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JUS POST BELLUM. NOVA ET VETERA IN BUILDING A FRAMEWORK FOR LEGAL ANALYSIS OF POST-CONFLICT SITUATIONS

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1. Jus Post Bellum: an ambiguous expression

Discussing Jus Post Bellum is a challenge from the very beginning: literally, as known, this expression derives from Latin and means 'Justice after War'. Actually, the first concern about this topic is already raised on the translation because the term "Jus" in Latin can mean either "Justice" or "Law". This clarification does not represent just a mannerism of linguists but it has substantial effects on the debate over as well as on the concept of Jus Post Bellum in itself. It represents the first element of vagueness and uncertainty[1] because the concepts of "Justice" and "Law" are, as known, essentially different.

Trying to give a definition of it with the intention of being satisfactorily clear, which should be the purpose of any definition, is almost impossible but, it might be stated, arguably, that the Jus Post Bellum is *the law applied in the transition from conflict to peace*. In order not to be contested we should correct the definition above, saying that Jus Post Bellum is the *framework* - rather than the *law* - which applies in the phase of transition from conflict to peace. Indeed, one of the key dilemmas of Jus Post Bellum is

[1] See "Rethinking Jus Post Bellum in an Age of Global Transitional Justice: Engaging with Michael Walzer and Larry May" Ruti Teitel on the European Journal of International Law Vol.24 no.1 , Oxford University Press (2013) . EJIL (2013) , Vol.24 No.1 , 335-342

certainly the question of its nature, specifically whether it should be legal, binding or not. The only point agreed on is regarding its temporal dimension: it regulates the *transition* from conflict to peace.[2]

As it will be seen, the expression is commonly considered to be an "integrative" part of the so called "Just War Theory" that has been conceptualized, studied, developed, implemented and applied for centuries. The Theory has represented the conceptual basis for historical regulations under International Law such as International Humanitarian Law (IHL) or Law of Armed Conflict (LOAC)[3] , the Law of Occupation and Law of War which have been labelled with historical treaties like the Hague Regulations of 1889 and 1907[4], the four Geneva Conventions and their additional protocols setting the standard for the humanitarian treatment of war, and even relevant principles on the use of force stated into the United Nations Charter, Art.2(4) and Chapter VII in particular.

An attentive scholar will notice that all the regulations mentioned ahead are not exactly related to Jus Post Bellum rather to Jus Ad Bellum and Jus In Bello. Thus, it might be - not arguably - stated that currently there is no regulation of Jus Post Bellum under international law.

The main question argued is whether a comprehensive regulation under International Law of all the activities that should be undertaken in the aftermath of a conflict can represent a solution for all the issues that the international community and the war-torn and fragile countries are facing in this scenario. This proposed regulation should clearly fill the legal vacuum of the "Jus Post Bellum", which is the only "part" of the Just War Theory (Jus Ad Bellum – Jus in Bello – Jus post Bellum) that has not been

[2] The topic of the temporal framework, particularly its duration and the individuation of the starting and ending moments is highly debated and still an open question though.

[3] For a comprehensive approach on International Humanitarian Law see Gary D: Solis "The Law of Armed Conflict – International Humanitarian Law in War" Cambridge University Press, USA (2010)

[4] Hague Regulations Respecting the Laws and Customs of War on Land, annexed to Hague Convention IV (adopted 18 October 1907, entered into force 27 January 1910) American Journal of International Law Supplement 90-117 (1908)

clearly regulated at international legal level. The analysis tries to consider all the concerns raised on this matter:

- Which should be the role of International Law in the rebuilding of states and societies after conflicts? Which should be the role of International actors?
- Which is the relationship between Jus Post Bellum and the existing international norms regulating Jus Ad Bellum and Jus in Bello?
- What is Jus Post Bellum exactly supposed to consist of? Who are the relevant actors?
- When should Jus Post Bellum start and end?
- Which would be the best way of creating such a regulation?

The elements, data, information, and experiences needed to give an answer to all these questions are already on the ground, but they are unstructured, under-discussed and under-theorized. Not only, it is also unclear whether there is a real political will to proceed towards such a comprehensive and important process for rebuilding good and peaceful societies and states after conflicts by creating new — binding — international norms.

2 Interdisciplinarity, Broadness and Actuality: Allies or Enemies?

The remarkable rise of the debate around the topic of "Jus Post Bellum" [5] represents one of the most interesting trends registered by the contemporary scholarship, for several reasons.

Firstly, because of its inter-disciplinary nature: scholars who investigated numerous and very different fields of knowledge have approached this topic under their own lenses: Religion, Moral and Political Philosophy, History, Political Sciences, Law, Economics, Social Sciences - just to mention the most relevant ones — and within those, the topic touches a multitude of aspects and sub-branch of every single subject. Taking

[5] Stahn, Easterday and Iverson (edds.), Jus Post Bellum Mapping the Normative Foundations, Oxford University Press (2014) See Preface (vii) by Brian Orend about the "explosion of interest in the ethics of war and peace" and Epilogue (pag.544) A. Key strenghts – Broad and increasing interest

into consideration the extension of the topic under the lens of Law, for instance, it is easily understandable how it relevantly impacts, at least, Public and Constitutional Law, Administrative Law and the most part of the branches 'composing' International Law (Public International Law, International Criminal Law, International Humanitarian Law, Human Rights Law, Law of Occupation, International Refugee Law, Law of Treaties, Law of International Settlement Dispute, Law and practices of International Organizations).

Secondly, because it still represents a conceptual "open space" where any supported contribution, position, point of view, data, practice from any field can, and should, be still taken into consideration in this figurative, permanent, multi-disciplinary brainstorming space about a topic, Jus Post Bellum, that is still considered a "concept in statu nascendi"[6].

Moving beyond the formal relationship between Jus Post Bellum and its relevant subjects and looking at the substantial aspects of it, it appears clear that such a concept challenges essential pillars which bear the architecture and the dynamics of our societies, from the most domestic to the most international dimensions. It encompasses legal, political, social and economic perspectives. The "idea" of Jus Post Bellum lies at

[6] Thomasz Lachowski published in Сучасні тенденції міжнародних відносин: політика ,економіка , право, (ed.) I. Byk, M. Makiyevych, N. Antoniuk, I. Hrabinskiy, Львів 2014, pp. 20-29

the intersection of concepts such as Sovereignty[7], Justice[8], Governance[9], State Responsibility, Intervention, Self-Determination, Peace -Keeping, Peace Building, Stabilization, Constitution Building, State Building, Nation Building and Development. Furthermore, it strongly challenges the main pillars of the international architecture as known and set at the end of the Second World War, as well as the relationship between national sovereignty and the international community, with significant effects on the roles of the United Nations and other International Organizations. Jus Post Bellum represents one of the unsolved issues of the international order.

Thirdly, because this debate is rising not only amongst scholars but also amongst International policy and law makers. Jus Post Bellum is endowed with the characteristic of ubiquity as it is present, active and in evolution in universities and research centres as well as within the United Nations and other regional and international organizations and - obviously - on the ground, in a very diverse context of missions and operations. At the moment, we can mention, without having the ambition of being fully

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[7] Zaum, see also Eric De Brabandere, (Chapter 7) Gregory H. Fox (Chapter 12) Martin Wahlish (Chapter 17) , Dominx Zaum (Chapter 18) , Dov Jacobs (Chapter 21) , Yael Ronen (Chapter 22), Matthew Saul (Chapter 23), Aurel Sari (Chapter 24) in Stahn, Easterday and Iverson (eds), Jus Post Bellum, Mapping the Normative Foundations, Oxford: Oxford University Press (2014) ; for other positions on the same topic see also Chesterman Simon, You, The People: The United Nations, Transitional Administration, and State-Building. Oxford: Oxford University Press, 2004 and Simon Chesterman Keyone Address: State-Building and International Law https://www.westminster.ac.uk/__data/assets/pdf_file/0003/81588/Chesterman.pdf ; see also Nehal Butha, New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1574329 ; International Law and State-Building, Dejan Pavlovic on Western Balkans Security Observer, 6(21), pp. 42-51. - See more at: http://www.bezbednost.org/All-publications/4166/Western-Balkans-Security-Observer-Issue-21.shtml#sthash.rUtoUATE.dpuf; see also Tahira Mohamad Abbas "Sovreignty in the post-liberal paradigm of International State-Building" https://www.academia.edu/1258305/_Sovereignty_In_The_Post-Liberal_Paradigm_Of_International_Statebuilding ;

[8] See Mark Evans (Chapter 2) Jens Iversen (Chapter 5) Frèdèric Mègret (Chapter 26) in Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) ; see also Seth Lazar, Scepticism about International Law http://philpapers.org/archive/LAZSAJ.pdf ; Ruti Teitel, Rethinking Jus Post Bellum in an Age of Global Transitional Justice: Engaging with Michael Valzer and Larry May on the European Journal of International Law Vol. 24 no.1 published by Oxford University Press http://www.ejil.org/article.php?article=2385&issue=114

[9] See note 3

comprehensive, 16 UN peacekeeping operations (UNPKO)[10], 11 UN DPA-led field operations (political missions and peace-building support) managed by the Department of Political Affairs (UNDPA)[11] , 17 EU-led's between civil missions and military operations[12] (27 Peace Operations worldwide totally [13]) , 3 African Union-led field missions[14] (13 totally) , 5 OAS (Organization of American States)-led missions between peace and political missions[15] (totally 7) , 6 NATO missions and operations[16] (13 missions totally). Furthermore, there are 6 countries on the Agenda of the Peacebuilding Commission (UNPBC)[17] , and all of these missions are substantially dealing with the Jus Post Bellum area of practice. Jus Post Bellum affects also the context of the so-called "fragile states" as most of them are war-torn or post-conflict countries, coming out from internal or international conflicts (inter-state or intrastate conflicts). There is not any internationally agreed definition of "fragile state" but, fundamentally, all the definitions provided by international organizations (IGO's or NGO's) clarify that "fragile" is the state that is not able to provide basic needs to its citizens (i.e. security, rule of law, justice, services and opportunities, a certain kind of governance, respect for human rights). According to the different extension of each definition, the data and numbers of "fragile states"change but, by balancing the main sources[18] , it is possible

