview. The thing was she was a really good lawyer. You have to be careful in that respect. And I think all international organizations are a little bit, have that problem. Oh we talk too much to people who speak our language, be it English or French whatever mission you're in. … and then you come away with a very skewed picture perhaps because what community are the ones that speak English and French, in some countries it may be a very particular community.

Language – metaphorically and literally – is significant in humanitarian intervention. In its literal sense, it becomes another mandatory import of the international intervention – where the language of the mission is the language of governance. It is also constitutive of a local ‘class of interpreters’ to facilitate and carry on the work of intervention. In that project, it is easy to substitute markers of the ‘international,’ such as familiar language, for understanding, capacity and expertise. Interestingly, Anthony underscored his cautionary tale of seeing the professional
expertise of a local colleague devalued because of her limited language skills with a story of his own inadequacy in language later in his career in another field context:

Anthony: On my second day I had to go into a meeting that was conducted in French, and I have not spoken French properly for years. I studied it for 8 years. I can follow everything they're saying, but then I needed to make an intervention. I sounded like a 5-year old. … You're like, now I understand when people would say they didn't want to talk. [Because] I had a really intelligent point and it now is going to lose because I sounded like a blithering idiot. Because I'm like, ‘me want this good idea happen.’ And you're like, oh Lord, it's really bad.

The complexities of literal translation illuminate the fragility of other translations in the field and the tenuous status of expert. Just as relations of power are refracted through multiple levels of ‘field’ in the expertise of human rights officers, they are also refracted through different forms of translation – literally of language, but also of mandate and of law.

Law is effective – and its expert interpreters are able to accomplish its work – “only to the extent that it is socially recognized and meets with agreement, even if only tacit and partial, because it corresponds, at least apparently, to real needs and interests” (Bourdieu, 1987, p. 840). In fact, agreement is not always sufficient; the symbolic power of law requires the ceaseless reproduction of a “tacit grant of faith in the juridical order” (1987, p. 844). The field officers I interviewed related numerous challenges, points of resistance, and counter-interpretations they encountered in the course of their work. Some of these occurred in relation to their efforts to translate the normative content of the law, and others reflected uneven terrain between the legal and the ‘practical’ or ‘real.’

Kevin identifies several points of disconnect in his efforts to interpret and apply the law in the everyday context of the field:

Kevin: Well, I think that in the field at the time, of course, it was extremely difficult wherever you were … I think that first of all you had the very difficult challenge of, in essence, seeming to be a, I guess you could say, an academic in nature, and having to be an interviewer … interviewing people, in some cases, people that had been traumatized by their experiences. Suddenly having to try and get them to talk about their experiences, to get them to open up to you, to trust you, those are things that simply the law did, of course, did not teach you those sorts of skills.
Interestingly, Kevin first frames the law as an active participant – or, rather, inactive in this example – where the law fails to teach the necessary skills. It is academic when it needs to be practical and relational. He continues:

Kevin: And, then of course, there were always some real conflicts there, you would get people to open up and be quickly leaving them. There were some ethical issues that I found to the work at the time that were unsettling. … not to mention that sort of basic disconnect you have whenever you’re talking to someone about a violent incident that had just occurred to them or that had happened years before and then you’re taking their statements, you’re trying to confirm and reconfirm the information they have given you, and then suddenly you go from what is a very, you know, factual yet very emotional accounting of real world events, and then suddenly you try to bring the very sterile law into that discussion. It sometimes seemed very non sequitur …. It seemed to question the relevance of your work.

Law is not only impractical in the field, it is also sterile when it faces the emotional. Where it is supposed to offer solutions, to decide, instead law manifests as inadequate, perhaps even irrelevant, when it encounters the ‘real world events’ of the field.

Because of (international) law’s inadequacies, the field officer is hindered in the basic interpretive process of ‘revealing rights’ and measuring compliance, fundamental aspects of human rights expertise:

Kevin: And then taking the sort of eyewitness accounts and trying to apply them to what at the time I think was a very rudimentary legal framework, where there [was] not a lot of literature available in terms of how to turn the rights themselves into measurable standards. There was not a lot of literature readily available in terms of how to, umm how to do more detailed or more sophisticated comparisons of national legislation to international standards. And so those were always the challenges.

Kevin’s comments reveal a frustration that other field officers also expressed about the efficacy of law and its usefulness in achieving practical ends even when translated for the local audience. Cristina ties the difficulties of translation to larger problems of effectiveness, usefulness, and even belief:

Cristina: Law would not be very often the most effective way to achieve your goals because people do not believe in it. … They just don't see the utility of it, you know… The work needs to be done but I think very often we go there, we meaning international
go there with the idea that this is the law and this is the way it has to be. But it's much more complex than that. It's not just an automatic translation.

Paul makes a similar point, suggesting that the importation of a new (and borrowed) legal framework that is commonplace in the field, is not adequate to the task:

Paul: Here [at home] we've got legal instruments, we've got courts, we've got human rights bodies and they function. Of course they don't all function perfectly, but they do function and they have power and if there's an infringement, there's a chance that something can be done about it. But over there human rights instruments are largely irrelevant. The situation, you can't make Kosovo into Switzerland by bringing all the Swiss laws into Kosovo. And in fact, if you hope someday that Kosovo would become like Switzerland, I don't think that would be the best way to do it, one day transfer all their laws there and hope that some day they would catch up. You need, I think, a more practical step-by-step approach to deal with the environment which you have.

Paul suggests that the systems that work at ‘home’ or ‘headquarters’ may simply not translate in the field. In the end, translation often fails. It may, as Cristina indicates, fail for lack of belief – the “grant of faith” is missing to sustain law’s power. Moreover, it may, as many field officers suggest, fail for lack of practical usefulness. Law, especially law brought in from ‘outside,’ does not appear to have enough to offer in the aftermath of the conflict.

The multiple practices of translation and interpretation in the field are coordinating practices of power, whether they succeed or fail. In each situation, the field is constituted to locate power in the international expert. The status of translator is linked to expertise; in turn, expertise itself is constructed through impartiality (about the conflict, not about normative standards), knowledge (about international law or standards, not domestic law), and language (English or French, the international languages, not domestic language). Translation becomes a communication across the boundaries of always already unequal dualisms.

III. THE FIELD OFFICER AS Scribe

Law and language are central to the expertise of the field officer, but that expertise must also produce, create and expand knowledge, often, if not predominantly, in the form of written texts. Because law is often a “text-based practice,” human rights officers – as legal experts – are
called upon to create myriad texts in the course of their everyday work (Orford, 2003, p. 50). Human rights officers may see these as “neutral, technical function[s]” of expertise, but these reading and writing practices of field work involve the reproduction of power relations (2003, p. 78). Baxi frames these practices as a political undertaking – not disconnected from the practices of translation discussed earlier – where human rights languages (and texts) “construct institutional facts as a species of social facts” (2006, p. 88). This section considers two aspects of knowledge production in human rights field work: monitoring and reporting, and the drafting of laws. The human rights field officer as observer, monitor, and reporter provides the record of human rights conditions and the progress of the mission, in collaboration and in contestation with other participants within and outside the mission. In addition, the human rights officer often acts as a sort of de facto legislator, or at the least, a legislative consultant in the field. This role is less frequently acknowledged in the literature but appears significant in participants’ accounts of the work. Both forms of reading/writing practice reinforce and reconstitute expertise in the field.

A. Monitoring and Reporting

Monitoring and reporting figure prominently in the work of human rights field officers. The professionalization project lists them as “principal” work areas, functions and tools of the field officers (O’Flaherty & Ulrich, 2010, p. 23). Monitoring is broadly defined as “gather[ing], analys[ing] and us[ing] information on the human rights situation” in the Guiding Principals for field officers, and it is considered “integral to all functions of the field officer” (2010, pp. 424, 24). The commentary on the Guiding Principles outlines the contours of a human rights officer’s expertise with the description of these two key functions. Within the broad framework of monitoring, human rights officers may be expected to meet with a wide range of people, develop relationships, visit and assess specific places and events, communicate findings, follow
up, and generally provide a “reassuring presence” (2010, p. 424). Monitoring almost necessarily leads to reporting on the results of all that observation and investigation. Like monitoring, reporting is “an essential tool for human rights work and protection” (2010, p. 24). The professionalization project identifies five principal functions of reporting:

- recording a current human rights situation and its evolution over time, both negative and positive; informing State authorities and other relevant actors of their responsibilities and obligations regarding human rights problems and identifying solutions; providing an independent appraisal of the human rights situation that can inform the decisions of the international community and mobilise action; supporting the rights of victims and their families to know about the details of violations and their rights to justice, restitution, compensation or reparations; and use in criminal prosecutions and other accountability mechanisms (2010, p. 24).

Reporting requires a particular skill set or technical competence: “the ability to analyse information and to write clearly and concisely,” as well as “knowing applicable human rights law (including national laws and regional treaties) and current country conditions, national politics and regional issues” (2010, p. 428). Both monitoring and reporting are characterized as “diagnostic,” further positioning the field officer as expert (2010, pp. 424, 427).

Given her interest in texts, it is unsurprising that Smith has interrogated expert writing practices and the embedded relations of power. She destabilizes the idea of the expert as holder and purveyor of objective knowledge; the expert is never really ‘outside’ the relations being observed, analyzed or interpreted. The texts produced by experts are particularly significant; these texts allow, or perhaps even lead, the expert to conceal his or her standpoint as embedded in the same everyday world they scrutinize (Smith, 1989, p. 136). Distance and detachment are illusory:

The only way of knowing a socially constructed world is knowing it from within. We can never stand outside it. … The relation of observer and object of observation … is a specialized social relationship. Even to be a stranger is to enter a world constituted from within as strange. (Smith, 2007 [1990], p. 322).

It is the ‘impartiality’ of the expert that sets up the ‘one-sided relationship of observing and telling’ that organizes the expert account. The expert takes for granted “the privileges of
speaking for those who are not members of the discourses embedded in the relations of ruling in which she has a voice” (Smith, 1989, p. 116).

These general critiques of expertise have relevance in law and in the monitoring and reporting work of human rights field officers. The legal expert, and the human rights officer, is engaged in an asymmetrical relationship with the subjects of monitoring and reporting, where the officer has the privilege of speaking and writing. The expert creates “the authoritative version” account of the empirical world that is both independent of the “partial and subjective perspectives” of those involved in the action and also transcends the accounts of others, particularly of those without expertise (1989, p. 118). The expert reporter, thus, not only describes the realities of the social world but also constructs and shapes it through text. The authoritative account is integral to broader “systems of ‘communication,’ ‘knowledge,’ ‘information,’ ‘regulation,’ ‘control,’ and the like” (Smith, 1999, p. 77). The reports live on beyond the moment of creation; they are read, cited and archived. For experts, the texts also serve a function of reflecting and reinforcing their expertise. They become an independent source of ‘knowledge’ and provide a renewed foundation for expertise.

The work knowledge of human rights officers supports the central role of reporting and reporting in their everyday work in the field. Andreas describes them as “part of our basic work” and links them to other facets of expertise (or lack thereof) in field work:

Andreas: I used to give a, the introduction or some trainings on particular, rather than the theory, something like a basic training on how to monitor human rights, how to write reports, report-writing, for instance. Yeah, these types of things just so they are not even touched at the university or even with masters degrees, but they are part of our basic work, especially when you are dealing with human rights monitoring. It is not only a matter of knowing the human rights conventions but also how to translate that to a report, or how to write a report.

The written text is an integral part of the work of translation of law and links law to the other activities in the field. Kevin echoes this point on the centrality of the report: “every time I went to the field I tried to make sure I produced a report.” He continues with a description that tracks
closely the outline of monitoring and reporting practices offered in the “Guiding Principles” for field officers:

Kevin: From a visit to the field, well, you tried to encapsulate all the places you, not just the places you visited but the categories of individuals that you spoke to. … you would write up a situation or report of what had happened when you were in the field, what was the, what were rumored activities … You would, you know, clearly demarcate what can be confirmed and what was not confirmed um, then you would make a basic rights analysis. You would try to make a recommendation of how a given situation would be addressed or improved upon.

These basic monitoring reports establish an ‘authoritative account’ of what has happened in the field and an expert recommendation of possible responses by the international community and by domestic officials.

However, the basic human rights field report also becomes a building block for other reports and expert texts. The basic field report forms the first link in a chain of texts that coordinate practices in the field:

Paul: The UN is pretty report heavy. So there was an awful lot of report writing and sending off to headquarters… They would in fact compile the reports [doing some political analysis of the bigger picture] … and there was certainly stuff that came back from them in terms of their perception of the overall direction and priorities.

Paul’s characterization of the ‘report heavy’ UN appeared to be almost an understatement when field officers elaborated on the role of reports and reporting in their everyday practices. Kevin described the various reports he prepared in his work in addition to regular periodic reporting:

Kevin: And then at times you would do issue-specific or thematic reports where you try to put everything together in about one specific category of violation you'd been encountering. There were also a couple times when we had to do specific investigations into an incident … I also was asked to develop a couple of training manuals for use by field officers and for use by NGO's at the time, so I was also trying to put my analytical skills to work in doing those sorts of written reports and materials.

The field report begins as an official record of an event, which is used by the field officer and other parts of the mission; it is combined with other basic field reports to identify (“diagnose”) categories of violations; and these reports are then further used in training procedures that
cultivate and reinforce the expertise of field officers. This is a network of reports that Marcus described an ‘avalanche of paper’ flowing from mission to headquarters and back again:

Marcus: It was an avalanche of paper that we were showered with, or not necessarily paper, electronic information we were showered with on a regular basis. Again, most of it is just garbage, and totally irrelevant and totally unnecessary, and every once in a while there was something that was really worth reading, and really valuable and really helpful … there were people who were known to write really good analysis, and when they took the time and they wrote a report, there were a lot of people who then wanted to read that report.

In this ‘report heavy’ context, it was difficult for field officers, as well as other institutional actors, to separate out and pay attention to the information that had value. The report itself becomes the objective, and reporting is the activity of the expert.