[10] http://www.un.org/wcm/content/site/undpa/main/about/field_operations
[11] http://www.un.org/wcm/content/site/undpa/main/about/field_operations
[12] http://www.eeas.europa.eu/csdp/missions-and-operations/index_en.htm
[13] See Paul F.Diehl & Alexandru Balas, Peace Operations (2nd edition) , Polity (2014. First published in 2008) Cambridge UK. See tab 3.1 at page 88 on Specific Agencies of peace operations . Total numbers of operations is provided from this source.
[14] http://www.peaceau.org/en/page/40-where-we-serve
[15] http://www.oas.org/sap/peacefund/PeaceMissions/
[16] http://www.nato.int/cps/en/natohq/topics_52060.htm
[17] http://www.un.org/en/peacebuilding/index.asp
[18] The OECD-DAC International Network on Conflict and Fragility, "Fragile States 2014: Domestic Revenue Mobilisation in Fragile States, Paris: OECD, 2014 http://www.oecd.org/dac/incaf/FSR-2014.pdf reported 51 countries as Fragile; The Fund for Peace "Fragile States Index 2014" http://ffp.statesindex.org/ reported 138 out of 178 Countries between Very High Alert, High Alert, Alert, Very High Warning,High Warning, Warning and Less Stable; The Institute of Economics and Peace's "Global Peace Index" http://www.visionofhumanity.org/#/page/indexes/global-peace-index reported a warning level for 79 countries

to affirm that there are between 51 and 78 Fragile States that can be potentially interested by the "Jus Post Bellum" evolution as a normative framework. The 'Governance and Social Development Resource Center', for example, estimates that there are between 40 and 60 fragile states and territories alternately gripped by armed conflict or emerging from war.[19] These kind of definition can be very tricky though: shall we consider, for instance, Pakistan, a country who detains the atomic bomb, a 'fragile country'? Which would be the implications of such a classification?

The above-mentioned three elements (Interdisciplinarity, Broadness and Actuality) of Jus Post Bellum constitute, symmetrically and at the same time, its strong and weak points, as they represent both the reasons for the increasing interest for it, but also the main threats towards its conceptual and normative definition.[20]

In support of this point, we can bring forward Iverson, Easterday and Stahn's SWOT Analysis (see note 20) . There, there is a clear identification of the "side effects" related to the characteristics of our three points. We will take and analyze a few points.

The Interdisciplinarity of the concept has generated interest from many parts on one hand, it has stimulated an intense and comprehensive debate on the main issues, opportunities and challenges of Jus Post Bellum, but on the other hand, the same characteristic threatens to keep the concept into a permanent state of vagueness and confusion whereas the topic cannot have, in this way, a clear, determined, focus and so it cannot be clearly analyzed or much less implemented in any way. Therefore, the richness and extension of the debate create a comprehensive understanding of the question, a very complex 'conceptualization' of it, but bring in also a permanent vagueness.

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[19] For a more specific overview about the different definitions and approaches on Fragile States, States Fragility and the data mentioned: http://www.gsdrc.org/go/fragile-states/chapter-1--understanding-fragile-states/definitions-and-typologies-of-fragile-states

[20] An analysis of strength and weakness points has been already very well provided by Iverson, Easterday and Stahn who applied the SWOT (Strenghts, Weaknesses, Opportunities, Threats) approach to Jus Post Bellum with interesting and sharable results. Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) SeeEpilogue: Jus Post Bellum – Strategic Analysis and Future Directions (pag.542)

Indeed, Iverson, Easterday and Stahn's SWOT analysis well put as key Weaknesses the "lack of consensus" and "difficulties of integrating a range of sources". The second element underscored in this paragraph, *broadness*, highlights all the transformative potential of dealing with Jus Post Bellum. It can represent the most important opportunity in synchronizing the frame with the picture, that is to say, synchronizing once again the normative and political framework with the real context of post-conflict countries. This could happen in accordance with the lessons that should have been learnt from failures, good practices and successes of more than 70 years of 9international multi-dimensional interventions and about 86 peace operations formally approved by the Security Council since 1945 [21]. On the other side, dealing with this topic with the serious ambition of "re-setting the rules of the game" would mean also starting one of the most difficult processes since the San Francisco Conference of 1945. Such a debate, for instance, would oblige actors to find clear and common positions on issues on which successful solutions have never been found.

The development of a "Jus Post Bellum" would require to clarify its own role, function and position under contemporary lenses and not only, it would, for example, call for a definition of the relationship, responsibilities and synergies between democratically developed and less developed countries into the post-decolonization era, as well as the clarification of the responsibility of the States, the role of the international community in the processes of peace-building, state-building, nation-building and development, touching upon the evolving concept and practice of the so called 'Responsibility to Protect' and its effects to war-torn countries. Such an activity is intimately linked to

[21] Interesting data about it are provided by the International Peace Institute (IPI - September 2014) http://www.ipinst.org/media/pdf/publications/ipi_e_pub_rethinking_peacebuilding.pdf Pag.4 : "In the last 25 years, since the end of the Cold War, the Security Council has approved a total of seventy peace operations, as compared to only sixteen during the organization's first forty-four years of existence (1945-1989). Even more significant is that of the seventy peace missions, fifty-one missions (or 73 percent) were interventions in intrastate conflicts with various forms of peacebuilding mandates. By contrast, the Security Council approved only one mission to deal with an intrastate conflict during its first forty-four years: the ill-fated UN operation in the Congo, ONYC, in the 1960's. "

the ongoing and never ending debate over UN Reforms: from the UN's Architecture - particularly the Security Council's functions and composition- to the response to the new challenges for the maintenance of international peace and security. It would also require a clarification about the role Peacebuilding Commission as well as a serious discussion over the coordination of UN entities and agencies acting on the ground ,within themselves and with international actors in the post-conflict scenario (Regional Organizations, Investment and Development Banks, Donors, National Agencies). Narrowing more this hypothetic and ambitious action would mean to address key-related issues like the regulation of development and humanitarian aids, the determination of indicators, strategies and plans for monitoring, evaluation and accountability of peace operations, clarifying the relationship between local authorities and the international actors, the timing, the exit strategies, in other words, to give a systematic approach to the confusing post-conflict scenario. This represents a "key opportunity", to say it with the SWOT's terms of Iverson, Easterday and Stahn, who summarized this operation in the point "*to clarify a range of areas of law and practice*"[22]. Again here though, what seems to be an opportunity risks to become a risk: many scholars argued that the "vagueness" of both International Law and the United Nations on this topic is strategic and should be maintained[23]. Such an opinion is supported by two different 'categories': those who argue and legitimately believe that the status-quo on this matter is more productive and desirable, for the sake of maintaining a 'political discretion' or more elegantly 'flexibility' in post-conflict scenarios and those who have interest in not 're-setting the rules' for political self-interests in order not to obey to any new regulation that would jeopardize the political strategies which, for instance, inspired certain interventions or

[22] Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) SeeEpilogue: Jus Post Bellum – Strategic Analysis and Future Directions (pag.549)

[23] Eric De Brabandere in Jus Post Bellum : Mapping the normative foundation (Chapter 7, pag.140) Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014)

operation. Therefore, the other face of the coin, said it with the above mentioned SWOT's point is the "Key Threats of politicization" [24]. Nevertheless, this threat is, in the opinion of the writer, not only potentially present in any single opportunity to evolve or push forward International Law - and for this reason it should be just an alert to bear in mind, more than a threat - but also, in this specific case, has a bivalent reason that would make the discussion worth to proceed. To regulate this subject would mean to empower the rule of law, setting standards that would avoid 'neo-colonial projects' but, in order to do so, it will be essential to set proper standards, 'neutralize' Jus Post Bellum as a politically neutral framework, limiting the enormous discretional power that actors have today when they act into post-conflict contexts.[25] In simple words, the reconstruction of States and Societies should not be dependent from the foreign policy of a State or of a certain numbers of states anymore[26], and not because doing so should necessarily mean failing in a good reconstruction but because the guiding principles of a state's reconstruction should be simply neutral and respective of the indigenous processes, self-determination and local ownership above all, and the foreign policy of any country cannot be, it might be said even legitimately, as neutral as the level of neutrality required in this case. For instance, the issue whether the establishment of a certain kind of form of government, or governance - like liberal democracy - can reasonably represent a foreign policy's goal more than an objective or

[24] "The risk of manipulation and instrumentalization of the legal framework by international actors, as well as the embedding and legitimation of neo-colonial projects through law, are critical threats that advocates of jus post bellum would be wise to guard against," from Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) SeeEpilogue: Jus Post Bellum – Strategic Analysis and Future Directions (pag.551)

[25] This negative dimension of the threat is touch lightly in the same paragrap (pag.552) when the authors question why the Jus Post Bellum is the only part of the Just War Theory that has been not fully developed.

[26] I.e in the case of the reconstruction of Iraq led by the United States, President Bush set up the date for Iraq to have an interim Constitution by the date of the mid-term elections in the United States. influencing the process for the adoption of the Law of Administration for the State of Iraq for the Transitional Period, the interim constitution of Iraq.

neutral goal arose insistently after the US-led military intervention in Iraq and Afghanistan. The outcomes of the processes of 'exportation of democracy' had led to the awareness that it is not only a danger but also it heads to failures.[27]

In the dichotomy between powerful (International actors, winning parties, military entities) and weak actors (the people of the warn-torn countries, local authorities, the defeated parties), Jus Post Bellum can represent at the same time a threat but also a tool for guarantees that can defend and support the weak parts. It can provide rules and standards respectful of rights and principles such us the local ownership, the establishment of accountability measures or limits to the international administrations. Obviously, the discriminating factor is in the goodness of the process. This point, to be solved, has to be brought into a broader dimension about the value of International Law itself: do we believe that more International Law is something that goes in favor or against equality, rights and justice? We argue that a serious process of implementation of a minimum legal framework to be applied to post-conflict contexts and related to the rules for rebuilding and reconstruction in a very comprehensive way cannot represent a problem rather a part of the solution of the issue. The law is often a compromise between power and protection of the weak, but the more the strong has agreed to limit of its power, the more the weak can invoke law. Thus, more international law is likely to benefit the weaker states as much or more than the powerful.

The third element was Actuality: there is no better time to face this topic than now. As lastly shown by Iversen, Easterday and Stahn [28] the interest on this topic has increased

[27] On the State-Builing Policy of the United State see von Godnandy at al., State-Building, Nation-Building in Max Planck Yearbook of the United Nations Law, Volume 9, 2005, pag.594. The Netherlands.

[28] See tab on pag. 544 Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) SeeEpilogue: Jus Post Bellum – Strategic Analysis and Future Directions

considerably since 2007 and nowadays it is reaching its most matured moment: this was actually predictable though. It did not happen suddenly and, if contextualized, it is possible to notice that this trend is simply reaching its most important turning in 2015 from a theoretical, institutional and practical point of view. The International Community is about to approach the moment of its most important exam on Peacebuilding and the construction of peaceful societies in the aftermath of conflicts and their definition and regulation. As it has been already mentioned, 2015 is an important year for the global community: it is the seventieth anniversary from the constitution of the United Nations and, even though there will be time for a complete evaluation, it is time for important actions which aim to tackle pressing global issues and the concrete threats to the international peace and security. Furthermore, it is the time of setting the Post-2015 Agenda with the new Sustainable Development Goals (SDG's)[29] after the long negotiation process that eventually has come to an end with the solemn adoption of the Agenda during the 70th UN General Assembly. This process, although may not seem, has interesting profiles related to the topic of this discussion[30], particularly relating to the negotiation of Goal 16 of the Proposal for Sustainable Development Goals ("Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels") made by the Open Working Group in charge of drafting them, later on become the official Goal 16. Despite those polemics, with the full adoption of Goal 16 an official link between peace and development has finally been marked. Furthermore, it is the year of the tenth anniversary from the constitution of the UN Peacebulding Commission and the Peacebuilding Architecture (UN Peacebuilding Commission,

[29] http://sustainabledevelopment.un.org/

[30] The debate about whether Peace and Security should be part of the Agenda created lots of tensions among Member States but it seems that the final decision will be for the inclusion of it. See the Proposal of the Open Working Group for the Sustainable Development Goals http://sustainabledevelopment.un.org/sdgsproposal.html . See Goal 16 and its targets. The Group of Arab States has obstructed this inclusion, arguing that the issues of peace, security and governance should not be part of the 'Sustainable Development' agenda.

Peacebuilding Support Office and Peacebuilding Office) and it will see the awaited second[31] "Review of the United Nations Peacebuilding architecture". It represents a unique opportunity for the United Nations to re-shape, develop and enhance a more effective role in the field of Peacebuilding that could head to the creation of an essential tool for the re-building of peace and security to be respondent to the challenges posed by the reality. In order to achieve this goal, a wider vision for peace-building needs to be developed by the UN[32]. The reality has changed a lot from the first UN-led Peace-keeping missions, the practice has demonstrated already the increasing power of intervention of the Security Council in intra-state conflicts, and not from today but since the end of the Cold War[33]. The concepts of International and Non-International Armed conflict look obsolete, particularly under the lenses of "Jus Post Bellum" and the role of the international community in post-conflict reconstruction. The process of reconstruction and the often-following processes of democratization are structurally internationally-led or at least supported, from the peace-talks to the constitution-building process of a country. In this context, to be mentioned also the last Report on Peace eleased by the ad-hoc Independent Panel on Peace Operations[34] as well as the last Leaders' Summit on Peacekeeping convened.[35]

Another segment of this complex topic deals with the dynamics of the so called Responsibility to Protect, which evolving always more as the new tool for international intervention and that acknowledges the cosmopolitan nature of the global community,

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[31] The first review has been in released in 2010 http://www.un.org/ga/search/view_doc.asp?symbol=A/64/868

[32] An interesting input and 5 proposals has been produced by the International Peace Insistute "Rethinking Peacebuilding: Transforming the UN Approach" http://www.ipinst.org/media/pdf/publications/ipi_e_pub_rethinking_peacebuilding.pdf

[33] As reported by the International Peace Institute in Rethinking Peacebuilding: Transforming the UN Approach" (September 2014) http://www.ipinst.org/media/pdf/publications/ipi_e_pub_rethinking_peacebuilding.pdf between 1945 and 1989 " of the seventy peace missions, fifty-one missions (or 73 percent) were interventions in intrastate conflicts with various forms of peacebuilding mandate"

[34] Report http://www.un.org/sg/pdf/HIPPO_Report_1_June_2015.pdf

[35] Declaration Outcome https://www.whitehouse.gov/the-press-office/2015/09/28/declaration-leaders-summit-peacekeeping

particularly in front of threats for human rights and human security. Acknowledging the cosmopolitan nature of the global community would mean also embracing a collective innovative approach in dealing with security issues, particularly with intrastate conflicts, recognizing that every threat to countries' maintenance of peace and security could easily affect an entire region or even larger scales. Unfortunately, we do not need to use a theoretical approach on this issue as the international response to the self-called Islamic State of Iraq and Syria (ISIS) or Islamic State of Iraq and the Levant (ISIL) or better, after the new expansion in North Africa trough Libya, Islamic State (IS) is showing to the world how hardly the international community and its tools are dealing with this global threats which start acting regionally. In this context the process of implementation of the Responsibility to Protect ins the UN practices, and its evolution as norm of international law, is surely relevant, particularly regarding to the side discussions arising about the so called "Responsibility to Rebuild". Lastly, the current situations in Libya, Central African Republic, South Sudan, Somalia, Kosovo, Bosnia and Herzegovina Iraq and Afghanistan (all countries that have been or still are locations of international or UN-led peace operations) should alert the stakeholders on the need for a more comprehensive approach on "what to do after conflicts" and urge the international community to take its responsibilities, setting stage for effective actions, in order to avoid new failures. The United Nations, that still represents the only entity capable of leading such a complex process, has now the maturity to face this fundamental challenge for its future and credibility: the main question is whether the Member States will have the political determination to pursue this objective. Again here, in the case of the third element - Actuality - it is possible to assign the two sides of the coin, present into the SWOT analysis from the "Jus Post Bellum – Mapping the Normative Foundations" opera: "The opportunity to contribute to the establishment of just and enduring peace" and "the threat of discouraging peace". Even though the look clearly in antithesis, this relation well represents the importance and the relevance of

the ambitious attempt of regulating the post-conflict scenario under International Law: it would be a very delicate process that could drive to success or failure but the signs that have been analyzed represent evidences which call for actions.

Having taken into consideration all these arguments and trends is possible to affirm that in the case of a potential regulation of "Jus Post Bellum", the opportunities represent at the same time the threats of such an operation. Therefore, the discriminant, whether such a process would drive toward the facilitation of the process of post-conflict re-building, will be entirely related to the choices and the procedures that would be chosen in order to pursue this ambitious project.

3 Jus Post Bellum as "Terra Nova"[36]

The "sui generis" nature of Jus Post Bellum is undeniable. However, the fact that it is a much more fluid and complex issue, particularly compared to the residual two parts, cannot represent an alibi for not facing the issue of its definition because, from the perspective of the writer, Jus Post Bellum constitutes a 'condicio sine qua non' of the whole Just War Theory and, more importantly, the real success of the above mentioned 'Ad Bellum' and 'In Bello' regulations lies on the successful transition and realization of the post-conflict part, something that a 'Post-Bellum' regulation can help to achieve.

Currently, by attempting to give a systematic categorization of all the different positions expressed, it is possible to individuate 4 different general positions related to the conceptualization and potential development of Jus Post Bellum. These positions can be categorized as follows, in a progressive order of 'intensity' :

1) The Philosophical or Moral Approach: this position is probably the most ancient

[36] Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations (pag.1) , Oxford University Press (2014)

one and it is more related to the idea of 'justice' in its moral meaning, therefore as a value rather than a 'law' system in its positivist acceptation. Christians and Naturalists used such an approach to define the 'spirit' with which certain conducts should be adopted in the aftermath of a conflict. This School has Grotius as one of its main developers. He identified and resumed such an approach in the so called *Meionexia,* a 'virtue' taken from Aristotle[37]. It represents the moral criterion of equity in applying Justice after war.[38] This approach identifies Jus Post Bellum as the equalizer principle through which justice can be secured appropriately after conflict in a fair way, even by sacrificing part of prerogatives of the victorious over the losers for the sake either of a reconstruction or a reconciliation, having as main objective the long term sustainable peace rather than the acknowledgement of a mere victory of a part over the others. Christian School also connected such a concept to their idea of "Christian Humility" applied to the Just War tradition, as recalled also by Francisco Vitoria. [39] Such an approach easily fit into the Naturalist School too, which indeed made moral obligation its main pillar - and source - of their general understanding of law. According to this school, choosing certain behaviors shall come from the 'foro interno', as natural obligation. As stated, the main characteristic of a 'moral' Just Post Bellum framework is the 'balance' between the requests of the victorious parties to the defeated parties. It refuses the idea of a simple retributive, compensatory or even distributive justice, which could give the impression to be more satisfactory on the short term but does not set solid roots for a sustainable peace. In the longer term, fostering reconciliation processes, even helping the defeated by including them in the peace transition, especially

[37] Howard J. Curzer, "Aristotle & the Virtues" (pp. 231 ff) , Oxford University Press (2012) ISBN 978 - 0 - 19 - 969372-6

[38] " […] the idea that justice should encompass compassion is a central idea in what I regard to be the very best understanding of justice in a jus post vellum context.
Justice is normally understood as retributive, compensatory, or distributive. […] In my view, the form of justice appropriate for jus post vellum is meionexia, which incorporates aspects of the other three forms of justice, but is distinctly different from each of them" Larry May, Ibidem, pages 19 - 20

[39] Ibidem, page 21

at societal level through - for example - transitional justice, reconciliation and re-integration measures would be more helpful and morally desirable. In order to build a more solid and durable peace, any sort of manifestation revenge, summary executions or exemplary punishments shall be avoided and rejected . Such an approach can be found in several cases[40] and it can be clearly related as the inspirational criterion for the correct application of what we will call 'Transitional Justice' . Modern advocates of such an approach are used to refer about through the perspective or 'ethics of reconstruction' or even referring to this behavior as a 'responsibility'. Most recently, Larry May individuated the six 'Principles of 5 R&P' as the guiding principles which should all be applied according to this approach, explaining them in the Jus Post Bellum opera. This approach is taken as inspirational value to develop more incisive positions, as it will be seen at a later stage.