Because of their extensive reach from the field back into the mission and the broader institutional setting, field reports and reporting practices also are shaped by and reflect the ruling relations of those broader contexts. At times, the larger institutional politics and even geopolitics might contour reporting priorities or even language:

Andreas: Within an international organization, you are working within a very political framework, so some things it's a bit difficult, and especially the OSCE, it’s quite a political international organization because of how it is composed, and how it is funded because all the players, the states, they have veto power to the missions … so we were always [laugh] in between and at the same time, we were a pillar of the UN mission, so also taking into account that we were not just the OSCE, but the OSCE within the UN. Yeah, and that was reflected in our reporting methods, in also the, the language that I was, that was appearing in the end in the reports.

These practices of power are seldom, if ever, explicit in the reports themselves, but they structure the ‘impartial’ and ‘comprehensive’ reporting work of the officers. More typically, field officers described the influence of more mundane institutional politics. Within the mission, in fact, expertise could be differentiated based on staff members’ approach to writing and reporting. Marcus explained:

Marcus: There were people who actually wanted to get stuff done, there were people who wanted the right stuff in reports to make it look good, and there were people who were really sensitive to what was actually going on, and were listening to their local staff
members and paying attention to things and realized that you couldn't just come in with a steam roller and accomplish anything.

At one point, Marcus somewhat dismissively characterized as ‘report-writers’ the international staff who focused on reports that ‘look good’ versus trying to ‘get stuff done.’ He elaborated:

*Marcus:* They were international staff … who thought that putting on a suit and a tie made you important and sitting behind a desk in an office with a title and your name on the door meant that people had to treat you with respect. And literally those people would take reports that other people wrote and submitted and they would copy and paste what other people were doing and they would submit it … as this is what I've observed that's going on … when in fact, none of what they were submitting was anything they had any involvement with, they might have attended a couple of meetings, but they didn't even take the time to write their own report and have their own critical thought about it, they just copied what someone else put down on paper.

The report serves as evidence of expertise – maybe even of field expertise in particular – even when that evidence is cynically manipulated.

Despite the proliferation of reports within the mission and in larger institutional context of the inter-governmental organization, field officers sometimes questioned the usefulness of reporting. The multitudes of reports and the myriad levels of institutional review serve as a sort of filter of information to and from the field. In that context, the reporting that seems essential to field officer daily work may barely register at headquarters in the ‘avalanche of paper:’

*Marcus:* We had to submit everything from weekly reports all the way down to, they went through an exercise to see what would happen, hourly reports, um, and then of course, there were quarterly reports, there were semi-annual reports, and there were annual reports. … and ninety-nine percent of the time it was the same information regurgitated over and over and over again, and nobody ever read them or very few people ever read them. … They went, you know, up, to the next level up. … There were an inordinate number of levels and layers, and then all of that to get to the office that decides what information gets to New York. And I had a friend who sent code cables, so every once in a while he would tell me, oh, by the way, that report you wrote, you actually got a sentence in the code cable today.

Marcus was particularly ambivalent about reports and reporting as a feature of field officer expertise and he spoke on it at some length. However, other field officers articulated similar concerns as well. Reporting is a preoccupation of field officers and tangible outcome of their
daily work – sometimes one of the few demonstrable results. These texts are active in the work of the intervention, and it is often field officers who both author and activate them in the field.

**B. Writing Law**

Although reporting is a primary manifestation of human rights field officer expertise, human rights officers also write other texts in the field. As lawyers, they may be called upon to draft, review or revise ‘new’ domestic legal texts, from basic regulations and legislation to more significant documents such as national constitutions (Chandler, 2006, Sripati, 2008). This is not often discussed in the literature, but it emerged from the interviews as another significant feature of expertise in the field. When that expertise is framed as legal expertise, these practices may take on greater significance. As discussed more fully elsewhere, the idea of the rule of law has historically been linked to a democratic framework and self-governance, and in contemporary field missions, the development of such a framework has generally been the goal if rarely the practice. In practice, the approach has more typically been one of “externally imposing a rights framework” outside the usual domestic political process (Chandler, 2006, pp. 128-129). This is generally seen as unproblematic given the ‘universal’ and ‘progressive’ nature of human rights, and this practice has been facilitated through the expert work of human rights field officers.

Particularly in the more expansive ‘transitional administration’ missions, human rights field officers are tasked with writing new laws for the ‘host’ nation or vetting proposed laws for human-rights compliance. For the most part, field officers acknowledged this as an important and, seemingly, uncontroversial part of their work and the work of the mission. Valerie, who was trained as a lawyer, distinguished international law from the domestic laws put in place by international personnel:

*Valerie:* Well, the laws that were being implemented there were drafted by the international community … It was domestic laws but drafted by international institutions, so not international law per se.
Similarly, Kevin, another field officer trained as a lawyer, discussed his work on various legislative and other legal drafting work:

*Kevin:* I was assigned to the drafting team [on a court statute] … I did then work rather intensively on legal research, legislative drafting, umm and negotiation on different points of the jurisdiction of the, of jurisdictional elements of the statute at the time. And so I ended up using my legal background rather intensively.

The processes of setting policy priorities, negotiating and compromising on language and outcomes that are usually integral to domestic law-making instead occur primarily (at least initially) within the international mission. Those debates may occur, but they take place among international staff. Suzanne discusses interplay within the mission on drafting legislation:

*Suzanne:* We were drafting legislation on everything, I mean like the police institution law, the judicial service law, the legal aid, I mean everything, just very, very basic, because they had no legislation themselves, and so all of that, and the human rights department made a lot of comments on a lot of the draft legislation like for example, oh L.A. [Legal Affairs] would draft, make the original draft, and then we would provide additional input and there was a lot of back and forth on making sure that human rights protections were integrated into the new, into the all the new pieces of legislation.

Suzanne provided me with a copy of a memo she had participated in preparing as a member of the mission’s human rights department to another mission component regarding draft legislation related to the police. Although the memo makes clear that the domestic authorities will ultimately enact (or not) the legislation, it is the international authorities who are debating the contents and drafting the language. The memo makes general recommendations on content, proposes particular language for various provisions, and offers supporting analysis based in human rights law.

Suzanne’s experiences are not unique, and in some ways, they may reflect exactly the sort of legal expertise that is expected from field officers, by both domestic and international authorities. While she actually had significant experience as a lawyer and as a field officer (as well as advanced training), that is not always the case. As with other expert practices in the field, at times the authority to draft legislation was grounded more in ‘international’ status than
in actual professional expertise. For example, Nathan discusses his observations as part of a transitional administration:

_Nathan_: Part of what we were doing … was reviewing draft legislation, doing sort of a human rights compliance check on it and we also occasionally originated draft legislation but that was kind of on our own initiative. There were lots of people around drafting legislation. … People just out of law school. When I was first tasked with drafting some language I was very reluctant to do something, thinking back home they'd never let me do this (laughter). But then I looked around to see who else was doing it and the crap they were churning out, and I thought, well hell, you know, I may not be the best, but I certainly did a better job than they are.

Other field officers expressed similar reluctance to take on such authority, but in the context of the mission, it was typically considered a major part of the work of international staff.

Although these practices were common, however, that does not mean that local authorities played no role or that ‘international expertise’ was accepted without question or complaint. For example, Stephen described his effort to draft a comprehensive non-discrimination law that was largely rejected by local authorities. He begins by placing his efforts in the context of a contemporary movement within Europe on similar issues:

_Stephen_: The EU in the year 2000 adopted the racial equality directive, which is the beginning of a start of a number of equality directives, … which had basically revolutionized anti-discrimination laws in Europe, … it was amazing, I mean, it really had teeth … In 2001, I was right in the middle of when that should have been happening in Kosovo too, because under the constitutional framework for the provisional institutions of self-government they were to required to adapt their laws to European standards. And so I really used that as all the leverage I could, to say look guys, you've got to also adopt this anti-discrimination, why don’t you do a law, why don’t you, instead of changing all the different laws and making them compliant with this directive like the rest of Europe is doing, why don’t you do a comprehensive discrimination law.

This context has both persuasive and coercive value – ‘leverage’ – as international and domestic authorities work to rationalize the domestic legal framework in accordance with international standards. However, as is often the case in the field, it is difficult to resist the temptation to advance human rights protection even further:

_Stephen_: And I basically I drafted the law with consultations with the experts at Council of Europe, with European Roma rights and with many internationals, governmental and non-governmental organization commentators. Put it out, basically the framework was
easy because the framework was the racial equality directive and then I hung all this other stuff on it, and we really fleshed it out and made it even more powerful than the racial equality directive.

This over-reach turns out to be a strategic miscalculation, and perhaps a misunderstanding of the extent of ‘international’ expertise, in this situation:

Stephen: I realize that was a mistake because we should have just sat down, instead of me drafting this thing and giving it to the government hoping you know, adopt a lot of it or some of it, we should have just sat down with the government and you know done it in the first place, because now it looks like [Stephen’s] law. … So finally the government had it for about a month or two, and they came out and they said … thank you and we’re going to do our own now. And I thought, that’s fine, good, you know, it’s better, at least they have something to go on and we can help them with it.

Stephen realizes a mistake in moving beyond expert advice and consultation, marking the legislation too overtly as an ‘international’ product. He retreats to more familiar and acceptable ground, providing a model for local government to use supplemented with expert assistance.

International expertise draws from the texts of intervention – human rights laws and mandates – and it produces other texts that reflect and extend the reach of those laws and mandates. Through reports, human rights officers position themselves as expert observers and diagnosticians. Through other legal texts, they continue the work begun in treaties, resolutions, and peace agreements to bring international law into the domestic realm. However, international expertise, in fact international authority, is not absolute, and this may become more evident in the context of writing law, which is more unambiguously a domestic responsibility, than in other facets of human rights work, such as reporting and interpreting law.

IV. CONCLUSION

Human rights officers both reflect and reinscribe existing relations of power across scales, at the international, national and local levels. They are partner and counter-part to the texts of humanitarian intervention – agents of texts, activators of texts, translators of texts, and authors of texts. The texts of intervention simultaneously require and enable their expertise;
human rights officers are endowed with expertise through law and the mandate, and in turn, they deploy law in projects of administration and governance. This expertise is magnified in the field as it becomes conflated with the ‘international,’ and as it produces knowledge in the form of reports and (re)establishes the rule of law. However, these practices and productions are unstable and contested in operation, among various components of the international mission and by domestic authorities, when the promises of the ‘international’ are not matched by professional competence, when translations are misconceived or misunderstood, and when expertise overreaches. Law and expertise must continually be reframed and renewed.
CHAPTER 5: LEGAL ACTION IN THE FIELD – STANDARDS, POLITICS, PRAGMATISM

This chapter returns to larger questions about the nature of law in the context of humanitarian intervention and human rights fieldwork. From a perspective grounded in the texts and expertise of power, law’s multi-dimensionality appears in the violence of military intervention, the bureaucracy of international administration, and the governing projects of nation-building. Tracing these dimensions of law into and through the field complicates this understanding, surfacing new coordinating practices and pathways of rule. With its separation from home and headquarters, the field appears exceptional to those who enter from ‘outside,’ and this exceptionality frames and is framed by law (Agamben, 2005, Butler, 2004, Douzinas, 2007). In this context, the texts and experts of intervention attempt to distance (human rights) law from violence, to situate field officers in opposition to bureaucratic headquarters, and to govern as caretakers of the host population. These practices result in a transformation of law into ‘standards’ or general principles and a struggle to reconcile law/standards with the ‘political’ and the ‘practical.’

If we begin with a view of law’s multi-dimensionality as triangular, with violence, bureaucracy and governance representing the three sides of the triangle (as discussed in chapter 2), and further expand those dimensions into a prism with the active texts and expert practices of humanitarian intervention at either end (as discussed in chapters 3 and 4), then in this final chapter, the prism sides are revealed as standards, the political, and the practical. Along the plane of governance/violence, law becomes standards and normative enforcement; along the plane of violence/bureaucracy, law’s entanglement with politics emerges; and along the plane of bureaucracy/governance, law becomes – or must yield to – a practical solution. In the field(s) of humanitarian intervention, the prisms splinter and multiply, becoming kaleidoscopic, and we
can trace law from and through the various facets, tumbling and shifting with the vantage point and the viewer, over time and across contexts. (Figure 13 illustrates the prism of law in the field, with ‘practical’ on the back plane in this view, and ‘standards’ and ‘political’ on the two forward-facing planes in this view.)

Figure 13: The Prism of Law in the Field

This transformation in the exceptional context of the field results in a sort of legal pluralism reminiscent of colonial endeavors that is difficult to reconcile with the purported goal of establishing the ‘rule of law.’ This chapter notes those points of connection to the imperial past (and present) but does not trace them in the ways that other scholars have comprehensively done so (Anghie, 2005, Orford, 2003). Instead, it sketches an outline of the (uneven and unequal) dialectic between field and headquarters (home, not-field), where law in its multidimensionality is imposed but also altered and ignored, received but also transformed and returned. International law as the formal law of treaty and mandate is abstracted to universal standard or principle; freed from some of the constraints of legality, law expands its reach as norm. As both formal law and norm, however, law must contend with other competing values and visions in the field. For human rights law in the field, these encounters take shape as conflicts between law and politics and law and practicality. This process creates a tension and,
at times, a cynicism within field missions as human rights officers struggle to negotiate relations of power along these axes within the mission and beyond.

I. Law as Implementing International Standards

Humanitarian interventions seek to end conflict but also to (re)establish the ‘rule of law’ and restore the protection of human rights. These broad concepts – human rights and the rule of law – are often invoked but rarely defined or elaborated in the field; instead, the texts of intervention and the work knowledge(s) of field officers tend to presume a shared understanding that will guide the everyday work and, in time and through capacity-building efforts, be transmitted to local counterparts. This presumed shared understanding is articulated as ‘international standards’ or ‘principles’ in the general language of texts (especially mandate and report) and in the descriptions of field officers. The dialectic of the field is in play in this transformation of law into standard and standard into law. The international standards of human rights and rule of law provide impetus and justification for projects of governance in the field. At the same time, work in the field has informed the development of international standards for forceful intervention.