2) The Political Approach: in the context of the explosion of interest about the issues of Jus Post Bellum, skepticism and criticism have raised meaningfully, too. This approach has been adopted by those critics who firmly believe that Jus Post Bellum can not find any systematic configuration. They emphasize the weak points already discussed before through the SWOT analysis and they see them as insuperable obstacles. Furthermore, they consider the hypothesis of any sort of regulation both as incompatible and as a threat. According to them, it would be incompatible with the ordinary - or classic - elements of International Law as, for example, it would be impossible to determine in its temporal coordinates, hard to define in his substantial aspects, impossible to make it accountable, extremely vague and it would overflow the borders of international law itself. Furthermore, it would also be a threat because it is felt as a

[40] The institution of International Tribunals, the constitution of Truth and Reconciliation Committees can be regarded as 'inspired' by such a principle. As already shown, the entire reconstruction phase after the Second World War followed such a 'strategy' , even though for political more than moral reasons. Furthermore, the Post-apartheid South Africa and the Rwanda Gacaca proceeding have shown the same attitude, avoiding revenges or punishments in order to restore stability in the society.

trojan horse which would enable to overflow the limits of Sovereignty, giving power to international actors to pursue political projects hidden behind the reconstruction of countries through the imposition of certain set of values, form of governance or economic standards that shouldn't be part of the process of international administration of a war torn countries. They believe that filling the normative gap is not only unnecessary but also undesirable because there is not really the need to categorize with a set of norms such a fluid context because it would create more issues than solutions, especially because the risk of manipulations is likely to occur. Critics believe that the management of the post-conflict phase, the reconstruction, should stay into the political sphere of the actors involved in the process (United Nations, regional organizations, States or alliance of states) in order to be able to adapt to the complexity of each context. In other words "determining when a war ends has more to do with strategy and politics than law and fact" [41] . Another risk highlighted is related to the manipulation of the terms such as Conflict, Peace, War, which can end up in a distortion of the reality on the ground and would allow more aggressive actions at many levels. The most convinced part of these thinkers is composed by the Realists, who believe that a Jus Post Bellum body of law will not even influence the existence of peace because it cannot be conditioned by laws rather by politics, the power of states and their interests. Indeed, for these reasons, according to Realists, this delicate momentum of conflict should stay in that sphere. The political approach is anyway the first step that has been seen in practice. The first kind of 'responsibility' to be considered it a political responsibility, then, it starts with a political commitment, which can find then other ways of evolution or interpretation.

3) The Regulatory Approach: although it does not support the full legal implementation of a set of norms, this approach stands for the setting of general, more or less binding, principles to guide the aftermath of conflict. Supporters of this position

[41] Myres S. McDougal "Peace and War: Factual Continuum with Multiple Legal Consequences" 91955) 49 American Journal of International Law 63 as re-proposed by Roxana Vatanparast in Ibidem, p. 149.

acknowledge that there is a lack of legal obligations even though there are 'applications' of these principles in certain international sources and in general in the international policy-making process and at UN level[42]. According to the supporters of this approach There are several degrees of intensity or 'legality' of such principles already applying but they all promote just an 'interpretative framework' governing the rules and practices applicable to post-conflict reconstruction. The Regulatory framework, as said before, can have different degrees of legal intensity even though it will lie in the boarder of "Guidelines" or "Framework". Models and proposals for a development of this concept go to the idea of an "Interpretative Framework"[43] to the idea of an "Independent Legal Framework" [44]. Both of them re-elaborated the moral concepts adopted in the philosophical approach into a modern policy/law framework, introducing a viable intermediate way through which Jus Post Bellum would find a first assessment. James Gallen - in Jus Post Bellum, Mapping the Normative Foundations - describes a model for such a framework, individuating the "Principles of Integrity' which would compose Jus Post Bellum in the principles of Accountability, Stewardship and Proportionality. Another evidence of the existence of such an approach can be found in the already mentioned 'Brahimi Report' which advocates for the adoption of a "Light footprint', in other words, a regulatory framework. Such an exercise seems to be highly remarkable and would find application in any possible model.

[42] Referrals can be made to the Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992 - UN Doc. A/47/277-S/24111 and supplements. Furthermore and more in general to all the new lexicon on post-conflict peace-building adopted by the United Nations since then (i.e DDR, SSR, Reconciliation, Peace-Building and others)

[43] James Gallen in Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations (pag.1) , Oxford University Press (2014), p. 58

[44] Dieter Fleck in Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations (pag.1) , Oxford University Press (2014), p.55

4) The Legalistic Approach: this approach represents the evolution of the latter in a more convinced legal point of view. It aims to give a determined, specific legal dimension to Jus Post Bellum that would aim to solve all the issues related to the uncertainty and fluidity of the post-conflict reconstruction through a clear set of norms to be used in each aspect of this phase. Such an approach requires a strong and credible law enforcement system related to the all the aspects which compose the complex moment of the aftermath of a conflict, from the establishment of peace-operation to the law of international administration and beyond. In order this approach to be conducive to effective improvements, it needs to address each problematic aspect of the scenario such as the identification of the 'end of the war' , the delimitation of borders between law of occupation and interim administrations, the determination of the powers and their limits of the international actors acting on the ground, the setting of principles related to the end of the post-conflict period and the related goals, exit strategies, political and legal mechanisms for assessment and accountability, the targeting of all the possible actors with the proposition of the common legal framework to follow, the determination of the right balance between international support/administration and local ownership and so on. Another considerable issue would be on the method for the adoption of such a set of norms, whether through a multilateral treaty or within, for instance, the UN process of reviewing of its operations (including the acts of the Security Council on these issues and the framework of all the bodies, agencies and military corps acting on the ground). Dieter Flick, in his proposition of a "Partly Independent Legal Framework" [45] , aware of the difficulty of such an operation, simply gives useful 'instructions' for such a process of regulation, indicating three guidelines: pragmatic limitation, conciliation, temporary nature.

This general categorization of the main positions on this topic gives the 'spectrum' of the debate. Each of the four positions makes relevant points, to be taken into deep

[45] Ibidem, p.56

consideration when proposing new models for the establishment of Jus Post Bellum. Probably, building a comprehensive Just Post Bellum system would require to take a part from each of them and to find a way to create a sustainable system.

Summing up, we can say that Just Post Bellum would represent the framework of the transition from conflict to peace but, in order to establish such a framework, will it be moral, political or legal, a systematic work of coordination is needed: mapping the actors, the aims and above all determining an agreed lexicon of indicators, criteria and even definitions about post-conflict scenario at institutional level would be highly desirable as starting point[46].

4 Jus Post Bellum challenges International Law. Jus Post Bellum and the Law of Occupation

If the Jus Post Bellum debate has generated such a range of positions is probably because it literally 'challenges' the most important pillars on which International Law has been built on. On this matter, it might be said that it is contributing to the push for a revision of certain pillars under International law.

Someone[47] has argued that there is no need for a Jus Post Bellum framework because the norms regulating the operations for post-conflict reconstruction are already part of the system, as part the Law of Occupation, a particular segment of international humanitarian law. Such a position is misleading and not exactly correct, at least for all those advocating for a strong function of Jus Post Bellum as the law of transition from conflict to peace.

[46] An academic attempt of agreeing on such a lexicon has been offered in "Post-Conflict Peace-Building, a Lexicon" edited by Vincent Chetail, Oxford University Press, Oxford (2009)

[47] See Eric De Brandbare in Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) (p. 128)

Namely, the law of occupation can be considered as a parallel - or even internal - branch of international humanitarian law, thus in framework of the regulation of Jus In Bello. It exactly applies when a territory comes under the control of foreign armed forces.
According to article 42 the 1907 Hague Regulations:

"*a territory is considered occupied when it is actually places under the authority of the hostile army*"

The four Geneva Conventions of 1949 apply entirely to any occupied territory according to these criteria. Not only, this part of Jus in Bello is totally detached from the principles of Jus Ad Bellum, which are regulated into the UN Charter with the compulsory indication of the cases of lawful military intervention, meaning that, Jus in Bello shall apply also in cases when Jus Ad Bellum is breached. Thus, the Law of Occupation applies in any case there is a verification of the factual, military episode of an occupation of a territory from foreign powers, regardless its lawful or unlawful nature. This is due to the fact that law of occupation deals primarily with humanitarian provisions - e.g. the treatment of civilians or prisoners during armed conflicts - and according to the common vision shall be respected absolutely. These rules will intervene by looking at the effectiveness of the reality, so when a territory falls under the control of the occupying power. Specifically, with regards to the traditional sources of such a law, the duties and responsibilities of the occupant are listed primarily in the 1907 Hague Regulations (articles 42 - 56) and in the Fourth Geneva Convention relative to the protection of civilian persons in time of war and the managing of the occupied territories (Section II: Status and treatment of protected persons, articles 27 - 34 and Section III: Occupied Territories, articles 47 - 78) of 1949 (GC IV) and in some provisions of Additional Protocol I, other than in customary international humanitarian law.