This section discusses the intersection of law’s violence and law’s governance as they are manifested in the transformation of international law into ‘international standards’ in the field. It begins with a focus on governance and the conversion of formal law into international standards in peace agreements, Security Council resolutions, reports and the work knowledge of human rights field officers. It then examines the emerging norm of a ‘responsibility to protect’ as an expression of authorized violence in the name of human rights and for the sake of governance that has been generated as a response to both success and failure in the field.
A. Governing through Standards

When humanitarian intervention occurs, it is typically justified in the name of protecting human rights and the rule of law, both in text and by international personnel. These concepts, despite their relation to (international) law, are seldom invoked in a strictly legal sense. Instead, they typically appear as standards or principles, even aspirations, overlapping with law, but something that is both less and more than law. To some extent, this move away from law to standards seems to reflect an attempt to distance the governing project from the more coercive dimensions of law. Although recognizing the practical value of law that comes from its authoritative status and ability to coerce compliance, some scholars have in fact argued for a move away from a legalizing view of human rights (Cali & Meckled-Garcia, 2006). Human rights law, to the extent that it is reflected in multi-lateral treaties based on state consent, actually establishes a lowest common denominator version of rights – “minimum standards” (Donnelly, 2006, p. 71). Conceptualizing human rights as norms or standards opens up a wider range of possibilities for advocacy and definition, but it also furthers the link to projects of governance (Wilson, 2007, Baxi, 2006).

In the texts of humanitarian intervention, formal law retains its authoritative and coercive power. For example, Chapter VII of the UN Charter is regularly and specifically invoked in the operative language of Security Council resolutions for the authority to intervene that it bestows upon the Security Council, and the general body of international law is sometimes noted in characterizing conflict or framing obligations. For example, Resolution 1272 on East Timor notes reports of “systematic, widespread and flagrant violations of international humanitarian and human rights law” in the on-going conflict (Preamble), and Resolution 1270 on Sierra Leone calls for strict respect by all parties of “relevant provisions of international humanitarian and human rights law” (para. 22).
More frequently, however, there are general references to human rights and the rule of law that seem to suggest a shared (implicit) understanding of the scope of these concepts and the steps required to accomplish them as goals. Resolution 1244 on Kosovo charges the international administration with “[m]aintaining civil law and order” and “[p]rotecting and promoting human rights” (1999). Resolution 1509 on Liberia notes “violations of human rights” and urges the transitional government “to ensure that the protection of human rights and the establishment of a state based on the rule of law and of an independent judiciary are among its highest priorities” (2003). The provisions of the resolution defining the scope of the mandate include “contribut[ing] towards international efforts to protect and promote human rights” and “ensur[ing] an adequate human rights presence, capacity and expertise within UNMIL to carry out human rights promotion, protection, and monitoring activities” (2003).

In the other texts of the field, the language is equally imprecise, and law becomes explicitly transformed into standards and principles. The peace agreements negotiated with regard to the conflicts in Kosovo, Bosnia and East Timor all present a version of this transformation (with particular treaties or other texts listed as exemplars of these standards). The parties to the East Timor agreement undertake to “promote, protect and respect human rights and fundamental freedoms … as set forth, inter alia, in the Universal Declaration of Human Rights, the 1993 Vienna Declaration on Human Rights and the Decree of the People's Consultative Assembly No. XVII/MPR/1998 Concerning Human Rights.” This general provision is followed by an enumeration of seventeen rights ‘included’ in the general provision (one of which refers to a specific treaty on children’s rights) (Part IV, Art. 46).

The Kosovo agreement makes greater use of the language of principles and standards. It includes three specific articles on applicable “principles” in different sections of the agreement. More tellingly, reference to ‘international standards’ is common throughout the text:

- trial “ conducted pursuant to international standards” (Framework, Art. II, para. 2);
• prisoner transfer “in accordance with international humanitarian standards” (Ch. 1, Art. XII, para. 1);
• respect for minority rights “in accordance with international standards” (Ch. 1, Art. VII, para. 4.a.iii.);
• education rights for minorities “in accordance with international standards” (Ch. 1, Art. VIII, para. 4.c.);
• law enforcement agencies “shall observe internationally recognized standards of human rights and due process” (Ch. 2, Art. I, para. 1);
• prisons operated “consistent with international standards” (Ch. 2, Art. VII, para. 4);
• voter list “prepared to international standards” (Ch. 5, Art. IV, para. 2);
• census “in accordance with international standards” (Ch. 5, Art. IV, para. 3);
• measures re independent media “in keeping with international standards” (Ch. 5, Art. IV, para. 6); and
• prisoner release “in accordance with international humanitarian standards” (Ch. 7, Art. XII, para. 1).

Reference to the law – and even to human rights – is much less frequent and remains very general – e.g., obligations under “international humanitarian law” (Ch. 1, Art. II, para. 13);

This pattern of general conceptual reference rather than citation to law or legal authority in the documents of the field also appears in field reports. For example, an OSCE field report on the treatment of minorities in Kosovo mentions “international human rights standards,” “principle[s],” “universally recognized rights,” and “international standards,” in addition to references to specific treaties and treaty provisions (OSCE, 2000). Similarly, a UN mission report on human rights in Iraq makes general reference to “international human rights obligations,” “a culture of human rights,” and “promotion and protection of human rights and the rule of law” with only brief references to specific treaties or “international treaty obligations” (UNAMI, 2008).

The human rights officers I interviewed also often spoke in terms of international standards of human rights and the rule of law. Some field officers were explicit, both in framing human rights and the rule of law in terms of standards and principles, and in discussing conflicts.
within the mission about defining and complying with those standards. For Kevin, this conflict was particularly acute when he worked in the Kosovo field mission, which assumed the sovereign powers of government as a ‘transitional administration:’

Kevin: Yeah, absolutely, it was a completely different world. I mean, if nothing else, you suddenly are … expected to make compromises. You know, when you’re just doing monitoring work, you could be, you know, be the final word, or … the last man standing in terms of holding out for the observance of a standard, or of a norm, or of a principle. And then suddenly in government you’re expected to find practical compromises. I would say it’s the difference between standing for a universal principle versus progressive realization, which, it seemed regardless of the issue, we were always expected to compromise on everything. And of course the consequences of not compromising were that we were often times shut out or not given any voice on certain issues.

Elizabeth: Who were you compromising with?

Kevin: Well, … it was often times three prime culprits. One being the head of the department of justice, the second being the head of political affairs and the head political advisors to the head of SRSG, and then the third element and perhaps the most powerful element was the mission’s legal advisor, who viewed himself as sort of the voice behind the throne of the mission and who demanded that every single issue come through him, including issues of the extent to which UNMIK law and regulation reflected human rights principles.

Kevin makes an interesting distinction between the traditional human rights work of monitoring, where the commitment to the basic norm or standard is fundamental, and the political and practical work of governing (which are discussed further later in this chapter). In this view, traditional human rights work requires standing for universal principles, and the idea that these principles should be subject to compromise or filtered through other perspectives is anathema.

Like Kevin, Anthony framed human rights normatively as “the highest standards.” He also contrasted this understanding of human rights standards with the perspective of those who would compromise or negotiate in the field:

Anthony: You don't negotiate these things. Or you shouldn’t. Or you do actually. I mean people do, and we've seen it happen, but we've all had times you give these beautiful briefings and talking points, and your principal or the SRSG, your head of mission or whatever, goes off and has a political meeting and kind of sells away things that, you're like, you're not authorized to give away basic rights. You can't negotiate that
down. No. That wasn't a negotiable point. The ICCPR is there, the European Convention is there, your negotiating doesn't make it go away.

Anthony’s comments are one of the few times where a field officer made the link between a general sense of human rights or international standards and the formal law of human rights treaties. Anthony does that here to underscore the legally binding nature of the obligations, perhaps recognizing the fragility of the shared understanding of international standards.

More typically, human rights remained framed as standards, linked to law and the rule of law, but as much a matter of faith as law. For example, Kevin summarized:

Kevin: I still believe firmly that human rights standards offer one of the prime, I mean, I like to think they are the prime indicator of the extent to which rule of law is respected in the country, the extent to which individuals have security, free movement and most importantly a sustainable life.

Kevin is making a practical argument about the value of human rights standards, but he expresses it as a matter of belief. Gwen made a similar point:

Gwen: There's always, one hopes, [human rights] has a preventative role although I'm not sure it always does. I guess we have to keep trying. We can't give up, but I think that's the alternative, is just not giving up. That human rights will not be respected. I do believe in universal human rights however difficult it is to implement. It is important to try.

As Bourdieu suggests, this ‘faith’ is fundamental to the symbolic power of law, even for expert practitioners (1987). In the context of human rights, this generalized faith in the law has greater traction as a belief in the universal standards of human rights. It is, of course, impossible to fully separate formal law from the principles that underlie it. At a minimum, these principles or standards inform the interpretation of law and legal obligations, both in formal adjudications and in the everyday of the field. More broadly, the “principles informing international law actually shape the nature of the human rights upheld within it” (Cali & Meckled-Garcia, 2006, p. 11). In more traditional legal environments, the normative possibilities of human rights are still constrained by the limits of law and the legal system. In the field, however, the discretionary
authority of the ‘international’ in both text and expertise is given freer reign, particularly when it relies upon standards rather than law.

In the field human rights and the rule of law take shape distinct from, though connected to, the international laws defining and enforcing them. Law tends to become standard or guiding principle in projects of governance and capacity building. This is evident in the language of the texts of humanitarian intervention, particularly the peace agreements and Security Council resolutions that limn the contours of the mandate of the field mission and the framework of the new nation. However, it emerges even more strongly in the work knowledge(s) and practices of human rights field officers. They conceive of and are committed to the ‘highest’ standards of human rights, more deeply at times than to the possible ‘minimum standards’ of actual treaty or negotiated compromise. At times, this presents points of conflict within the mission and in their own everyday work. Nonetheless, the experiences of the field in working with and under international standards in turn shape understandings of law and human rights beyond the field.

**B. Violence as Protection**

As humanitarian intervention has become more common, the experiences of field missions – especially the more remarkable success and failures – have begun to inform the development of international law and normative standards. In the past decade, this may be most evident in the emerging idea of a ‘responsibility to protect’ as a supporting rationale for humanitarian intervention (ICISS, 2001, Orford, 2011, Zifcak, 2009). The doctrine relies upon a definition of sovereignty based on governance that requires nations to ensure basic human rights to their nationals and to refrain from extreme violations of rights, such as genocide and crimes against humanity. If the international community determines that the sovereign has
failed in this regard, the international community has its own responsibility to intervene, including through force (ICISS, 2001).

The origin story of the ‘Responsibility to Protect’ places its foundation in the increasing practice of humanitarian intervention in the 1990s and the controversies surrounding particular instances where the international community did or did not intervene:

These four cases [Rwanda, Kosovo, Bosnia and Somalia] occurred at a time when there were heightened expectations for effective collective action following the end of the Cold War. All four of them – Rwanda, Kosovo, Bosnia and Somalia – have had a profound effect on how the problem of intervention is viewed, analyzed and characterized (ICISS, 2001, p. 1).

The doctrine also grounds itself in recent UN reform efforts, led by then Secretary-General Kofi Annan (ICISS, 2001, Zifcak, 2009, Orford, 2011). In 2000, in a report to the UN General Assembly, Annan posed the question: “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?” (Millennium Report, 2000, ICISS, 2001). The story continues that inspired by this query, the Canadian government convened an international expert commission, the International Commission on Intervention and State Sovereignty, which consulted widely (and globally) with governments, NGOs, IGOs, universities, think tanks and others. After these extensive consultations, the Commission issued a report outlining and justifying the ‘responsibility to protect’ (ICISS, 2001).

The Commission report is lengthy but it begins with a synopsis of the “core principles” of the emerging doctrine, broken into “basic principles,” “foundations,” “elements,” and “priorities” (ICISS, 2001, p. XI). The ‘basic principles’ reframe state sovereignty as state responsibility and assert an international responsibility to protect:

- State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
- Where a population is suffering serious harm, as a result of internal war, insurgency,
repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect (ICISS, 2001, p. XI).

These principles are founded in: “obligations inherent in the concept of sovereignty; the responsibility of the Security Council … for the maintenance of international peace and security; specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law; [and] the developing practice of states, regional organizations and the Security Council itself” (ICISS, 2001, p. XI).

The doctrine comprises three different forms of protective responsibility – prevention, reaction and rebuilding:

- The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.
- The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.
- The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert (2001, p. XI).

The doctrine (and Commission) position forceful intervention as a ‘last resort,’ only when other ‘protection’ efforts have failed to ensure that nations comply with the basic international standards (2001, p. XI). It prioritized conflict prevention through “transfers of wealth, expertise and opportunity from developed to developing countries” (Zifcak, 2009, p. 112).

The Commission’s articulation of the emerging norm or doctrine returned to the UN in the context of on-going reform discussions, and in 2004 the ‘responsibility to protect’ was endorsed as “an emerging norm” by a “High-Level Panel” convened by the Secretary-General (Zifcak, 2009, p. 112). In 2005, after much negotiation, it was recognized in two paragraphs of the World Summit Outcome Document as a “[r]esponsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity:”

Each individual State has the responsibility to protect its populations from genocide, war
crimes, ethnic cleansing and crimes against humanity. … We accept that responsibility and will act in accordance with it. …

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. … We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out (World Summit Outcome Document, 2005, paras. 138-139).

Although it is still quite new (or newly framed), this norm or standard of ‘responsibility’ has begun to appear in the texts of Security Council resolutions. In 2006 in Resolution 1674 on the protection of civilians in armed conflict, the Security Council ‘reaffirmed’ the provisions of the World Summit document on “the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” (para. 4). In two subsequent resolutions on Darfur (Resolution 1706 (2006) and Resolution 1769 (2007)), the Security Council makes reference to the operative language of Resolution 1674 and the World Summit document. Most recently, in 2011, in resolutions on Libya and Ivory Coast, the Security Council has noted those countries’ “responsibility to protect” their populations (Resolutions 1970, 1973, 1975). However, the Security Council has not yet explicitly invoked the ‘international’ responsibility to protect as a rationale for intervention.

In some respects, the ‘responsibility to protect’ appears as simply the latest manifestation of the disregard (willful or otherwise) of the complex and violent history of intervention by the ‘international community’ (Orford, 2011). International force is framed as a responsibility and as protective; in contrast, domestic force represents failure at best, and at worst, internationally criminal conduct. The larger context of ruling relations – and the violent operations of law – are
obscured in the new shared/international normative framework. However, the emergence of this new standard also reflects the ways in which the remote ‘field’ reaches back along networks of rule to the coordinating centres of power. Given its recent emergence as a doctrine, it is unsurprising that few field officers mentioned the ‘responsibility to protect’ specifically. Instead, their comments relay the frustrations noted by the Commission regarding high level decisions on whether, when and how to intervene:

Marcus: The real truth of the matter is that everybody knows that the mission was a complete failure. The joke at the beginning of the mission was, for the price of one more cluster bomb, Kosovo would have had a twenty-first century power system, but they didn't because one cluster bomb did not fall on the power station. So instead of rebuilding, instead of building a new one, they spent millions and even probably billions of dollars fixing and repairing and trying to get it working, and even to this day, its still a crappy, old early twentieth century system.

The dark humor of the field underscores frustrations with the apparent randomness of not only the larger decisions on intervention itself, but also the many small decisions in the conduct of the intervention – from military strikes to rebuilding projects.

For those committed to the highest, universal standards of rights protection and promotion, this seems like a catastrophic failure of responsibility – domestic and international. Jessica mentions the idea of the responsibility to protect but has a similarly dismal assessment of the practice so far:

Jessica: Well, that's a whole thing that's going on now, isn't it, is there such a thing as a responsibility to protect from genocide? I think that argument's been won, um, it's so politicized, the countries we go in … So there's so many political things, there's so many military things, you never know what was that final thing that happened which caused the bombs to be dropped. …The more difficult question is what you do afterwards. And that's the thing, cause you're using military to stop a war, always problematic, because it, there's going to be a military consequence, which you're going to have to deal with [right]. Then what you've got, well, how then do you go in to try and change, calm the situation into one of democracy and human rights and rule of law.

She suggests that even framed as responsibility, the case-by-case decisions are inevitably influenced by politics, military strategy and a range of other concerns. The role of human rights
protection as impetus and motivator is much clearer than the role of these standards, or even law, in the aftermath, in the post-conflict world of the field.

Like the Commission, the field officers, despite many reservations and misgivings, nonetheless see the ‘solution’ as still based in intervention, but with better planning, better intentions, and better governance. Jessica critiqued the international intervention in Bosnia, which began in 1995 and remains on-going, as a failure:

Jessica: And I think with the best intentions, we just got it completely wrong because we didn't know how to do it. There was no five-year plan. There was, let's have elections, very bad idea, let's do this on laws on the military, right, good, but not integrated with how that was going to have an impact on the positions of the politicians. There was no, absolutely no assessment at all as to the impact of the economic situation going through a transition …So not any of that planning in place, as to how it was going to transition from conflict to peace, basing it on human rights.

Despite the expansive reach of the Dayton Peace Agreement, and the wide-ranging powers of the international administration (led by the ad hoc Office of the High Representative), Jessica still identifies an emphasis on action and legal reform, rather than on planning and assessment. Marcus offers a similar critique of the mission in neighboring Kosovo, which began several years later in 1999 and arguably was in a position to draw lessons from the Bosnian intervention:

Marcus: It was the first mission where the UN actually tried to run the country, and they had no idea what they were doing. And the UN is really bad at saying we don't know what we're doing, let's find some experts to tell us what to do because the UN believes that to admit that it doesn't know something somehow then it loses some power and authority.

For both Jessica and Marcus, as well as other field officers, expertise – not just expertise in human rights, but a wide range of expertise – appears critical to the success of the intervention overall and of the work of the field mission. Violence and law are replaced by or subsumed into standards and expertise – key features of governance. The problems that follow humanitarian intervention in the field do not arise due to limits of legalization or inherent conflicts over the use of force – which may be the problems of headquarters and beyond. Instead, in the field, it is
the difficulties of translating the high standards into practice, the lack of essential expertise, and an absence of managerial planning that present the greatest struggles in the quest to govern and rebuild.

II. LAW AS POLITICAL ACTION

Humanitarian intervention is a political project as well as a legal undertaking. Through its embrace of law, intervention purports to maintain “a separation between law and power, [where] law retains its purity of purpose” (Orford, 2003, p. 43). The idea is that “[i]nternational law ends at the point where ‘politics’ and coercion begins” (Orford, 2003, p. 43). This view obscures the multi-dimensional nature of law (and power), and allows field officers and projects of intervention to position themselves on the side of law, distant from, if not opposed to, politics as well as violence. A more nuanced view surfaces the forms of power exercised in the field and recognizes that “[a]ll law is political in that it reflects the distribution of power in society, and its interpretation and application have differential impacts on the life-chances of those who are subject to it” (Freeman, 2006, p. 53).

Politics, like human rights and the rule of law, is regularly discussed but seldom defined in the field. Unlike human rights and the rule of law, politics are seldom referenced in the texts of intervention, but the idea of politics and the political appeared frequently in the discussions of field officers. Typically, human rights officers distinguish their work – and human rights more generally – from the idea of politics and the political. However, they are also aware that the political context and the broader relations of power always frame the intervention itself and, consequently, the work of the international community. This section considers ‘law as politics’ at two levels, connecting the bureaucratic politics of the mission with the geopolitics of the intervention. At the field level of the mission, human rights officers distinguish law and human rights from the more cynical political concerns of the institution, while at the same they
articulate human rights as an end goal of political efforts. A similar struggle to reconcile law and politics occurs at the coordinating levels of power, in the institutional context of the United Nations and Security Council and more generally, in decisions to intervene or not intervene in particular situations of conflict.

**A. Local Politics: Bureaucracy at Work**

The field mission itself is a political actor in the domestic context of the intervention, and it is also subject to its internal politics as a bureaucratic institution. In the first sense, this is most evident in the example of field missions that actually displace domestic sovereign authority within the host country (e.g. Kosovo, Bosnia, East Timor). This is an exceptional circumstance that illustrates the (re)emergence of sovereign power “within the field of governmentality.” (Butler, 2004, p. 53). Butler uses the context of indefinite detention to demonstrate the ways in which law is used instrumentally as a tactic of governmentality in the “exceptional moment.” Law is nominally suspended, both national law and international law, and a new exercise of sovereignty takes place outside the law through administrative bureaucracies. This sovereignty is linked to both governance and bureaucracy – “[p]etty sovereigns abound,” and these bureaucrats become “part of the apparatus of governmentality” (2004, pp. 56, 59).

Humanitarian intervention – especially when the mission becomes the local sovereign – presents a similar sort of exceptional moment, where the suspension of law reveals the convergence of different forms of power and the shifting role of law. Law is redefined; it is no longer “that to which the state is subject nor that which distinguishes between lawful state action and unlawful, but is now expressly understood as an instrument, an instrumentality of power, one that can be applied and suspended at will” (2004, p. 83). This upends historical understandings of the rule of law as a legal framework predicated on consent, equality and
individual autonomy (Chandler, 2006); and it more closely recalls imperial practices that used law strategically and unevenly as tactics of power (Anghie, 2005, Orford, 2003).

The work knowledge of human rights field officers revealed just such an understanding of law in the field in humanitarian intervention:

Jessica: We, en masse, dump ourselves in someone else's country, and decide how it's going to be run, and we make up the rules as we go along. … We then say let's have democracy and rule of law, and let's have it done the way we do it, without understanding or empowering nationals to do it at all. So we have OHR on top of the government [in Bosnia], being the government, dictating laws that – was it twelve a month that [the High Representative] imposed? Some of them weren't even translated at the time he imposed them, you know. And then we end up with this alienation.

The bare assertion of power, in the name of law, in this ‘do as I say, not as I do’ approach in the field was troubling for many field officers. It undermined their confidence in the intervention and presented a profound disconnect from their understandings of human rights standards. At the same time, however, some field officers also seemed to appreciate the utility of that ability to suspend the law instrumentally. One human rights officer, an experienced lawyer, relayed an illustrative story about the ‘impractical’ nature of the law and the pragmatic decision to ignore it:

Paul: There was a new regional administrator and he came up to me and he asked for an opinion on an issue that was happening in the municipal government … The assembly was about to pass legislation dealing with, I believe, illegal occupation of property which was a huge issue over there, which appeared to fly in the face of the law. And the question was what should we do about this? … My advice was we should do nothing.

He was rather shocked and after discussion and explanation he was comfortable with it and the reason was this: … there was national law which was entirely contrary to what the municipality was trying to do which nobody at the national level either the local government or the UN had any interest whatsoever … It was something brought in as a good European model and was left there and then completely ignored. There was no structure to support it being implemented at the local level. Nobody cared if it was erased. Every other municipality in Kosovo was doing what they felt appropriate and most of them were doing what the government and the municipality … [were] supposed to do. So without regard to whether it was a particularly good way in dealing with it or not, it seemed to be the way that they were dealing with it but with some success.

And so under those circumstances trying to make it out as some sort of test case when there was no support within the courts, no support within the national government
or the UN and everybody else is doing it differently … at that point it didn't deserve any sort of respect. You just do what works and picking a fight with the municipal assembly over something that nobody else cared about or supported that just didn't make any sense. … It wasn't that one was horrible in human rights, the other one was great. It was just sort of a bureaucratic sort of thing and we're to try to enforce the law, which had nobody's interest in it, which would have been sort of a waste of time.

Interestingly, Paul is comfortable – and persuades other international personnel in the mission to his view – in disregarding the law, in part because of the flawed system of imposing law in the exceptional context of the field. Here, it is a ‘good European model,’ likely imported (if not imposed) by international administrators, that becomes an obstacle in the field. While this presents a dilemma for local authorities, the international administrators remain free to suspend or ignore it.

At the same time, field officers continued to distinguish law from politics, and their work from the work of political counterparts within the mission. The idea that expertise, like law, is a relation of power was seldom discussed by those I interviewed, much less “the ways in which the reading and writing practices of international lawyers are themselves political” (Orford, 2003, p. 78). Stephen, a field officer who had also practiced as a lawyer, articulated a common view:

Stephen: One of the biggest problems I have, is, I've had with human rights officers, I've had with many, many colleagues is they seem to want to distinguish human rights from human rights law. You know, I'm a fervent believer of the rights-based approach, but in order to do the rights based approach … in the end human rights are based on law not politics … The more it's about law and the less it's about politics for me, the more it’s human rights. Yes, to be sure, human rights has it's place in the political arena, but it doesn't mean that human rights should be politicized because when human rights are politicized, they're marginalized, they're neutralized, and they're, they're made useless, they're rendered useless. So I very firmly believe that human rights have to be based in law.

Politics here would undermine the normative power of human rights – they would become politicized and ‘useless.’ This is politics in its most negative sense, undermining the universality of human rights. Human rights become an “anti-politics” (Douzinas, 2007, pp. 78-
Human rights may be normatively framed as standards, but they remain tethered to law to keep their ‘purity of purpose.’

The negative view of politics also manifested itself in bureaucratic critiques field officers offered of the conflicts between ‘political’ components of the mission with the ‘human rights’ components. For some, this was related to the larger political context of the mission that shaped everyday policy and decision-making:

*Marcus:* The US office had its own idea, the US government had its own idea, the EU had its own idea about what they were going to do, but within the UN, those strategies, those conversations never took place. At the beginning, it was let's get in there and stabilize Kosovo, and then it was, let's keep Kosovo stabilized at all costs, and then it was oh, well, we should pay attention to human rights and law and stuff, and then it was oh, I guess we'll just let the US do what it wants.

For Marcus, this ‘political’ interaction at the highest levels of the intervention reappeared throughout, from the leadership within the mission to the interactions of professional staff:

*Marcus:* It's really hard to when you have a different SRSG every six months, um, and when there is no institutional memory, there is no, uh, what's the word I'm looking for, there's no connection between what one administration does and what another administration does. Just like with presidents, [right] and so all of the initiatives that the former SRSG was involved in, the new SRSG, he's not going to touch, and then the next SRSG, his wife is actually running the show, um, and you know, it was a mess. It was absolutely a mess. We had a few really good ones, and we had a bunch of morons.

Although he continued to support the idea of humanitarian intervention, Marcus thought that the internal politics of field mission – from the global authorizing powers to the local administering powers – undermined the establishment and use of expertise:

*Marcus:* Very rarely does the knowledge and expertise from the ground filter up. I was always a regional guy, I was never a central headquarters guy … with all the politics and all the bullshit, it's not worth it for me. … It's all about who's sleeping with who, … and if you don't go to all the right parties, you don't stay out until two o'clock in the morning, drinking with all the right people, then guess what, when the time comes that you need your job, you need to do your job, and you're having a problem. I'm not really going to be there to help you because you're not my drinking buddy.

This sort of cynicism about the local politics of the mission was repeated by other field officers as well, in a range of contexts. It appears in Suzanne’s comments below about the conflicts
between political and human rights officers, and in the critiques of numerous field officers about
the actual level of expertise of the international personnel of the mission (discussed in earlier
chapters).

Generally, the view of politics that emerges from the field is a narrow one and a negative
one. Institutional politics undermine expertise, authority and capability; political and politicized
decision-making diminishes human rights and the rule of law. The larger geo-political context
might authorize and enable the everyday work of human rights in the field, but field officers
separate that exercise of power from their own practices in the field and from the universal
values of human rights. This conflicted view of and relationship with the ‘political’ also moves
between field and headquarters, changing shape and coordinating practices of intervention.