These provisions are particularly strict with regard to the limits of the occupant powers about establishing new institutions or engaging in political transformations.
Article 43 of The Hague Regulations states:

" *The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.*"[48]

Such a provision has been integrated by Article 64 of the Fourth Geneva Convention, which is regarded as 'lex specialis' to the 'lex generalis' represented by article 43 of The Hague Regulations, and it states:

" *The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.*
The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfill its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them." [49]

[48] Article 43 of The Hague Regulations ; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. From the IFCRC database https://www.icrc.org/ihl/WebART/195-200053?OpenDocument

[49] Article 64 of the Fourth Geneva Convention from the ICRC database https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6DB876FD94A28530C12563CD0051BEF8

Although this provision allows the occupant power to change laws that threat or breach human rights and humanitarian law obligations, it has not been considered enough for affirming the existence of a real power of 'political and institutional transformation' in the hands of the occupying forces, because such a concession would be generally violating the conservative rational at the basis of the Law of Occupation.
As further proof of this fact - the 'conservative' and not 'transformative' power of the current provisions of law of armed conflicts - there can be another example: the provision which imposes the respect of sovereignty and self-determination of the people in the occupied territory, as witnessed by article 47 of the Fourth Geneva Convention: "*Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.*"[50]

Therefore, the legal framework and the limits imposed to the occupant powers are enough clear under International Humanitarian Law and they cannot cover the whole area of operation of a transition from conflict to peace.
On the other side, indeed, an international intervention led by the United Nations, thus authorized by the Security-Council, with a subsequent establishment of an international administration does not fit into the framework of the Law of Occupation. The UN-led efforts for post-conflict reconstructions are legitimate and found in the Security-Council Resolutions their legal source which often gives more intense powers to the administrative entities operating, closer to our concept of 'Jus Post Bellum'. So, the

[50] Article 47, Fourth Geneva Convention from the International Committee of the Red Cross database https://www.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5

discern whether an intervention has the UN flag or the flags of one or more countries is essential in order to understand the legal framework that applies and its different intensities and limits. This issue has often interested the activities of the Security Council[51] and even the International Court of Justice have been interrogated about related concerns in the past.

To mention one case, the US-UK Iraqi Occupation created a lot of confusion related to the legal framework to be applied and uncertainty about the adoption, the effects and the interpretation of UNSC Resolution 1843 of 2003[52] . In this case is possible to affirm that there was an extreme stretching of the principles regulating the law of occupation or probably even a violation of those. Traditionally, as anticipated, the law of occupation was thought to be dominated by a certain 'conservative principle' . The extraordinary fact of a foreign presence over a country had been considered as a military fact from which important limits were derived. Among the other principles, the most relevant provisions for the purpose of our observation are the follows:

- The occupant does not acquire sovereignty over territory
- Occupation is meant to be temporary and the power of the occupant are thus limited in time
- The occupant must comply with the laws of the country unless they are considered to represent a threat to security or an obstacle to the application of international law of occupation.
- The normal way for an occupation to end is for the occupying power to withdraw from the occupied territory or be driven out of it. However, the continued presence of foreign troops does not necessarily mean that occupation continues. A transfer of

[51] See Resolution 446 (1979) on the Occupied Territories of Palestine by Isreal. UN Document http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/370/60/IMG/NR037060.pdf?OpenElement

[52] UN Document S/Res/1483 (2003) http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3f45dbe70

authority to a local government re-establishing the full and free exercise of sovereignty will normally end the state of occupation, if the government agrees to the continued presence of foreign troops on its territory.

These characteristics emphasize the static nature of this legal framework which simply aims to maintain the situation under the control and gives to the occupant the opportunity to restore stability and security. Such a framework is seen in its military perspective and it aims to ensure humanitarian standards and it has had the function of stabilizing the territory.

Nevertheless, the Iraqi invasion of 2003, which represents shifted away from the ordinary practices of international interventions and post-conflict reconstructions, has marked a relevant difference. As anticipated, the Iraqi post-conflict scenario has been peculiar for several reasons. Firstly, because despite the increased tendency of having UN-mandated missions, the Iraqi case has been totally under the control of the US-UK alliance and minor partners. This marked an important difference between this case and the other recent cases in which UN-led international administrations have operated in the framework of post-conflict rebuilding. Furthermore, the Security Council showed lots of ambiguity in dealing with this case, as it can be noticed from the analysis of the Resolutions 1483 and 1511 (2003). This case, from one part, as argued by Eyal Benvenisti[53] , has brought back the typical situation of military occupations led by hostile armed forces, 'using' UNSC Resolution 1483, due to the lack of an international recognition, but, mostly, from another part, as underlined by Gregory H. Fox[54], it has created an 'unicum' in the practice. The Security Council, under the power of Chapter VII of the Charter, by acting with culpable delay, authorized the Coalition Provisional Authority to exercise sovereignty over Iraq, allowing that internationally

[53] Eyal Benvenisti, The Security Council and The Law on Occupation: Resolution 1483 on Iraq in Historical Perspective at http://www.lex.unict.it/STIPIL2008/documenti/benvenisti.pdf

[54] Gregory H. Fox, The International Law of Occupation in Humanitarian occupation , Oxford University Press (2008) ISBN**:** 9780521671897

established entity to change the legislative and socio-economic framework of the country, in the framework of the provisions given by UNSC Resolution 1511. It basically endorsed a new law of 'transformative occupation', overriding the conservationist principle of the law of occupation. Not only, through that Resolution, the Security Council acting under Chapter VII of the UN Charter, has been able to derogate those norms - which are not peremptory norms under international law - of classic international law of occupation, indicated in GC IV. It has to be remembered that the United Nations and none of international organizations have never ratified the GC IV and, from a formal perspective such an operation is legally valid because of the supremacy rule contained in Article 103 of the UN Charter. [55] Nevertheless, certain peremptory norms in the Convention, as well as many other provisions, have been protected and emphasized autonomously by the UN.

Gregory H. Fox said about the Iraqi 2003 case that it "*presents the most complex interaction between unilateral and multilateral actors in a recent post-conflict state"* and, described Resolution 1483 as *"a study in political compromise and legal ambiguity"* [56].

Moving beyond these dynamics, it is possible to envision a different the relationship between the traditional law of occupation and the Jus Post Bellum as understood in the most recent doctrinal and practical evolution and as endorsed in this research, as the two can be clearly differentiated. The law of occupation as understood in its classic manner cannot represent a valid pattern for Jus Post Bellum because of its static and conservative nature, which, to clarify, is of course an essential value for the aims of law of occupation. They are simply two different things.

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[55] UN Charter, Article 103 "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.
"http://www.un.org/en/documents/charter/chapter16.shtml

[56] Gregory H. Fox , Navigating the Unilateral/Multilateral Divide in Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) (p.252)

A different approach is requested in the case of an acceptation of a law of 'transformative' occupation. Such a framework is certainly related the framework of Jus Post Bellum, although is not completely overlapping. This new model has been newly categorized for the case of Iraq 2003 and it shares with the idea of Jus Post Bellum the capability to initiate and realize a complete reconstruction which aims to a successful transition from conflict to peace. However, there are lots of limits in this 'transformative occupation' idea. Firstly because, being still an occupation, it is led by foreign powers and it may not have an international mandate, which leads to a general lack of legitimacy and related issues lying in the violation of the law of self-determination and the political need for local ownership in the reconstruction process. Actually, the conservationist principle surrounding the law of occupation has not been set by chance or with limiting intentions but has the clear rational of not allowing the occupant to impose a "Victor's Peace" or any other kind of operation that is unilaterally taken, not accountable and not following neutral standards, those same activities that can potentially be carried out better by an international mission mandated by the UN Security Council. Without a Jus Post Bellum systematic evolution, the Iraqi case showed how difficult is to consider the option of a 'transformation' carried out by the occupants with some level of coordination with the Security Council - so endorsing the validity of a law of transformative occupation - . It causes clear difficulties in coordination among the two levels and raises the concrete threat of politicization, approximation, lack of accountability, slowness of the whole process and high risk of failure.

The Law of Occupation and Just Post Bellum, understood as the law of the transition from conflict to peace, must stay separate because they have two different aims, rationales and objectives. This is another reasons why imagining the UN ratification the GC IV would be unlikely, it would limit the post-conflict powers of the Security Council to the limits of occupants states, basically neutralizing any kind of post-conflict operation, which is still essential when more or less 'neutral', or, at least, UN-mandated.

Those limits are meaningful and desirable for the occupants but would be un-productive for IOs acting on the ground for post-conflict reconstruction. For this reason, the two legal frameworks need two different kind of actors and they can be put in chronological order. Occupants, ruling under the framework of law of occupation can stabilize the country until the point of leaving the control to an international mission or administration, which, having set and agreed the objectives, goals and timings of the operation, can better start an effective, sustainable 'transformation', in other words, the reconstruction of the country, respecting certain principles that should be previously set, related to the balance between the locals and the international actors in decision-making process, rights and guarantees, a process for accountability, the definition of targets, objectives and the exit strategy. Such a difference has been seen by Gregory H. Fox [57] as a difference between unilateral and multilateral actions, marking the distinction between actions undertaken by a group of states (or even one state) and those undertaken by the United Nations. The legitimacy of the UN does not have 'immaterial legitimacy' or simply a moral legitimacy, the strong powers available in this context derive from Chapter VII of the UN Charter and the supremacy rule provided in article 103.

Conclusively, it is argued that the practice of a law of transformative occupation is not enough to fill the gap of the legal framework of post-conflict reconstruction and, even by stretching this idea, such an option is not desirable. [58] Furthermore, it can be stated there is neither identity nor overlapping between the law of occupation and Jus Post Bellum and therefore, by giving a systematic definition of the second, it would be possible to make clear and effective differentiations.

[57] Gregory H. Fox, Navigating the Unilateral/Multilateral Divide in Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) (p.230)

[58] On the same position Gregory H. Fox on 31-03-2012 Article, International Review of the Red Cross, No. 885, by Gregory H. Fox https://www.icrc.org/eng/resources/documents/article/review-2012/irrc-885-fox.htm

5 The Responsibility to Protect and Just Post Bellum

Now let us switch to more recent developments in international law such as the 'Law' - or better practice - of the so called Responsibility to Protect. Technically, the Responsibility to Protect represents the most revolutionary principle in evolution for international law for the international legal order as set. It directly tackles the main pillar on which the system has been legally, politically and conceptually built on: Sovereignty. The advancing of the principle witnesses the push made for international law to protect not only its traditional subjects (Sovereign States) but also individuals, particularly from gross human rights violations.

As it is known, this concept was originally invoked in the international agenda in 1999 by the UN Secretary-General of the time, Kofi Annan, who, at the time of the tragedy of the Rwandan Genocide of 1994 was the UN Under-Secretary General for Peace-Keeping Operations. At that time he figured the lack of agility of the UN in deploying, bringing and keeping peace during or on the verge of humanitarian crisis. This issue was particularly 'embarrassing' the international community and the United Nations after the shameful and tragic happenings in Rwanda, Bosnia and during the Kosovo crisis, where the UN finds itself unable to prevent or react properly to the terrible humanitarian crisis going on in those territories, with terrible consequences for civilians. When elected Secretary-General, he prioritized the need for a definition of a 'humanitarian intervention' . The appeal was followed by the declaration of the Prime Minister of Canada, Jean Chrètien, about the establishment of an independent International Commission on Intervention and State Sovereignty (ICISS) "*to address the moral, legal, operational and political questions involved in developing, broader international support for a new framework legitimizing humanitarian intervention*" [59]. Before analyzing the report, it must be emphasized that its content was neither implemented nor entirely agreed.