**B. The Politics of Intervention**

These conflicting – and conflicted – understandings of politics and the political also
emerge in the larger context of the intervention itself. The ruling relations are more overt, and
more overtly political, at the global level. There is a long history of forceful intervention for a
range of political ends – from the obvious examples of aggressive war and colonialism to more
nuanced interventions of trusteeship and, now, peace-keeping and humanitarian intervention.
Scholars have elaborated the ‘politics’ of intervention from a range of perspectives in each of
The texts of humanitarian intervention – treaties, peace agreements, Security Council
resolutions and reports – generally eschew both the language of force and the language of
politics, particularly in the context of human rights and humanitarianism. As more fully
elaborated in earlier chapters, the authorized force of the intervention is sharply juxtaposed to
the illegal violence of the conflict. Politics appear only in formal trappings of elections, parties
and negotiated processes at the local level. The international presence serves as impartial oversight.

Field officer work knowledge is similar. On the one hand, field officers are keenly aware of the larger political context of intervention and the impact of global power relations on work in the field. At times, the geo-political wrangling for power has a direct effect on the everyday life of the mission:

*Marcus:* I think there were too many people working at too many cross-purposes, because above everything that was happening in Kosovo, there was the tension between the US and the EU over what was going to ultimately happen in Kosovo. And for all intents and purposes, the US called the shots, and the EU pretended that they called the shots, but ultimately the US called the shots because the resolution of the whole Kosovo issue happened because of the United States.

*Elizabeth:* So do you think it was the politics that caused the problems, is that fair to say?

*Marcus:* I think it's very fair to say.

However, field officers also noted the relations of rule that extend beyond the particulars of an intervention, even as they also have an effect there:

*Jessica:* Yeah, I think we were very much the, um, I would have termed it is that the international community now practiced what we could call collective imperialism.

Jessica was one of several field officers who experienced discomfort or frustration with the echoes of earlier imperial endeavors, particularly the conflict presented when laws were imposed outside of meaningful domestic participation. This is the negative form of ‘politics’ that rules without consent. This is politics that undermines the protection and promotion of human rights, rule of law and capacity-building.

Field officers positioned human rights in opposition to this form of politics in the larger context, just as they did in their everyday work. However, they also made an argument for an ultimate reconciliation between politics and human rights. Kevin again framed this as a matter of belief:
Kevin: I believe firmly in the principles of human rights, but I also believe in the politics behind human rights because I really do think that if you’re going to have a legitimate political system, that rights have to be one of the core concerns that you undertake as a political leader, in terms of how you delineate majority rule versus minority right and versus the need of the many for the needs of the most vulnerable. And those are the basic differences between what you do that is politics and what you do that is legal obligation. So I believe firmly that there is a very political dimension to human rights, a very policy-oriented dimension to human rights.

There is a normative and legal purity to human rights that offers political legitimacy and that also shapes policy. Suzanne makes a similar point:

Suzanne: It has become very clear to me that the end game of the political process even though the political guys like to think they’re some lofty, you know, much more savvy sophisticated beings than development and humanitarians, the end goal of any political goal is the protection of human rights.

Both Kevin and Suzanne articulate a relation of politics and human rights, where human rights is the normative standard or ultimate goal, and politics becomes an acceptable means for reaching that goal. In fact, politics demonstrates its legitimacy through its connection to human rights, extending beyond ‘legal obligation’ or even policy making.

As with law as normative standard, law as politics in the field reaches extra-locally back to headquarters and larger policy development. Here, too, the ‘responsibility to protect’ provides a revealing example. Politics and political will are recurring themes in the expert Commission report that elaborates the new norm, with substantial discussions of both political failures in earlier interventions (or decisions not to intervene), as well as the need to mobilize domestic and international political will around the idea of the responsibility to protect:

It remains the case that unless the political will can be mustered to act when action is called for, the debate about intervention for human protection purposes will largely be academic. The most compelling task now is to work to ensure that when the call goes out to the community of states for action, that call will be answered. There must never again be mass killing or ethnic cleansing. There must be no more Rwandas (ICISS, 2001, p. 70).

The Commission does acknowledge the risk that intervention, even justified by the ‘responsibility to protect,’ may be viewed as “a form of neo-colonial imperialism” (ICISS, 2001, p. 45). This makes the ‘political’ support, both domestic and international, particularly
important; where that support is absent, it must be generated. In familiar language framing a choice between intervening and doing nothing, the Commission invokes the specters of mass killing, ethnic cleansing, and genocide as the alternatives to intervention.

Like the field officers, the expert Commission traces a line between bad politics and good politics, harmful politics and helpful politics. Bad politics are, to some extent, the risk of imperial tendencies, but to the Commission, the more troubling form of bad politics is the ‘failure of will’ at the institutional level of the Security Council or the UN more broadly:

While the Council has from time to time demonstrated a commitment and a capacity to fulfill this responsibility, too often it has fallen short of its responsibilities, or failed to live up to expectations. Sometimes this has been the result of a sheer lack of interest on the part of the five permanent members. Sometimes it has been because of anxiety about how a particular commitment would play in domestic politics. Often in the past, it has been the result of disagreements among the five permanent members on what if any action should be taken. Increasingly, it has resulted from a reluctance on the part of some key members to bear the burdens – especially the financial and personnel burdens – of international action (ICISS, 2001, p. 51).

The suggested antidote to such bad politics is, of course, the good kind of politics – legitimate politics, informed by principle, and intervention on the side of international standards:

… The UN exists in a world of sovereign states, and its operations must be based in political realism. But the organization is also the repository of international idealism, and that sense is fundamental to its identity. … The UN has the moral legitimacy, political credibility and administrative impartiality to mediate, moderate and reconcile the competing pulls and tensions that still plague international relations. People continue to look to the UN to guide and protect them when the tasks are too big and complex for nations and regions to handle by themselves. The comparative advantages of the UN are its universal membership, political legitimacy, administrative impartiality, technical expertise, convening and mobilizing power, and dedication of its staff (ICISS, 2001, p. 51-52).

This is a statement that could come directly from the field – where political will is directed and inspired by universal standards, dedicated idealism and impartial expertise. The violence of law and intervention is authorized through universal norms; it is tamed and made effective through bureaucratic diligence.
III. LAW AS PRACTICAL INTERVENTION

While the universality of ‘international standards’ and the value of the ‘political’ may be contested, on its face, law’s remaining transformation in the field appears less controversial. At the intersection of law’s bureaucracy and governance in the field, it emerges as pragmatism, technical expertise, and practical solutions. Despite its surface appeal, however, we can also problematize this dimension of law in the field. Unsurprisingly, it also echoes earlier interventions by the international community. Anghie has critiqued the early League of Nations (the precursor institution to the United Nations) ‘mandate’ system, under which international experts offered needed “practical” or technical solutions to the problems of ‘developing’ nations (2005, p. 145), and Orford has offered a similar analysis of contemporary interventions in East Timor and elsewhere (2003, p. 26). They trace the shift of intervention from the regimes of force to pragmatic projects of governance. Kennedy (2004) embraces a form of pragmatic humanitarianism, but he is careful to distinguish it from the rhetoric of ‘practicality,’ the professional instrumentalism, that is common in the field and that remains committed to an idealized view of human rights and intervention.

This section traces that more common professional instrumentalism in the field. Field officers often distinguished law from both the political and the practical – however, where they typically rejected the political, they tended to embrace the practical. In fact, they often discussed the ways in which they distanced themselves from the formal law to focus on practical solutions to ‘problems’ in the field. This section examines the field officers’ critique of law as impractical in encounters in the field and considers the ways in which they reframe expertise as a facility in reaching practical solutions or making practical arguments, based in their understanding of international law and standards. It then discusses this practical approach in the larger institutional projects of capacity-building and reform. In the texts of intervention, and the
everyday work of field officers, this solution-based approach appears as institutional reform and capacity-building in the aftermath of conflict.

**A. Impractical Law, Practical Expertise**

The instrumentalist view of law (and international law) sees law as a tool or instrument, “a set of problem-solving institutions and of legal techniques” to be used and managed by “technocratic” experts (Riles, 2006, p. 59). That view is both challenged and reinforced in the field as field officers find that (human rights) law appears to be an obstacle to solving ‘problems’ rather than a useful tool. The importation of law into the field – a major project of most interventions – often seems to present “impressive achievements on paper [that] do not necessarily reflect or encourage an improvement in practice” (Chandler, 2006, p. 121). The law itself appears inadequate (or, alternatively, as too strict), and field officers also face resistance to its use in the field. They again become translators of law into standards and standards into solutions.

At times in the field, it seems that the ‘highest’ international standards, treaty-based or otherwise, have no place in the immediate aftermath of conflict:

*Nathan:* And I remember being in a senior staff meeting in OSCE headquarters … I can't remember the exact dispute that came up in the meeting, but I was raising the Race Convention, CERD, well, the standards in CERD are actually relevant to our decision here, and those standards would seem to, you know, indicate that we should go with this decision. And the deputy head of mission just exploded and said, don't talk to me about human rights, this is a war…. So this is the deputy head of mission running the senior staff meeting basically saying international human rights treaties have nothing to do with this discussion. … OSCE had the human rights mandate so it was particularly ironic.

Here, other staff in the mission, other international personnel, rejects both law and the broader notion of human rights as irrelevant to decision-making in the field. Even among human rights officers, there were times when they struggled to reconcile human rights standards with the pragmatic concerns of the post-conflict environment:
Gwen: It's just the compromises that one has to make between the ideal and the principle that we're suppose to be upholding and then the practical comprises that one has to make to try to reach those ideals, and I think the return of IDPs [internally displaced persons] is probably a good example actually in Kosovo. … We were working on the return of IDPs to Kosovo but we were pushing, pushing, pushing the ideal but at what cost. For instance, is it better for an IDP to return if they have to live in an enclave situation or is it better for them to stay where they are in Serbia? The situation in Kosovo was such [that] we were really sending people to live in miserable circumstances if they did come back.

The supposedly universal standards of human rights, the ‘highest’ ideals of the law, do not always translate easily into the realities of the field. This apparent contradiction between the ideals of human rights and the practical realities in the field challenges the expertise and contributions of human rights field officers, as well as the more general ‘faith’ in the universal normative value of human rights.

Often field officers relayed their sense that they had to make a pragmatic case for the use or relevance of the law both to local authorities and to other components of the field mission:

Suzanne: The role of law... I mean, I think it's always a combination, right? I think, the role of law is a framework, but unfortunately in field missions your better argument is practicality … Does it make economic sense? Is it going to help with violence? Is it going to support the current government? … I think it's the most, the more effective one, and whenever we make an argument, if you’re arguing legally, you also try and couple it up with a practical benefit, for whoever you’re arguing to.

Elizabeth: Okay, and who are you mostly arguing to?

Suzanne: Uh, usually the [national] authorities, … And occasionally the UN as well, … I couldn't believe the conversations I was having with these guys … I was relying on Security Council resolutions and decisions of the International Commission of Jurists, and they were just looking at me like I was just some little pesky lawyer, bringing up impractical issues, right? … I've always found the most effective is if you couple the law with some sort of practical benefit, unfortunately.

It was common for field officers to have to ‘make the case’ for the relevance or usefulness of law, or, as Suzanne suggests, to pair a legal argument with a ‘practical’ argument – law itself seeming insufficiently practical. Paul, a field officer trained as a lawyer, similarly characterized the law as impractical, or even irrelevant in the post-conflict context:

Paul: The law is not very effective over there. There are real practical issues which were much more compelling, and certainly knowing the law, knowing how it functions,
permitted me to do a much better job with that, but simply working as a legal officer, I think you wouldn't have felt you were accomplishing anything too much.

Paul continued at some length on this theme, juxtaposing law with the practical, and even the political as he understood it. For example, in discussing report writing in the field, Paul noted that he more frequently used a “political” analysis rather than a legal analysis, explaining that “political is a practical aspect, unlike the law.” To cling to ‘law’ in these circumstances is counter-productive at best and ultimately unfaithful to the larger project of effective governance:

Paul: We raised various issues if there were a particular problem with a particular law, but generally speaking, we tried to be practical. Complaining about a particular piece of legislation, again it was a battle that didn’t really seem to accomplish anything. What seemed to accomplish things sometimes is just everybody ignoring it. And all trying to be practical in terms of the way we actually dealt with things.

Arguing about the law diverts attention from practical solutions, or worse, law itself becomes the problem to be solved.

When law, especially formal law, becomes a part of the problem – whether because it was imported from ‘outside,’ or a relic of the past regime, or adopted in an ethnically- (or otherwise) charged post-conflict environment – and the solution is not-law, ignoring law, trying to be practical. The ideals of law have to yield to the practicalities of the field, especially when the law’s own status is contested. The expertise of human rights field officers is challenged when (international) law is undermined, and the translation of law into standards assumes greater significance. Expertise is restored through a turn to the practical and a focus on building institutions and capacity in the post-conflict setting.

B. Building Institutions and Capacity

The ‘practical’ approach that field officers describe is focused less on legal approaches and more on projects of pedagogy, reform and management – the projects of capacity-building that are fundamental to the everyday work of international administrators in the post-intervention mission. Law only sets the frame – often through standards – for the practical work
of governance. In fact, two of the “Guiding Principles” developed by and for field officers relate to “capacity building” and “partnership,” familiar expressions of technologies of government (O’Flaherty & Ulrich, 2010). Capacity building is an “essential aim of human rights fieldwork,” and partnerships “define the work” of human rights field officers (2010, pp. 44-45). The commentary on the guidelines link those principles to pragmatism and frame them as a sort of practical counter-part to the more ‘legal’ activities of monitoring and reporting:

Capacity-building efforts must address the shortcomings identified in the monitoring, and in turn, the reform efforts must be monitored to assess whether they are working or not and why. Institutional failure is at the root of human rights breakdowns, so building institutional capacity to protect human rights is an important measure of the success of [the] work. … These efforts must go well beyond training to include organizational reforms … It does little good to train judges and then find that they are not paid, have no transport, are not qualified, or cannot consult even basic legal texts (2010, p. 45).

The principles and the commentary both encapsulate a view that was repeated in field officer work knowledge. In the everyday work of the field, law was sidelined or became focused on practical solutions – not law as a tool, but rather law as a background for determining the right solution.