[59] David Chadler, "The Responsibility to Protect? Imposing Liberal Peace" on International Peacekeeping, Vol.11, No.1, Spring 2004, pp.59-81 , ISSN 1353-3312, 2004 Tayolr and Francis Ltd.

However, it expressed the starting point of an evolving process that undoubtedly has been put forward, although with less juridical and political strength than expected by the Commission.

The activity of the Commission generated a high level doctrinal, political and juridical debate until it produced a report called 'The Responsibility to Protect' [60]. It can be considered a cornerstone for the evolution of these concepts. The report advanced forward looking and courageous positions and actually not all of them have met the expectations in the implementation and recognition process. The Responsibility to Protect concept represented, with Chandler's words, an attempt to '*institutionalize a new international security framework*'. As highlighted by Chadler, the report highlighted and contextually tackled three main points to be solved in order to achieve consensus and sustainability for the responsibility to protect: determining the concept of humanitarian intervention, the issue of the compatibility with State Sovereignty and the compatibility with the United Nations.

Aiming to underline only a few and the most relevant points of the report, particularly relevant for the purpose of this paper, it is possible to individuate two roots.

1) The Report stands for a more 'moralizing role' of the international community. The states and the international community are there seen as moral agents, ready to act and overcome sovereignty when sovereignty fails to protect 'its' citizens from genocide, war crimes, crimes against humanity, ethnic cleaning.

2) Such a change opened the doors for a historical shift in the concept of Sovereignty. According to the new vision offered by the report, Sovereignty shall not be anymore an absolute right to express, rather a "Responsibility". Failing to fulfill this responsibility will authorize the international community to act in defense of the people victim of the abuses which the State was not able to avoid.

[60] http://responsibilitytoprotect.org/ICISS%20Report.pdf

Such a change has unchained different political and scholarly reactions. This point is crucial for the definition of the relations between Sovereignty, Jus Post Bellum and the dilemmas about intervention, liberal peace and the standards of civilization.

It is possible to call it as the shift fron the Westphalian system to a Cosmopolitan or Global System. It has lots of consequences in the conceptualization of pillars of international law. Such an idea of 'sovereignty as a responsibility' represents a new direction in making international law more people-centered. According to it the international community is able to directly intervene helping populations affected by severe issues of human security, bypassing barriers of the sovereignty of a country and the previously undiscussed principle of non-intervention in internal affairs. Of course, this eventuality could have occurred without the Responsibility to Protect with a Security Council Resolution but, by affirming a 'responsibility' of the international community on this regard, the source shifts from a matter of political opportunity under the discretion of Security Council Member States - and particularly the Five Permanent Members - to a moralizing obligation to intervene for the international community. This consideration has started eroding certain limits of the Security Council itself, which biggest limit is clearly the overwhelming space left to political opportunity (the self interests of the Permanent Five) for intervening, because the evolution of such a norm is now envisioning the possibility of abolishing the veto power for such kind of cases. The situation is still far from getting there, but the process has started. A 'Code of Conduct' for the Security Council for restraining the Veto Power in cases of mass violations of human rights and Genocide has been promoted by the 'Global Center for Responsibility to Protect' and it is receiving an interesting number of endorsements by member states. At the same time, several Countries established a "R2P National Focal Point" for monitoring situations where such a principle should be invoked.

In the Research and Bibliography part of the Commission Report there are interesting positions in support of the thesis presented. In redefining the classic concept, the principle of sovereignty as responsibility, gave way the Commission to state:

"*Sovereignty is not absolute but contingent […] can be temporarily suspended*" [61]

In this way another collateral effect was caused. A double standard of accountability was created: a State is not only internally accountable to its own population, but it is also to the international community, which has not only the right, but even the responsibility, to express a judgement and in case even legitimately start an intervention for protecting people.

Not only, the Commission tried to draw a more comprehensive framework. Starting from the changing dimension of sovereignty, they declined this change in all its possible ways of expressions, determining which kind of responsibility the international community of states really has in those circumstances. It represents another crucial point for the aim of this research because there is a clear relevance and a strong relationship between the Responsibility to Protect and Jus Post Bellum. The reports focuses on three main areas of intervention: the Responsibility to Prevent, the Responsibility to React and the Responsibility to Rebuild. This marks a very important differentiation between the concepts of humanitarian intervention and responsibility to protect, a differentiation - present in the original report - that is usually underestimated or not considered. While the humanitarian intervention is always a military operation, the R2P represents a wider range of tools which last resort can be represented by a humanitarian intervention but does not stop to the military action.

[61] International Commission on Intervention and State Sovereignty, The Responsibility to Protect: Research, Bibliography, Background. Ottawa: The international development center, 2001 (p.11)

The Responsibility to Protect can potentially intervene in each moment and it would have a different aim accordingly: it could prevent an atrocity, it could react to it and then, it implies the 'responsibility to rebuild' [62]. The last one, as brought forward by the Commission can be considered as way of proposing and interpreting Jus Post Bellum. The report emphasized it by saying that it can represent a "*genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development*" Not only, it clearly states that "*conditions of public safety and order have to be reconstituted by international agenda acting in partnership with local authorities, with the goal of progressively transferring to them authority and responsibility to rebuild*" [63].

The Report is very comprehensive, well thought and complete in its systematic effort. It individuated also the area of operations and, recalling a Secretary-General's report, claimed the need for a post-conflict strategy for rebuilding, as an essential element for the intervention itself, as argued in advanced too. It drawed the connections and set the standards for post-conflict peace-building, security, justice and reconciliation, development and it further individuated the area of competence and the legal basis for international administrations, the limits to occupation and the balance with local ownership. It elaborated its own interpretation of Jus Post Bellum.

However, the Report of the Commission eventually did not find full endorsement or support both at political and doctrinal level. Several positions were expressed.

David Chandler[64] claimed that the Commissions' position is definitely too centered on the western values and on imposing liberal peace. He affirmed that this moralizing operation leads only to giving an asserted legitimacy to operations that could not have

[62] Ibidem, p. 39

[63] Ibidem, p.39

[64] David Chandler, "The Responsibility to Protect? Imposing Liberal Peace" on International Peacekeeping, Vol.11, No.1, Spring 2004, pp.59-81 (footnote number 2) . OSSM 1353-3312 (http://iilj.org/courses/documents/DavidChandlerTheResponsibilitytoProtect.ImposingtheLiberalPeace.pdf)

it otherwise under international law. It would be like putting a nice veil on Realpolitik, exactly - we can say, - like a legal Trojan horse.
From this perspective, there can be a high risk of mixing the humanitarian purpose of these interventions with the political purpose of a 'regime-change' operation.
According to him, the spirit of humanitarian interventions should not be enough to justify such kind of operations.

"The less certainty there is regarding the international legal and political framework the more morality and ethics have come into plain in attempt to provide the lacking framework of legitimacy. It is no coincidence that the first modern moral war 'fought not for territory but for values' , as UK Prime Minister Tony Blair describer the war over Kosovo, was also fought without Security Council authorization. Rather than being condemned for its illegality, the Kosovo crisis was held by many leading Western government officials to have illustrated the growing importance of morality and ethics in international relations" [65].

Actually, after the September 11th attacks to the United States, the 'moralization' has definitely increased, essentially due to political purposes, something undesirable that has not helped the evolution of the process.
Just to prove it with the words of two of the main interpreters of this political trend, is possible to mention UK Prime Minister Tony Blair and the President of the United States George W. Bush. The first one defined the following invasions as a new moral war for a value or, at this time, a war against something borderless: "war against 'terrorism'. " The American President George W. Bush, emphasized Blair's points in a stronger way, marking the case for the moralizing intervention:

"*Some worry that it is somehow undiplomatic or impolite to speak the language of right and*

[65] Ibidem, p.75

wrong. I disagree. Difference circumstances require different methods, but not different moralities. Moral truth is the same in every culture, in every time, and in every place. Targeting innocent civilians for murder is always and everywhere wrong. Brutality against women is always and everywhere wrong. There can be no neutrality between justice and cruelty, between the innocent and the guilty. We are in a conflict between good and evil, and America will call evil by its name. By confronting evil and lawless regimes, we do not create a problem, we reveal a problem. And we will lead the world in opposing it."[66]

What happened after is now history and it is not a task of a jurist to judge the political and historical consequences of those happenings even though the political trend or derive had to be mentioned.

As anticipated, the strong positions of the Independent Report did not find full support. The Secretary-General called for a UN commitment on this issue officially in 2004[67]. In its report the Secretary-General clearly stated that the debate should have focused not on "*the right to intervene"* of any State but the "*responsibility to* protect" of every state.