It was common for field officers to juxtapose law and practicality from the vantage point of the field – in a sense, law was more suitable to home or headquarters, where there were already the familiar and developed institutions. It could be a goal, but it was not currently practical to expect it in the field:

*Paul*: Well, you certainly do need law. I think perhaps you need a simpler law. Perhaps you need a law that is … just perhaps is a little simpler to start with. Perhaps it builds on the strengths of the local system a bit more, doesn't worry too much about all the niceties and perfections for a while. In other words is prepared to take a longer-term view. … I think by focusing too much on the law you divert attention from where the real issues are. … We do need that as a long-term goal. But trying to rush into it I don't think really helps anything.

It is not that law has no place, but it must be kept basic and useful. Human rights officers were often surprised at the inadequacies of the law to solve problems in the field and the limitations
of their own training and experience; nonetheless, they came to see their own role as grounded in simplifying law and language to make it understandable and useful in everyday practice.

For many officers, this meant that their work was based on advocacy, perhaps informed by principle, but focused on practical solutions. Gwen provided an example from her work in post-conflict Kosovo, where discrimination occurred along ethnic lines between the Albanian and Serbian communities:

Gwen: We had to work with them to find practical solutions. … So it came across less as human rights worker function and more as what can we actually find this solution to this problem. … I remember a lot of the more interesting work was around trying to get Serb health workers around the health system. … So it was much more the work was really focused on where, how we can build trust between the community and the different health workers and the different ethnicities rather than just a matter of filling quotas and telling, well, you’ve got to, its their right to work in this area, and you’ve got to give them a job. We had barriers we had to overcome before we could make those arguments.

Authoritative invocations of human rights principles regarding non-discrimination and the right to work are little help in this environment. Instead, Gwen focused on identifying practical problems and advocating solutions – building trust, integrating communities, and finding jobs.

These were not simply daily tasks of advocacy, however, these practical solutions were also intended to develop the local population and build capacity. At times, the work focused on the mundane as well as the practical:

Gwen: A lot of it was advocacy within the local, the municipal administration. But it was also just practical issues like helping the Albanians … provide the services to the Serbs. For instance, … there was a social welfare officer who was Albanian, helping him to deliver the welfare payments in Serb enclaves. So literally organizing convoys with cash and distributing that cash to the Serbs. So advocacy work but also setting up practical solutions to make sure the services could be delivered.

As Gwen describes, field officers had to take a pragmatic approach to manage an everyday workload that could encompass logistics and advocacy, as well as institutional reform.

However, this work occurred in the context of a broader approach of building capacity:

Paul: Our purpose was to get our local colleagues and members of the local population to function and that was, yes, there was a great deal of capacity building. It was a
combination of establishing structures but also capacity building in terms of attempting to teach them in the guise, in terms of how best to work within those structures. …It was very much addressing problems in the early days.

The purpose of the mission, including human rights field officers, is rebuilding the nation, restoring or establishing institutions, and ‘teaching’ the local population how to work within that newly reformed structure.

In fact, it is in this role of building capacity – and measuring the success of those efforts – that law (and human rights) recaptures its utility:

Kevin: There is something very practical about human rights, and it’s only just now being realized. And I think that one of the key reasons why it will eventually be realized how politically useful human rights and human rights end up being is because of issues like EU accession, or because of issues like a military and political stabilization effort in a country like Afghanistan or in Sudan, that you’re looking for hard standards to delineate when a country is serious about meeting its obligations to its citizens, particularly its minority citizens or its most vulnerable citizenry. And human rights provide very good, very concrete indicators that are not just simple, simple process-based indicators. It’s not just a matter of ticking boxes, it affords a framework for qualitative assessment of governance.

As with politics, human rights can provide an ultimate anchor for practical efforts in reform.

The standards of international human rights provide the measurement for practical development as well as political legitimacy. Moreover, it is through this idea of capacity-building that the ‘practical’ law returns from the field to the upper echelons of international power.

Capacity building, partnership and reform appear as themes in the ruling texts of humanitarian intervention, including both Security Council resolutions and recent formulations of the ‘responsibility to protect.’ Resolution 1509 that frames the mandate for the mission in Sierra Leone after years of internal conflict includes capacity building as part of support for the implementation of the peace process: “to assist the transitional Government, in conjunction with ECOWAS and other international partners, in reestablishment of national authority throughout the country, including the establishment of a functioning administrative structure … in developing a strategy to consolidate governmental institutions, including a national legal
framework and judicial and correctional institutions … in restoring proper administration of natural resources … and in preparing for national elections” (2003). Resolution 1244 on Kosovo uses similar language of partnership and transition between the international and the local – “organizing and overseeing the development of provisional institutions for democratic and autonomous self-government … overseeing and supporting the consolidation of Kosovo’s local provisional institutions … supporting the reconstruction of key infrastructure and other economic reconstruction” (1999). Resolution 1272 on East Timor charges the international mission with “establish[ing] an effective administration … assist[ing] in the development of civil and social services … support[ing] capacity-building for self-government … [and] assist[ing] in the establishment of conditions for sustainable development” (1999).

More generally, in an issue-specific resolution on the protection of civilians in armed conflict, the Security Council outlines:

… a comprehensive approach through promoting economic growth, poverty eradication, sustainable development, national reconciliation, good governance, democracy, the rule of law, and respect for, and protection of, human rights (Resolution 1674, 2006).

It elaborates this comprehensive approach as including domestic obligations to ratify and implement international law, implement Security Council decisions, and cooperate with field missions, and international obligations to strengthen partnerships. The ‘practical’ approach of capacity-building is also featured in the expert Commission’s discussion of the responsibility to protect, particularly in the elaboration of the responsibility to rebuild (ICISS, 2001). The Commission summarizes the objectives of intervention that should be reflected in the mandates of future field missions:

… the mandate should define in clear language what the aims of the intervention in the various phases of it would be and it should spell out that the desired end state is the restoration of good governance and the rule of law (ICISS, 2001, p. 60).

Intervention should be focused on restoring the rule of law and establishing good governance, defined in clear terms and based in practical goals and accomplishments.
In this latest reconfiguration of humanitarian intervention, the lessons of the field emerge and shape the formulation(s) of law that will then return to the field. The Commission’s work on the responsibility to protect nicely illustrates the ways in which understandings of the law as standards, politics and pragmatism come together in that doctrine:

[W]e seek to make a principled, as well as a practical and political, case for conceptualizing the intervention issue in terms of a responsibility to protect. The building blocks of the argument are first, the principles inherent in the concept of sovereignty; and secondly, the impact of emerging principles of human rights and human security, and changing state and intergovernmental practice (ICISS, 2001, p. 12).

Practical intervention – based on international standards and political action – is the contemporary model of humanitarian intervention.

IV. Conclusion

In humanitarian intervention, multi-dimensional law enters the field and operates as violence, bureaucracy and governance. Its force and effects multiply through and across networks of texts, institutions and individuals, and in the process, the field also transforms law. Along points of connection and disjuncture between governance and violence, law takes shape as international standards. These standards are freed from the tethers of legality and become both more mobile and more expansive in their reach. As normative universals, the standards of human rights are invoked to justify additional (and perhaps more frequent and expansive) interventions in a newly configured ‘responsibility to protect.’ Along points of connection and disjuncture between violence and bureaucracy, law must contend with politics and the political. Field officers – and the texts of intervention – distinguish law and human rights from politics. Politics and (the failure of) political will become obstacles to success in the field; at the same time, human rights become a measure of the success of politics. Finally, along points of connection and disjuncture between bureaucracy and governance, law faces its limitations as a useful tool for problem-solving. Law’s impracticality is revealed, and it must depend on its
experts to rehabilitate its usefulness as measure and guide in projects of capacity-, institution- and nation-building. In each instance, the transformations of law in the field travel back along networks of rule to the institutions of power in global capitals, where they contribute to ongoing formulations of international law and legality.
CHAPTER 6: CONCLUSION – REVISITING THE FIELD(S) OF HUMANITARIAN INTERVENTION

Twenty years ago, the collapse of the Soviet Union, the end of the Cold War, and the subsequent realignment in global politics re-energized and re-configured the commitment to international humanitarian intervention. Although peace-keeping operations had occurred since the inception of the United Nations, in the 1990s and in following decades, they expanded significantly in scope and number, typically including a substantial number of international civilian administrators charged with protecting human rights and restoring the rule of law. In particular, the wars in the former Yugoslavia and the genocide in Rwanda gave further impetus to a more ‘muscular’ human rights practice. This has occurred in conjunction with international humanitarian intervention, and the rise of professional human rights field work. As I noted at the outset of my dissertation, I began my professional career in the 1990s, on the cusp of this rise in humanitarian intervention. My story is similar to those told by many of the participants I interviewed in this project. We were equally drawn to the idea of ‘making the world a better place’ but ultimately troubled (or even disillusioned) by the complex actualities of life and work in the field.

In the intervening years, it seemed that the events of September 11, 2001 and the subsequent US-led ‘war on terror’, which has had a significant impact on the larger geopolitical context, would sap momentum from the burgeoning field of human rights work. However, it has only catalyzed interest in a ‘responsibility to protect,’ as the interventions in Afghanistan and Iraq illustrate, suggesting that contemporary practices of humanitarian intervention, including human rights field work, will in fact continue. Interestingly, as I was writing this dissertation over the course of 2011, it appeared that we were in the midst of another global sea change as the ‘Arab Spring’ unfolded. Although the UN Security Council authorized the
enforcement of a no-fly zone over Libya and UN offices have been involved, in some capacity, in subsequent elections in the region, at this time, there have been no further moves toward more substantial intervention. There has been little discussion as to the establishment of IGO field missions in response to the conflicts and transitions. I find myself relieved. With a two-decade record of international intervention for the sake of human rights and the rule of law, now seems a good time to critically reflect upon and undertake an examination of these projects, rather than embark on new ones.

To some extent, the work of the International Commission on Intervention and State Sovereignty elaborating the ‘responsibility to protect’ (discussed in Chapter 5) began that examination of contemporary practices of intervention. However, the underlying idea of the doctrine – and often the rhetorical support for it – seems captive to the ‘narrative of choice’ problematized by Razack (2004) and others. Situations of conflict and mass human rights violations appear to present (and are typically characterized as presenting) a difficult ‘choice’ between inaction in the face of tremendous human suffering or forceful action against a sovereign state. The stakes are, of course, high and the human and financial costs can be enormous. This is true not only for the international community, but also for the domestic ‘beneficiaries’ of intervention. This project suggests that there are substantial costs that follow from the imposition of norms and practices of human rights as well as the rule of law. If, as post-colonial scholars have argued, the colonies were ‘laboratories of modernity’ (Stoler, 1995) humanitarian interventions appear as new laboratories to test the rule of law, where the standards in and for the field differ from those of home and headquarters.

I. TRACING THE NETWORK FROM WITHIN: CONNECTING TO AND WITH TEXTS AND EXPERTS

This dissertation research has investigated the networks of rule in humanitarian intervention through the coordinating practices of law, particularly human rights law, and the
everyday work of the human rights experts deployed in international humanitarian interventions. It is grounded in my own work in the field(s) of humanitarian intervention, first as a human rights lawyer and law professor, and now as a researcher. It contends that more complex understandings of law, text and expertise can inform practices of human rights and humanitarian intervention. In turn, existing practices of human rights and humanitarian intervention can illuminate current understandings of the nature of law, text and expertise. Much of the literature on law and expertise examines domestic institutions and contexts but does not consider the ways law and expertise may be transformed in and by the transnational, international and global. At the same time, legal scholarship has generally dominated the literature on human rights and humanitarian intervention although other scholars – especially anthropologists and political scientists, – have become increasingly active in these discussions and debates (e.g., Goodale & Merry, 2007, Cheah, 2006, Kurasawa, 2007). While there is a growing body of theoretical scholarship on human rights and humanitarian intervention (as noted throughout this project – e.g. Orford, 2003, Kennedy, 2004, Douzinas, 2007), there is currently very little empirical research done in this area. The empirical research that has been conducted tends to focus on social movements, grass roots activism, and non-governmental work (Goodale & Merry, 2007, Keck & Sikkink, 1998). There are few projects that examine inter-governmental organizations and their personnel (Zifcak, 2009, Kennedy, 2004), and the only major project examining the work of human rights field officers has been professional and consultative in nature rather than empirical and theoretical (O’Flaherty & Ulrich, 2010).

In contrast, this project offers a more complex and nuanced explanation of humanitarian intervention based upon a multi-dimensional understanding of law (also reflecting multi-dimensional understandings of power). This project, like all institutional ethnographies, attempts to trace relations of power, and its contributions are in examining the interplay of the texts and experts and the networks of connection and rule that link the field to global and
institutional centres of power in humanitarian intervention. The distinctiveness of this project comes from its attempts to combine law and social theory with ethnographic insights to produce a critical examination of humanitarian intervention. Through a combination of textual and ethnographic sources, this project examines law in its everyday context, even though that context might be regarded by some to be an exceptional one. Moreover, by examining both key texts and the work knowledge of experts – rather than just one or the other – this project has been uniquely positioned to trace some of the dynamic practices and relations of rule, their intertextuality, at work in humanitarian intervention. As such, it contributes to the growing and multi-disciplinary body of literature on international human rights and humanitarian intervention based in law, sociology, anthropology and political science. In particular, it seeks to inspire further conversation between the disciplines of sociology and law regarding issues of legality, expertise and the global future of human rights, through an examination of everyday work in the field.