One year later, the Responsibility to Protect was affirmed as a principle by the international community and launched officially in 2005, in the same document mentioned above, which was the 2005 World Summit Outcome Document, where almost all the Head of States endorsed it. Curiously, the title about the responsibility to protect is exactly following the title about democracy. After having stressed the general principle

[66] George W. Bush, 'Remarks by the President at 2002 Graduation Exercise of the United States Military Academy, West Point, New York, 1 June 2002. Accessed at www.whitehouse.gov/news/release/2002/06/20020601-3.html

[67] United Nations Secretary-General, A More Secure World: Our Shared Responsibility: Report of the Secretary-General's High Level Panel on Threats, Challenges and Change. 201, UN DOC A/59/565 (Dec. 2 2004.

of each country to protect its population from atrocities in paragraph 138, the R2P was politically and diplomatically introduced into the international arena was at paragraph 139:

" 139. 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 stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. 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."[68]

Such an example of diplomatic accuracy reduced the ambitions of the report in many ways. The position expressed seemed just to stress international cooperation in preventing atrocities through capacity building, adopting a case-by-case approach and using the framework of Chapters VI and VII of the UN Charter. Nothing so innovative,

[68] UNGA Document, A/Res/60/1, paragraph 139 http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf

actually, but we can say it was a starting point. The "three pillars" [69] are enshrined into the ad hoc report of the Secretary-General of 2009 "Implementing the Responsibility to Protect"[70] in which the three pillars are entitled as follows: the protection responsibilities of the state, international assistance and capacity building and timely and decisive response. From then, the Secretary-General frequently and periodically issues reports on this topic, clearly making R2P a strategic priority in the agenda of the United Nations, particularly under the chapters of the reform of the UN Security Council (being the main body interested the those circumstances) and in the implementation of the principle and international law (having interested also the International Law Commission[71], 6th Commission of the UN General Assembly). The debate about the legal configuration of the Responsibility to Protect is one of the most sensitive ones for the international community and scholarly as well as diplomatic debates have triggered the interested 'fora'. Diverse and interesting theories have been developed about the issue from the assertion of an already existing legal framework for the application of the principle (see Monica Hakimi at reference on note 71) to theories refusing such existence but advocating for it, to positions which simply refuse any legal implementation of such a 'responsibility'. Ministerial meetings on the responsibility to protect are annually convened in the context of the General Assembly, too [72], in addition to the

[69] "1. The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
2. The international community has a responsibility to encourage and assist States in fulfilling this responsibility
3. The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations." from the UN Special Adviser on the prevention of Genocide website http://www.un.org/en/preventgenocide/adviser/responsibility.shtml

[70] UN Document A/63/677 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677

[71] See Chapter 4 Monica Hakimi, Towarda a Legal Theory on the Responsibility to Protect on The Yale Journal of International Law [Vol.39: 247] (p.255 about the Draft Articles on State Responsibility adopted by the International Law Commission in 2001.

[72] Last session was the recent 2015 UN General Assembly Informal Interactive Dialogue on the Responsibility to Protect http://www.globalr2p.org/resources/797

periodical reports of the Secretary-General. The Security-Council has hosted already, not only thematic session on the issue, but has invoked for it demanding actions and interventions in the cases of Lebanon, Kenya, Ivory Coast, Syria, Libya, Central African Republic. [73]

Looking at the case studies is possible to understand how this concept is still not defined and used according to the political opportunity and self-interest of the permanent member of the security council. Although the international community has developed a deep sensitivity towards the Responsibility to Protect at all levels [74] there is still a crucial gap of practical definition and operationalization of it. To put it with the Secretary-General's words, notwithstanding the persistent question of how to implement it "*no government questions the principle*" [75] .

Such a difference is easily understandable. While the first part of the principle "each state must protect its population from atrocities" is undebatable and even recognized under international law[76] , the second part, stating that the international community in any case when the population is at risk, with is the real innovative part, is deeply debated and obstructed. Such a difference of positions on the two main propositions of the Responsibility to Protect reflects on a very limiting dynamic which represents a

[73] For a complete monitoring of the Responsibility to Protect principle, an outstanding work is carried out by the already mentioned 'Global Center for the Responsibility to Protect', which advocates for the full implementation of the principle (see also note 75)

[74] The Secretary-General further appointed two special advisers on the topic. More than 70 countries have established national focal points for Responsibility to Protect at institutional level for promoting it internally and reaching coordination with other actors at international level. Furthermore, in 2008 a Global Center for the Responsibility to Protect was founded by five leading international non-governmental organizations. It acts as a catalyst to promote and apply the norm of the "Responsibility to Protect" (R2P) populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and it becomes a sort of coordination point for the national focal points, too.

[75] UN Secretary-General Ban Ki-Moon, Remarks at Breakfast Roundtable with Foreign Ministers, The Responsibility to Protect: Responding to Imminent Threats of Mass Atrocities (Sept. 23, 2011), http://www.un.org.sg./statements/?nid=5567

[76] Monica Hakimi, Toward a Legal Theory on the Responsibility to Protect on The Yale Journal of International Law [Vol.39: 247]

huge 'risk' for Jus Post Bellum, too: the impossibility of a principle to be translated into a "*operational doctrine*" [77] or a practice (either juridical or political).

Monica Hakimi, in her referenced article, gave an important contribution to a potential operationalization of the principle, arguing about the different alternatives, for instance, related to the issue of whom to attribute such a responsibility, whether to the member states or to the international organization, in other words, the United Nations, then analyzing all the possible applications of the principle as accepted by the international community. However, this and other valid contributions, still remain academic exercises despite the fact - analyzed by Hakimi - of the presence of a certain number of sentences issued by International Tribunals which can refer to some extent, indirectly, to recognize state responsibility on the basis of arguments, principles or sources connected to the responsibility to protect.

Despite these interpretations, more or less extended or optimistic, it can be stated that of the whole R2P doctrine, the part related to the Responsibility to Rebuild has been certainly the most underestimated. The reason of such underestimation is clearly related to the fact that, in order to give it a clear configuration, a preliminary configuration of the other faces will be needed as a matter of coherence and cohesion. For the same reason, having presented the complexity of the responsibility to protect, it is now important to determine its relationship with Jus Post Bellum, as both of them "*are emerging contest that are at the heart of contemporary discourse of international responses to conflict*"[78] . Actually, several elements would bring to believe in a common nature of these two principles in evolution or even to an identification of the two, according to the ICSS Report. They also share the same critics about breaching of sovereignty principle, imposition of liberal peace and sacrificing too much in the name of an international framework of human security.

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[77] Ibidem, p.253

[78] Carsten Stahn, R2P and Jus Post Bellum, Towards a Polycentric Approach in Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014)

Probably, according to the words of the ICSS Report of 2001, such an identification would be smoother but, as underlined previously, what matters more is the successive UNSG Report of the High-Level Panel on Threats, Challenges and Change of 2004 and moreover the analyzed paragraphs 138 and 139 of the 2005 World Summit Outcome Document which adopted a much stricter and reduced interpretation of the responsibility to protect and was endorsed both by the General Assembly and the Security Council. The whole issue presented in a more holistic approach into the 2001 ICSS Report just fell into Pillar 2: "international assistance and capacity building" for the state. It seems to be much more reduced than the whole concept of Jus Post Bellum, as needed.

Jus Post Bellum and the Responsibility to protect are clearly interlinked concepts or principles, yet they walk an autonomous tracks. This position is shared also by Professor Carsten Stahn, likely the most prominent scholar on Jus Post Bellum. He has a polycentric vision of the two elements, underlining the areas where these two can differ. According to him, Jus Post Bellum may not simply fit into Pillar 2 of the report but also into Pillar 1 about "encouragement and persuasion of states to meet their protection responsibilities" as Jus Post Bellum should need to be an essential tool for preventing the outbreak of new conflicts, acting as "Jus Contra Bellum" [79]. He clearly wrote that "jus post bellum complements R2P or goes beyond its imperatives", a position shared by the vision of this paper. [80]

6 Jus Post Bellum: a New Conceptual Framework for Post Conflict Peace Building?

At the end of this analysis related to the possible conceptual and practical interaction between Jus Post Bellum and both the classic and emerging concept regulating the international efforts in building a lasting peace after armed conflicts it is possible to

[79] Reference from Carsten Stahn in Ibidem

[80] For a in depth analysis of these conclusions refers to Carsten Stahn in Ibidem

give a few statements about its relevance and configuration under international law. Regardless its nature, international law needs to establish a sustainable and coherent relationship with the principles emerging from the area of post-conflict peace-building and post-conflict reconstruction, whether it will fit into the responsibility to protect or directly into the jus post bellum pattern. It can be considered a new category under construction that needs to be set according to one of the approaches presented previously. And, in order to achieve this goal, it is essential to solve the biggest dilemma about Jus Post Bellum, presented in the following paragraph.

Obligation or Responsibility? Giving a response to such a question is the core point of the whole debate about Jus Post Bellum. In order to tackle the issue in a holistic way, it is essential to adopt a 'de lege ferenda' perspective because, given the current status of the situation, it would be too easy, and probably misleading, to state there is no legal obligation at all. The point needs to be whether there may be such an obligation.

First consideration is again given by the different approach adopted in the two main documents about the Responsibility to Protect - which includes the Responsibility to Rebuild - : the 2001 ICSS Report and the 2005 Outcome Document of the Millennium Summit, endorsed by the General Assembly and the Security Council. In the transition from one to another, the language and the concepts have changed meaningfully, reducing the innovative capacity of the principle. While the report gave clear principles supported by technical operationalizations, the Outcome Document expressed a declaration of intents, a commitment to cooperate without showing willingness to introduce legal obligations, yet. Carsten Sathn well gave the state of the art according to the actors entitled to express a position on it :

"*In light of this ambiguity, the precise normative status of "post-conflict" responsibilities under*

R2P remains contested. It is questioned whether this dimension of r2P or the very concept of itself qualify as a norm, i.e. an embodiment of shared convictions and binding framework for actions. There is a spectrum of voices on legal status and normatively. The High Level Panel Report spoke of an 'emerging norm". In UN documents, R2P is understood as a "concept", "principle" , or "standard". In the 2009, debate in the General Assembly qualifications ranged from "political commitment" (Liechtenstein) to "emerging normative framework" (Bangladesh) and "legal principle" (Canada). Scholars use different categorizations. Some have qualified R2P as the expression of a general "duty of care" or "soft law" . Other differentiate between its status as a norm with regard to the "protection responsibilities" of the host state, and its character as "an emerging legal norm with regard to other states and the United Nations. " [81]

This overview needs to be updated with the two annual UN steps about the responsibility to protect: the latest UN General Assembly Informal Interactive Dialogue on the Responsibility to Protect (8 September, 2015)[82], stimulated by the release of the United Nations Secretary General Report "A vital and enduring commitment: implementing the responsibility to protect"[83] on the occasion of the 10th anniversary of the 2005 Outcome Document. These two further steps marked the need for a stronger implementation of the responsibility to protect, showing continuity with the precedent tendencies showed by Stahn. Specifically, the UNSG Report, released in July 2015, expressed strong and relevant positions about the topic, also mentioning the direct link between R2P and post-conflict reconstruction scenario (Jus Post Bellum). It individuated the cases in which the international community has intervened successfully for the response to the risk or perpetration of mass atrocities (namely Cote d'Ivoire, Guinea,

[81] Carsten Stahn, R2P and Jus Post Bellum, Towards a Polycentric Approach in Stahn, Easterday and Iverson (eds) , Jus Post Bellum Mapping the Normative Foundations , Oxford University Press (2014) (p.106)

[82] Summary of the Interactive Dialogue released by the Global Center for the Responsibility to Protect http://www.globalr2p.org/media/files/summary-of-the-r2p-dialogue-2015.pdf

[83] UN Document A/69/981 - S/2015/500 http://www.un.org/en/preventgenocide/adviser/pdf/N1521764%202015%20SG%20Report%20R2P%20English.pdf

Kenya and Kyrgyzstan) but also the cases in which these efforts did not meet the expected results (Central African Republic and South Sudan - "represent significant failures to prevent atrocity crimes") and it obviously has made the case of the situation in Iraq, the Syrian Arab Republic and the rise of the "Islamic State in Iraq and the Levant" (ISIL), as well as the conflicts in Yemen and the Occupied Palestinian Territory of the Gaza Strip ("have generated high numbers of civilian casualties, raising concern about the indiscriminate use of force by all parties and the possible commission of war crimes") .