From the beginning of this project, I have been interested in questions regarding the nature of law, the role of texts, and the practices of those who work directly with law as experts in the particular context of UN and other IGO human rights field missions. The research presented here has asked a number of central questions about law and expertise: How is law, in its multi-dimensionality, engaged in ‘establishing the peace’ and ‘rebuilding the nation’ in post-conflict situations? How do human rights experts use law in their everyday work in the context of international humanitarian interventions? More specifically, how is human rights law characterized, invoked or deployed by experts in the field and in the larger institutional context of the IGO? How is expertise – in law, human rights, or otherwise – established and sustained in the field? To pursue these questions, I have followed an approach that pays attention to networks and relations of power, drawing from both Dorothy Smith’s institutional ethnography (2005) and Bruno Latour’s actor-network theory (2005). It is hard to find a better metaphor for
humanitarian intervention and human rights field work than ‘network,’ and a methodological approach that traces associations between human and non-human actors is especially important when the network relies so heavily upon both expert actors and authoritative texts. In my investigation, I drew upon my two years of experience in post-war Bosnia and Herzegovina as a member of the ‘international’ staff for one of the institutions created by the Dayton Peace Agreement, as well as shorter-term field work in Haiti, Romania, Albania and elsewhere in Eastern Europe, for a basic understanding of the network of humanitarian intervention. That experience in the network, together with my subsequent work in legal and social theory, grounded my exploration of questions of law and expertise in the field.

In addition to its strengths, however, this project also has several limitations. It is relatively concentrated in scope, even as it seeks to examine wide-ranging relations of rule. It draws on the work knowledge of fifteen human rights field officers, some of whom were no longer working in the field at the time of the interviews. This offered the additional insights available upon reflection in other settings, but it also meant that these officers were further removed from the everyday of the field. In addition, many began their work in the ‘early’ days of human rights field work and also worked in the more extensive missions, those tasked with transitional administration (such as Kosovo, Bosnia and East Timor). These factors undoubtedly affected their perceptions of the work they were doing as well as of the broader aims and practices of the mission. To supplement their perspectives, this project also focused on the materials assembled as part of a ‘professionalization project’ by former and current human rights field officers. Moreover, although treaties, peace agreements, Security Council resolutions, and field reports are central texts of intervention, especially in regards to human rights and humanitarian law, there are many other types of texts that are also relevant. For example, there are the domestic laws imported/imposed by international administrators, which this project considers only briefly as part of field officer work but does not examine in detail.
There are also numerous other ‘official’ IGO documents and reports, such as Secretary-General reports and General Assembly resolutions at the highest institutional levels, and non-human-rights-related reports in the field, which again this project considers only tangentially. It would be useful for future research to address some of these omissions.

Despite these limitations of the research, this project offers an important and innovative analysis of law and expertise in humanitarian intervention. It traces the practices of law and expertise from headquarters to field and back again, and through various contemporary field missions from Bosnia to Afghanistan and East Timor to Sierra Leone. Mobile texts cross temporal and spatial scales to establish normative frameworks, create institutions and deploy personnel, and monitor and evaluate compliance, violation and success. Though the focus of this project was on expertise in the field, experts are equally active across these scales, connected to and imbricated in larger networks of rule. The operations of law in and on the field have reciprocal (if unequal) effects outside of the field, at headquarters and at home. As humanitarian intervention seems increasingly likely to become a permanent fixture of international relations, and as the calls for more and better expertise in the field become more frequent, there is a growing need for critical examination of the practices of intervention. This project starts that process and begins to lay a foundation for future research.

II. TROUBLESOME AND TROUBLING EXPERIMENTS: THE RULE OF LAW IN THE FIELD

As a starting point for investigating the rule of law in the field of humanitarian intervention, I begin my analysis with a triangular view of law as violence, bureaucracy and governance, inspired by Foucault’s triangular model of power (1994) and elaborated by theorists of law, from Weber (1978 [1922]) and Simmel (2007 [1908]) to Benjamin (1986 [1921]) and Derrida (1990). The multi-dimensional nature of law – as bureaucracy, governance and violence – is fundamental to its work on projects of human rights and the rule of law in humanitarian
intervention. Bureaucratic law is engaged with the importation of ‘rational,’ international legal regimes and the deployment of ‘objective,’ international experts to establish and manage such regimes and to train local participants in new procedures and practices. Bureaucratic law cooperates with practices of governance when the human rights experts of inter-governmental organization missions and other actors in the field focus on educating and governing the local population as the nation is rebuilt. And the bureaucratic and governing dimensions of law rest upon a seldom-acknowledged foundation of violence, manifested in the force that supports international intervention at the micro level of the field mission as well as the macro level of the intervention itself.

Upon closer investigation of the associations of legal texts and the work knowledge of human rights officers, the triangles of law expand as prisms and soon begin to multiply, overlap, displace and refract one another in the complexities of power relations in humanitarian intervention and human rights field work. The substantial mobilization of personnel and resources in humanitarian intervention is authorized, set in motion, coordinated and concluded through texts. At the global or international level, there is the formal law that frames and authorizes the international intervention. Connecting international to national, there is the mandate, authorized by law and implemented through international administrators. Finally, connecting global to local, there are the everyday texts of the field mission, the myriad reports prepared and used by field officers, also shaped by and responsive to the law and the mandate. These dominant texts – and their networks of interconnection – in international law reflect both the global and local relations of power in humanitarian intervention.

Law travels to and through the field primarily via these essential texts of humanitarian intervention, but human rights officers are equally meaningful actors in field missions. They are deployed as ‘experts’ – as ‘objective,’ outside observers – in projects intended to promote human rights and the ‘rule of law.’ Human rights officers engage, use, interpret and represent
law and text in the local context as experts, and their expertise is (re)constituted in the field, in part through text. Although expertise is often developed, organized and reinforced in the field, where ‘international’ personnel are conflated with ‘expert’ personnel (by international and national actors), human rights officers become translators and authoritative representatives of both the law and the mandate.

The multi-dimensionality of law is further refracted in the specific context of the field – that ‘Other’ location, which is neither home nor headquarters. Field missions attempt to distance (human rights) law from violence, to situate field officers in opposition to bureaucratic and political headquarters, and to govern as practical care-takers of the host population. These practices result in the transformation of law into ‘standards’ and an on-going struggle to reconcile law/standards with the ‘practical’ and the ‘political.’ In the field(s) of humanitarian intervention, the triangular nature of law multiplies and expands through the mediating and coordinating practices of texts – law, mandate, and report – and experts – human rights field officers as international professionals, translators, and scribes. What finally appears is a mobile and kaleidoscopic view of law in constant motion and translation, shifting developments and unstable implementations across scales of analysis, from the local to the global.

That is the view of the network – the institutional complex – of humanitarian intervention that emerges from this research, but it is a perspective that raises new questions even as it answers others. The introduction of this chapter quotes a story from Nathan, a former human rights officer in Kosovo, about another international staff member of the mission who defines ‘rule of law’ as “laws being issued by a legislature” (p. 6). His comments, along with similar stories offered by other participants, highlight a fundamental problem underpinning humanitarian intervention, which is the idea that ‘human rights’ and the ‘rule of law’ are widely and commonly understood, particularly among members of the ‘international community.’ Moreover, there is a presumption that this shared understanding of the international community
then directs the work in the field (and, in fact, is a presumed feature of expertise). Interventions are justified in the name of human rights and the rule of law, and those concepts are regularly invoked in everyday work in the field, but the work knowledge of participants (and the texts from the field) illustrate that understandings and, consequently, practices vary widely.

That is troubling but perhaps understandable in such large-scale undertakings as humanitarian interventions. However, there is a related and more concerning problem, which is the way in which ‘rule of law’ is defined in the specific context of the field. Even if it was possible to identify some shared sense of the ‘rule of law’ among ‘international’ personnel, based upon experiences in their home countries (something slightly more developed than ‘laws issued by a legislature’), it is apparent that the standards of and for home differ profoundly from the standards in and for the field. Numerous participants identified this as common practice. Anthony, a human rights officer with substantial experience in several missions in the Balkans, calls it “how to get the rule of law without having it” and “cut[ting] a bunch of corners” (p. 90). Other participants made similar points, from Paul, who also worked in the Kosovo mission, who calls for a “simpler law” in the field (p. 213), to Jessica, a former human rights officer in Bosnia, who said “we make up rules as we go along” (p. 202). The idea of the ‘rule of law’ (and similarly ‘human rights’) is different in the field. Expertise becomes a means of translating and transforming the presumably shared international understanding into a suitable form for the field, but it is undoubtedly a lesser form.

This reconfiguration of the ‘rule of law’ and ‘human rights’ in the field suggests a need to return to the foundational ‘narrative of choice’ regarding humanitarian intervention. Instead of framing the issue (and decision) as a choice between standing idly by or intervening to (re)establish the rule of law, it is time to consider what is being created through humanitarian intervention. Based upon this project, I suggest two possible views, neither of which is a strong endorsement of current practices of humanitarian intervention. The first I will call the ‘fish
sandwich’ possibility, drawing from my own experiences in Bosnia. One day in Sarajevo, I
wanted to have lunch at my desk as I worked. My office was housed in a ‘national’ building
with other Bosnian institutions; we were the only international staff in the building at that time.
There was a cafeteria on site, but I asked the office assistant if she could have them send up a
sandwich for me. There was some lengthy phone discussion (in Bosnian) and then a somewhat
long wait. She explained that the cafeteria only had the noon meal (usually a fairly substantial
meal), but she asked them to send up a sandwich of whatever they had. When it finally arrived,
it was apparent that the meal of the day was fish – and I got a whole fish, head and all, stuffed
between two pieces of bread. We had a good laugh, but it seemed a bit telling. I got what I
asked for, but I did not really get what I had in mind. When I reflect on the mission there (and
other similar endeavours), it seems a little like that fish sandwich, with good intentions but a lot
of confusion and misunderstanding on both sides. The international community comes in and
asks for (or demands, or imposes) the ‘rule of law,’ but once imposed, it is barely recognizable
as such. The forms and institutions may be there, but the content is something different.

The second view is even less appealing. It suggests that humanitarian interventions are
not just misguided or plagued by miscommunications, where important points are lost in
translation. Rather, they are deeply flawed and, ultimately, counter-productive. By sacrificing
or disregarding the fundamentals of the rule of law and human rights in the field, the project is
either doomed from the outset or represents something other than the goals expressed. Some of
the participants expressed just this concern about “collective imperialism” (p. 206) and “new
colonial[ism]” (p. 82), and the resulting “disillusion[ment]” (p. 133) “alienation” (p. 202) in the
field. These concerns are heightened in the more expansive missions with ‘transitional’
authority, such as Bosnia and Kosovo. Those two missions are often cited as ‘success’ stories in
humanitarian intervention, and the conflicts did end in those areas. However, the international
presence is on-going in both places, more than 10 years later in Kosovo and more than 15 years
later in Bosnia. The interventions there may have transformed the governments but not through anything recognizable as democracy and/or the rule of law. Instead, the ethnic divisions have solidified and become entrenched, and long-term stability still appears elusive.

After two decades of the ‘new’ humanitarian intervention, including several where the United Nations or other international authority assumes sovereign powers in the territory, it is time to move beyond the simplistic narrative of choice, which positions the international community (and international staff) as expert rescuers with a ‘responsibility to protect.’ The everyday practices of law and expertise in the field raise important questions about the costs of long-term occupation and ‘international’ administration. The real responsibility of the international community is to more fundamentally and critically evaluate the outcomes of these undertakings and to start (or continue) exploring meaningful alternatives to the imposition of ‘human rights’ and the ‘rule of law.’

III. Looking Forward: Unsettling Assumptions

Throughout this dissertation project, and in many of my interviews with field officers, there was a discussion of the practical uses and benefits not only of law but also of research. In this dissertation, I suggest that this study might contribute to an assessment and improvement of human rights development and protection in humanitarian intervention, and I hope that is true. Over the course of the project, I was always aware of the on-going work on the professionalization of human rights field officers, on the one hand, and comparable efforts at the institutional level of the inter-governmental organizations to bring ‘best practices’ to peacekeeping missions, including their human rights components, on the other. Although this project is focused differently, intending to trace institutional power relations along lines of law and expertise, my analysis and conclusions on those issues connect to these practical manifestations
in professionalism and best practices. It is my hope that this project will be both interesting and useful to those who do everyday work in and on projects of humanitarian intervention.

For those who are interested in potential ‘practical’ applications of this research, I suggest a few possibilities. First, on expertise, I would echo the calls of the professionalization project to continue efforts to train and develop the capabilities of human rights field officers, as well as other ‘international’ mission staff. A general level of frustration with the competence of international staff and of opportunities for (and expectations of) training through the intergovernmental organizations emerged from the interviews. It has been encouraging to see the trend in recent Security Council resolutions calling for specific forms of training and expertise in international personnel deployed in field missions, particularly in missions charged with building capacity at the local level. The conclusions of this research should help destabilize the common assumption that ‘international’ equates to competence and expertise.

This distinction between international and national (or, more commonly, ‘local’) is pervasive in international work, and in the human rights field, but it is seldom seriously questioned. Of course, for individuals, such status is situational rather than immutable. A Bosnian in Bosnia is national, but a Bosnian in East Timor is international. The institutions that incorporate these distinctions risk over-valorizing the international and under-valorizing the national. Although it is common to bemoan political influences and conflicts of interests by national authorities or personnel, little or no formal attention is given to the same possibilities among international staff. The international becomes stripped of personal and national affiliations, neutralized as expert, while the national is overly personalized and localized. This oversimplification is also writ large when the international community is absolved from any complicity or misconduct in the intervention or in the conditions that may have fostered or exacerbated the conflict, and the locus for responsibility remains solely with the national.
It is clear that many field officers are aware of the power relations in the international-national dyad and have taken steps in their own work to ameliorate the more negative effects. However, this issue also remains something of a taboo. It is discussed only briefly (and somewhat opaquely) by the professionalization project, and a serious re-examination of the presumed distinctions between nationals and internationals would require a much more critical examination of intervention (and of much ‘international’ human rights work) overall. This is a discussion that does occur in the literature (particularly in post-colonial, transnational feminist and other critical approaches), but much more rarely permeates practice. It is, of course, my hope that the project encourages the expansion of that examination into the field. As a starting point, we should stop using ‘international’ to describe people; we are all located somewhere. There should also be meaningful (and public) examination of differences in compensation and professional development opportunities, in status within and outside of the institution, in day-to-day institutional practices and procedures, and in the forms of expertise valued (including competencies in language, in domestic and international law, in local and regional history, and so forth).