The Secretary-General made a clear case about the links between R2P and Jus Post Bellum in the case of the authorization of a military intervention in Lybia made by the Security Council with resolution 1973 (2011):

He stated : "*It has also reminded actors of the vital need to consider what kind of sustained support may be required after the use of force*."[84]

After having given the state of the art, the Secretary General individuated in the same report the new goals and objectives which somehow gave responses to several of the questions left open.

"*The primary purpose of the responsibility to protect is to close the gap between State obligations under legal instruments, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Geneva Conventions of 1949, and the continuing subjection of populations to the violence and terror of atrocity crimes*"[85]

"*It is based on the conviction that State sovereignty is enhanced through more effective protection of populations from atrocity crimes. The responsibility to protect and State sovereignty are thus allies, not adversaries*" [86]

[84] Paragraph 9 on the implementation of the responsibility to protect
[85] Paragraph 11 , Ibidem
[86] Paragraph 12, Ibidem

Then, the Secretary-General stressed the important of enhancing the legal framework given by Chapters VI, VII and VIII of the UN Charter against the hypothesis of unilateral actions.

Furthermore, the Report goes beyond, tackling the biggest issue and limit, which has been already highlighted, entitling Part II of the report "The Implementation Imperative" . The report analyzes the operationalization of the three pillars, individuating the concrete areas on which to act, at policy, legal and practical levels, in order to achieve the awaited operationalization. For the purpose of this research, Pillar II: international assistance and capacity-building and Pillar III: timely and decisive response, have to be observed. Under Pillar II a strengthening of the international and intergovernmental framework for capacity building and international support is invoked, through the enhancing of both political and financial commitments towards such a goal. Under Pillar III, the Secretary-General called again for a reform go the Security-Council approach due to its limits given by the veto power and a lack of a whole global voice as response to specific situations, clearly inspired by the entire principle of the Responsibility to protect. At the end of the report the Secretary-General presented the priorities for the next decade: implementation, demonstration of political commitment, investment in atrocity crime prevention, ensuring more timely and decisive response, preventing recurrence of atrocity crimes, enhancing regional action, strengthening peer networks.

The following interactive dialogue reaffirmed the progress made in advancing and institutionalizing the principle since 2005. Member States acknowledged that, despite all the debates on the single cases, the Responsibility to Protect still remains the most efficient evolving norm to prevent mass atrocities and called for a stronger political

determination for a more decisive implementation of this principle in practice and in legal enforcement. [87]

This overview was needed because it is clear how the possible legal outcomes of a Jus Post Bellum depend from this process essentially.

Thus, it can be said that currently Jus Post Bellum is understood as an interpretative framework to be applied institutionally at UN level in the post-conflict phase, using as principles the ones indicated by the Secretary-General and linking such a process with the overall implementation of R2P and the other processes led by the UN in this field, such as the Security Council Reform and the evolution of the Peace-Building Commission.

Adopting a de lege ferenda approach, other considerations are possible, debating about whether Jus Post Bellum should be a set of general principles up the political will of the states or a set of norms to obey to. It is abstractly possible to affirm that such a choice should not be seen in its static and alternative perspective, but, according to the general practice of international law, they should be part of the same evolving process. Theoretically, ff a moral duty on the responsibility to rebuild is started to be recognized by Member States and then such a duty will be practiced constantly, such an evolution could potentially happen. Realistically, this option is not suitable because such a practice, with all the political and economic interests stake, would never be formed in a uniform way. The perspective of an institutionalized process of implementation of a uniform Jus Post Bellum either under the international practice or under international law is at least more likely.

About the legal or political nature of JPB, several advocates have different positions, covering all the possible ideas about the topic.

[87] Summary of the Interactive Dialogue released by the Global Center for the Responsibility to Protect http://www.globalr2p.org/media/files/summary-of-the-r2p-dialogue-2015.pdf

James Pattison tried to understand exactly who should rebuild after war in his "Jus Post Bellum and the Responsibility to Rebuild" [88] . He tried to understand whether such a responsibility exists, if it exists in the political or legal field and to whom such a burden should relapse. He refuses what he calls "The Belligerents Rebuild Thesis", which basically follows the Pattery-Burns rule "You broke it. You fix it", presenting his arguments on support of it. He rather believes that the United Nations should take the responsibility of these kind of processes, probably under the direction of the Security Council that should not only authorize but also carry out these processes, with the support of the Peace-Building Commission, a scenario that is generally supported by this paper. Several other positions that could have been mentioned as a reference.
Such a duty is far from being considered an obligation and the practice has shown that these decisions are always taken at political level than according to other principles. However, the institutionalization of post-conflict transitions occurring at the UN level, mainly through the work and the strengthening of the Peace-Building Commission, the involvement of the Security-Council, the coordination of the UN-concerned agencies and Departments - such as the UN OCHA , UNDPKO , UNDPA, UNDP -, the evolution of the practices like the civil enlargement of Peace-Keeping Operations and Special Political Missions seem to be giving interesting directions to the implementation of a set of rules from driving the transition from conflict to peace, which can be referred as first attempts to process Jus Post Bellum.

Two trends can be recorded. From one side, Post-conflict peace- building and post-conflict reconstruction are currently left in a legal vacuum filled by the political strategies of the occupant powers or to the discretionary of the multilateral actors (e.g international organizations), approaches which have often led to short or mid-term failures. From the other side, the practice and case studies have shown an increased role

[88] James Pattison, Jus Post Bellum and the Responsibility to Rebuild on B.J.Pol.S., Cambridge University Press, 2013. do:10.1017/S00071223413000331

of the United Nations in managing post-conflict transitions under the prerogatives of the UN Charter but it highlighted the need for the system to evolve institutionally and operationally: the Security Council has been called to act in this regard increasingly using its powers under Chapter VII while the other UN bodies, especially the Department of Peace-Keeping Operations (UN-DPKO), the Peace-building Commission (UNPBC), the Department for Political Affairs (UNDPA) and Specialized Agencies, have completed the post-conflict framework of the UN both at political and on the ground levels. Beside the UN commitment, the role of Regional Organizations have increased meaningfully, as well as the role of multilateral or national donors. Mapping the actors involved on the ground in the reconstruction is complex and such an operation highlights the need for a more effective coordination among the various actors. Furthermore, the normative and regulatory sources are not enough to cover the actions of these bodies, which are increasingly stretching the rules. Therefore, a comprehensive normative innovation seems to be highly needed.

Among the possible options, adopting a regulatory, binding framework which would set the general rules of conduct, the objectives, measurable targets and accountability measures for the transition from conflict to peace when international actors are involved, will create a track on which the post-conflict actors can coordinate each other while at the same time the local communities can find their guarantees. Giving a regulation will mean also to determine and set the right balance between international assistance and support and national self-determination, between the adherence to international standards (rule of law, human rights, representativeness) and the political choices which must be left to the sovereign independence of the rebuilt country. Such a regulation could be considered like a hard law framework of soft law provisions, where principles and rules for coordination can be set up while maintaining the necessary dynamism and adaptability of such a framework to the extremely diverse post-conflict environments.

From the practice, it is already possible to individuate general principles that can apply to all the situations and need operationalization such as the need for inclusion of the locals in the decisions of the international actors, the determination of limits for international actors and international administrations, the individuation of measurable targets for determining an exit strategy, the establishment of accountability measures and the creation of coordination bodies at two levels: among the various international actors and between the international concert and the local community. Giving a normative framework to the post-conflict phase would also mean to finally individuate its relation with the other two phases of the conflict. As it is emerging from the debate, particularly relating to the Responsibility to Protect, there must be a link between the two. If a Responsibility to Protect as binding principle for the international community is affirmed, then there has to be a consequent responsibility to rebuild. The legitimacy of humanitarian interventions is not questioned, however, its reasons can not turn simply into an operation for overthrowing a perpetrator and leaving the country because it will entail more to think about a 'regime change' operation, rather than a 'humanitarian intervention'. In taking such a responsibility, the international community must comply with the post-intervention phase. Such an approach adheres to the multilateral dimension of humanitarian interventions and more in general to the generation and management of any other conflict. Nevertheless, even considering the hypothesis of non-internationally authorized operations,while a certain burden must be left to the interveners, the international community led by the UN must intervene in the aftermath in any case for two main reasons. First, because the international community will have the resources to potentially succeed in a comprehensive transition to peace more than a single group of state, being also more accountable and more neutral in its actions. Second, if someone would question the reason of this 'interventionism' even when the operation has been conducted unilaterally, it is because the practice has shown how a post-conflict country left at the mercy of a non-coordinated operation

leads to the creation of failed states or even to more dangerous threats to the international peace and security, so, it will affect anyway the international community in a worse way.

These questions are at the same time urgent and old but solutions need to be determined because, as Machiavelli wrote back in 1532, "Wars begin when you will, but they do not end when you please" [89].

[89] Niccolò Machiavelli, The Florentine History (New York: Harper & Row, 1960) , 68.