A similar ‘practical’ approach is also needed for law. Too often, human rights professionals and policymakers endorse the whole-scale importation of international human rights law into a domestic context. This elides the important role of national authorities and their citizens in making domestic law (an important feature of the ‘rule of law’), and it often undermines the credibility of the new legal regime. This can, of course, be counter-productive in numerous ways: it appears (and usually is) undemocratic, it may consequently lack validity and legitimacy, and it ignores the valid critiques that have emerged about existing human rights law. It also ignores both the long imperial history of taking such measures, as well as the complexities of domestic systems which may have functioned successfully, if differently, in important respects. At a minimum, international missions and their staff should resist the
temptation to require more from national authorities emerging from a conflict situation than they could reasonably expect in their own national contexts. This is not to say that increasing legal protection for human rights is not a worthy goal, but rather that greater care must be taken in how that goal is achieved.

Finally, I would encourage further empirical research on human rights and humanitarian intervention, and especially on the relations of power that animate both. As important as the studies of social movements and grass roots efforts have been and are, I would encourage more ‘studying up’ as well (along the lines pursued by Conti and O’Neil, 2007, Zifcak, 2009, and others) to uncover and interrogate the practices of governmental and inter-governmental institutions in humanitarian intervention. With that focus, I would encourage examination of the relations of power from the perspective of the nationals of the ‘host’ nations that are the site of such interventions, as well as from the national authorities and national staff who work with field missions, and I would also encourage further research on expert decision-makers at other levels and with different substantive fields within the intervention. No doubt there are many other ‘practical’ applications and productive avenues for future research. Regardless of the specific directions, I hope that the discussions and examinations of human rights and humanitarian intervention continue, develop, and grow more robust, crossing lines of theory and practice, disciplinary and professional boundaries, and, of course, other borders of the local, national and international.
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APPENDIX A: SUMMARY OF METHODS

This project uses an institutional ethnographic approach, informed by actor-network theory, to examine human rights field work in humanitarian intervention. In this research, data generation relied upon both knowledgeable informants and key texts. I conducted in-depth interviews with human rights experts who are working or have worked in IGO field missions in post-conflict situations; and I also analyzed key texts prepared by and for these experts.

Interviews

I recruited participants primarily through informal, personal and professional networks (my own and those of other human rights professionals I know). I began with an initial list of ten contacts; these included three former colleagues who currently work with the UN or UN-affiliated organizations, two who currently work with major human rights NGOs, five who are currently in legal academia, and others who remain connected with professionals in the field. I forwarded information about the research to these colleagues and asked them to forward the information and call for participation to their professional networks. As the research progressed, I contacted several other colleagues or contacts they had provided, including several contacts in the Office of the UN High Commissioner for Human Rights.

In addition, I also recruited participants through more formal, institutional networks. My call for participants was circulated to: the Human Rights Subcommittee of the American Branch of the International Law Association (ABILA), and through that contact to staff at the Inter-American Commission on Human Rights and the Organization of American States; the American Bar Association’s Human Rights Subcommittee and distributed in its newsletter; HuriTALK, a discussion forum on UN human rights policy; CANADEM, a Canadian organization that recruits human rights experts for field work on behalf of inter-governmental organizations; and two human rights websites (www.humanrightstools.org and www.humanrightsblog.org). I also asked authors of several prominent books on peacekeeping and human rights field work to circulate my call for participants.

Through informal networks, I was able to generate participation by thirteen individuals; most of these interviews were scheduled and completed within the first three months of the research. I started more formal recruiting efforts at the same time, but with much less obvious success. Despite investing significant time in initiating and following up institutional contacts, and trying various alternative avenues and ideas, these strategies yielded only another two participants.

The interview participants were from North America (Canada and the United States) or Western Europe (France, Italy, Spain, and the United Kingdom) and included five women and ten men. Thirteen of the participants were trained as lawyers; the other participants had educational training in social work and public policy. Six had specialized academic training in human rights. The participants had worked in IGO field missions (for the UN or the OSCE) in Bosnia and Herzegovina, Kosovo, Macedonia, Croatia, East Timor, Liberia, Angola, Uganda, and Afghanistan; they had also done related work for the UN or another IGO in Israel, Colombia, Kazakhstan, Nepal and elsewhere. Eight were still working in some capacity for an inter-governmental organization – in a field office, field mission or at headquarters. Of the remaining participants, two were in academia, two were working as independent consultants, one was
working at a non-governmental organization, one had completely left human rights work, and one other was out of human rights work but actively seeking to return. Most of the interviews – fourteen of fifteen – were conducted via phone or Skype, with one phone-to-phone call, five Skype-to-phone calls (with me on Skype and the participant on the phone), eight Skype-to-Skype calls (audio only, no video), and one in-person interview. At the time of the interviews, participants were located in Bosnia and Herzegovina, Canada (two), Colombia, England, France, Israel, Italy, Nepal, Slovakia, Switzerland, Uganda, and the United States (three).

**Documentary Research**

The documentary research in this project focused on three categories of central texts: international treaties, UN Security Council resolutions, and human rights field reports. I examined major and exemplary documents within each category. I was able to access most documents easily through the internet, relying primarily on UN websites (such as the UN’s Security Council page, and the links on the site of the UN Office of the High Commissioner for Human Rights); I also located other mission-specific documents through various mission or NGO websites (e.g., UNMIK, UNAMI, USIP).

The formal, positive law of international human rights is a fairly discrete body of texts. For the most part, it comprises three dominant texts – the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (collectively known as the International Bill of Rights). The Universal Declaration of Human Rights is formally a non-binding consensus document – a declaration rather than a treaty – however, many commentators consider that it has achieved the status of binding customary international law. The two International Covenants (the ICCPR and the ICESCR) are binding treaties with widespread ratification.

In addition to the documents of the International Bill of Rights, the formal law of human rights also includes several specialized international human rights treaties (e.g., the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment) and comparable regional human rights treaties (e.g., the African Charter on Human and Peoples’ Rights, the European Convention for the Protection of Human Rights, and the American Convention on Human Rights).

From UN information (from both DPKO and OHCHR), as well as other research, I developed a list of major humanitarian interventions in the past two decades. I reviewed the Security Council resolutions relevant to those conflict situations and focused primarily on the resolutions authorizing intervention and outlining the mandate of the international presence. I also reviewed mission websites and key texts, including numerous human rights field reports (as well as other field reports and mission-specific documents). I draw my primary examples in the research from long-term and expansive missions, such as the missions in Bosnia and Herzegovina, East Timor, Kosovo, and Sierra Leone (these are also missions in which a number of my participants worked).
APPENDIX B: INTERVIEW GUIDE

Interview Study:
Human Rights Work in Inter-Governmental Organization Field Missions

We’ll be talking today about your experiences in conducting human rights field work. I just want to repeat again that you can stop the interview at any time or let me know if there are any questions that you do not want to answer.

I. Background Information

Let’s start with some background information about you.

1. Where are you from originally?
2. Where else have you lived? PROBE: When? Why?
4. What is your current citizenship?
5. How would you describe your racial, ethnic, or ancestral background?
6. What is your current job?

II. Human Rights Education and Training

7. Tell me about your formal schooling. What is the highest level of education you have? PROBE: What did you study?

8. Did you study human rights law in school?
   IF YES, PROBE FULLY: When? What sort of program? What did you study?
   IF NO: When did you first learn about human rights? Where?

9. Have you had other training or education related to human rights law? PROBE FULLY

10. What aspects of your training or education about human rights have you used in your professional work? Can you give me an example?

11. Are there aspects of your training or education about human rights that you have found not useful in your professional work? Why?
12. Have you taught or trained anyone else on human rights issues? On human rights law?  
PROBE FULLY

III. Experience as a Human Rights Professional

13. How did you become interested in doing human rights work?  
PROBE FULLY

14. When did you first begin to work on human rights issues? Tell me about your first 
experience working on a human rights project.

15. When did you become involved in doing human rights work in an IGO field mission?  
PROBE: How did you get involved? What made you interested in field work?

16. Which field missions have you worked on? Let’s talk about your work in those.  
PROBE FULLY: Where? When? Type of work? Why did you leave?

17. Did you receive any additional/special training for your IGO work? For the field mission?

18. What is/was the nature of your “typical” work on human rights issues when you work with 
an inter-governmental organization in the field?

19. Do/did you use human rights law in your daily work? If so, how? Give me an example.  
PROBE: Did you use the major human rights treaties? How? Did you use other sources of 
human rights law?

20. Do/did you use other law (such as other international law or domestic law) in your daily 
work? Give me an example.

21. How would you describe the role of law in the work of a field mission?

22. What types of documents did/do you use in your daily work? Give me an example.

23. What forms of technology did/do you use in your daily work? How?
IV. Experience with an Inter-governmental Organization

24. What does/did it mean to you to be working on human rights for an inter-governmental organization (for the UN/OSCE/OAS, etc.)?

25. What are the advantages of doing human rights work for an IGO?
   PROBE: Give me an example of how that was helpful in your daily work.

26. What are the disadvantages of doing human rights work for an IGO?
   PROBE: Give me an example of how that was detrimental in your daily work.

27. Do/did you work with other components of the field mission (such as the military, the police, other civilian divisions)? Describe an example.

28. How do/did you see your work fitting in with the larger work of the field mission overall? With the larger work of the IGO?

29. How do/did you inform the field mission about your work (e.g., reporting, meetings, etc.)? What sort of feedback did you receive?

30. How do/did you inform the IGO headquarters about your work (e.g., reporting, meetings, etc.)? What sort of feedback did you receive?

31. Do/did you inform any other bodies or organizations about your work (e.g., the host country, funding organizations, your national government)?

V. Work with Others on Human Rights Issues

32. Have you ever worked with other human rights professionals on a project in the context of a field mission? Tell me about that experience.

33. Have you ever worked with laypersons or people who were not professionals on human rights issues in the context of a field mission? Tell me about that experience.

34. What do you think it means/meant to others that you encountered in your work that you were working on behalf of an IGO?

35. How do you think your work in the field was perceived by others in the host country?
36. Are you working on human rights issues now?
   IF YES, PROBE: What kind of issues? What kind of projects? Who is involved?
   IF NO, PROBE: Why not? Will you work on human rights issues in the future?

VI. Wrapping Up
The interview is almost done. I just have a few general questions about your work overall.

37. What are the biggest challenges of doing human rights work in the field?

38. What are the biggest benefits of doing human rights work in the field?

39. What do you think is important to the success of human rights fieldwork?

40. Is there anything that we have not covered that you would like to mention about the experience of doing human rights work?

41. Do you have any questions for me?

Thank you very much for your time and help with this project.

It is possible that I may want to interview people again in the future to follow-up on your work in human rights. Could I contact you again later to see if you’d be willing to participate in another short interview? [If yes, fill out future contact form.]

Thank you, again.
APPENDIX C: CALLS FOR PARTICIPANTS

Recruiting Email

Hello,

My name is Elizabeth Bruch, and I am a Ph.D. candidate in the Department of Sociology at the University of British Columbia. Before I began my doctoral studies, I was a lawyer and, subsequently, a law professor; in both practice and academia, my work focused on international human rights. I worked for two years in post-war Bosnia and Herzegovina, and I have also done short-term human rights work in Haiti, Romania, Albania, Kosovo and China.

As my dissertation project, I am conducting interviews with human rights professionals who have worked with an inter-governmental organization (IGO) field mission. As inter-governmental actors, such as the UN and regional IGOS, have taken on larger roles in the development and implementation of human rights law, it is important to gather information about their practices in this area. The purpose of my study is to look more closely at the experiences of human rights professionals in the context of IGO field missions.

To be eligible to participate, you must: be trained in human rights law (as a lawyer or otherwise); be working or have worked with a human rights portfolio in an IGO field mission within the last ten years for a period of at least one year; and be working or have worked outside your country of origin in such a field mission. If you ARE eligible and willing to participate in an interview, please e-mail me at [address omitted], and I will send you further information. The interview will last about 60-90 minutes and will be an informal discussion of your background and experiences in human rights field work. Participation is entirely voluntary and your identity will be kept confidential.

Although I cannot offer compensation to participants, as an expression of appreciation, a donation of $10 per participant will be made to a non-profit organization working in the area of human rights. As a participant, you may nominate such an organization to receive the donation. At the end of the research, one nominated organization will be randomly selected to receive the donation (which may total up to $350). If you choose not to participate or to end the interview before it is completed, the $10 will still be allocated and you may still nominate an organization to receive the donation.

If you are NOT eligible for the study, please forward this message on to other human rights experts who might be eligible.

Thank you for your consideration and assistance.

Elizabeth
Human Rights Research: Call for Participants

*Invitation to Participate in Interview Study:* Seeking human rights professionals as interview participants in research on the use of human rights law in inter-governmental organization (IGO) field missions. This research is being conducted in support of a Ph.D. dissertation project. As inter-governmental actors, such as the UN and regional IGOs, have taken on larger roles in the development and implementation of human rights law, it is important to gather information about their practices in this area. The purpose of this study is to look more closely at the experiences of human rights professionals in the context of IGO field missions.

To be eligible to participate, you must: 1) be trained in human rights law (as a lawyer or otherwise); 2) be working or have worked with a human rights portfolio in an IGO field mission within the last ten years for a period of at least one year; and 3) be working or have worked outside your country of origin in such a field mission. If you are eligible and willing to participate in an interview, please email Elizabeth Bruch at [address omitted] for further information. The interview will last about 60-90 minutes and will be an informal discussion of your background and experiences in human rights field work. Participation is entirely voluntary and your identity will be kept confidential.
APPENDIX D: MAPS

Figure 14: Worldwide Peace Operations (Large) (Image courtesy of the United Nations, Cartographic Section)
(This map can also be found at [http://www.un.org/depts/Cartographic/map/dpko/Peacekeeping.pdf](http://www.un.org/depts/Cartographic/map/dpko/Peacekeeping.pdf).)
Figure 15: United Nations Civilian Staff Locations (Large) (Image courtesy of the United Nations, Cartographic Section)
(This map can also be found at http://www.un.org/depts/Cartographic/map/profile/UNCivilianStaffDist.pdf)