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*Criminological Research and Education Matters: People, Policy, and Practice in Tumultuous Times*

Author Meets Critics:

**Reinvigorating the United Nations and its Actions Against International Crime**

*Marriott Marquis*

Nov 13, 8:00 to 9:20 am, Sierra F - 5th Level

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## **Introduction**

When in January 1941, US President Franklin D. Roosevelt (FDR) announced to the US Congress the idea of "Four Freedoms," and he laid the UN foundation. One month later Henry Luce, the founder of Time, Life and Fortune magazines, followed. In his essay "American Centennial," he predicted the US to become a global superpower and advocated US-driven internationalism. In May 1942, Henry A. Wallace, the US V-President in FDR's administration in line with the UN-spirited "Four Freedoms," responded to Luce's "American Centennial" with a concept of a "century of the common man". He meant better living standards not merely in the United States and England, but also in India, Russia, China and Latin America—not merely in the United Nations, but also in Germany, Italy and Japan<sup>1</sup> - the enemy Axis countries. Seven months later, in December 1941 (BTW: in the same month the progenitor of the ASC was founded), the British Prime Minister Winston Churchill and FDR signed the "Atlantic Charter" proclaiming that United Nations idea. In June 1945, 30 months later, the UNO was called to life in San Francisco. The UN Charter was elaborated and signed in the Herbst Theatre/Opera House, located 1,5 miles away from the Marriott. Its signatories went from there to the Grace Cathedral on the Nob Hill, some half a mile away, to dedicate the Charter to the Providence, as shown on the mural in that cathedral.

Ever since these two visions of internationalism were launched, many more have branched out of them. Over eight decades, US and West European concepts of internationalism crisscrossed and occasionally intersected with visions of other-minded people and geopolitical groups. Often these visions conflicted over two issues. First, over the sense, import and impact of the UN Charter's "principles of justice", credited for its rule-of-law content, especially applicable to the self-determination of nations and the right to development. Second, the exclusion-inclusion of "the Other" is over the US concept of the "enemy clause" from the Charter's articles 53 and 107 which - in principle<sup>2</sup> - has defined out war as a conduct among its parties.

Regarding that second issue, since 1946, countries ranging from Albania to Yemen were named by the Security Council or the GA as "aggressor" or "aggressors". The Security Council condemned them whether or not they were the Axis States, listed by V-President Wallace.

The aggression of Russia against Ukraine, President Zelenskyy's disinviting the present Secretary-General (S-G) Antonio Guterres to visit him in Kiev and Israel's recognition of the S-G as a "persona non-grata" highlighted the UN's complete failure to define out "the Other."

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<sup>1</sup> H. A. Wallace, Century of the common man, in: *Prefaces to Peace. A Symposium*, New York, Cooperatively Published by Simon and Schuster, Doubleday, Doran & Co., Reynal & Hitchcock, Inc., Columbia University Press 1942, pp. 373-379.

<sup>2</sup> Art. 51 UN Charter prohibits aggression and the recourse to force in the relations between States, except in the case of self-defence. Art. 1 of the Universal Declaration of Human Rights defines out war as a form of reciprocal recognition among anyone without any exception

These unprecedented developments may symbolize the tumultuous times (or "upheaval", credited by two "*Foreign Affairs*" authors to new Axis countries: China, Iran, North Korea, and Russia)<sup>3</sup> in which indeed we live. The general topic of the present ASC meeting expresses these tumultuous times very well.

Because of these, the UN can neither sort out the "friend or foe" dichotomy nor promote justice and the rule of law (RoL) when a permanent Security Council member blocks its decisions. The Organization became deadlocked to take enforcement action. One wonders, if the UN has killed itself by its own illusions, and whether or not the "United Nations" has become "The Organization of Other Nations"?. Suddenly, "the enemy clause," which until 24<sup>th</sup> February 2022 has been indeed falling through desuetude, has re-emerged in full force because a permanent member of the Security Council exercised a veto. The UN has found itself at "ground zero." Structurally, the UN is stuck in this blockade. It shows the Organization's disability in acting for the international RoL. In criminological terms, the UN itself documented the limits of its own paradigm of inclusiveness, which is illusive. We face a power shift.

### **About the book "Reinvigorating the United Nations"**

This brings me to the gist of today's ASC panel, the book "[Reinvigorating the United Nations](#)," co-edited with Prof. Markus Kornprobst from the Vienna-based Diplomatic Academy, now celebrating the 270th anniversary. Our book concerns the effect of the Diplomatic Academy international conference prompted by the after-24 February 2022 stalemate at the UN Security Council. The book consists of eleven analytical contributions organized into four sections. First, we address the rationale of this book. Why should we inquire into reinvigorating the United Nations? Second, we develop a frame for our comprehensive inquiry. We study the UN system, putting relations among its components under scrutiny instead of focusing on a single organ, such as the Security Council. Studying the United Nations system, we examine the institutional foreground and background, i.e., the two layers that make up the system. Third, we unpack what we mean by reinvigoration. We contend it has three dimensions: consolidation, elaboration, and transformation. Fourth, we preview the chapters by using these three dimensions as an organizing device.

Since my presentation time is short, I will only speak about one article by Mona Khalil in the first section. She addresses the present UN stalemate in her opening article, "The Power of Principles" by reviewing the ill-fated mandate of the Security Council involving the "Responsibility to Protect" (R2P) in 2005, given to the Council by the General Assembly. Since then, the Council may "take enforcement action in a timely and decisive manner..., when 'national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.' This mandate was only implemented once and partly to remove Colonel Qaddafi from power in Libya. R2P failed to restore peace and security there. The first and thus far only authorization under the R2P doctrine has possibly made it more challenging to pursue a second.

We know little about the vagaries of R2P from a criminological perspective because when it comes to the remit of the discipline and its insights into the UN operations, criminologists hardly deal with structural questions involving "peace-making," "conflict resolution," "abuse

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<sup>3</sup> A.Kendall-Taylor and R. Fontaine, The Axis of Upheaval, How America's Adversaries Are Uniting to Overturn the Global Order, *Foreign Affairs* 103(3), May/June 20024, pp.50-63.

of power," "climate justice" or "international rule of law." We know more about such questions from the political science perspective, which has a bigger UN outreach and impact than Criminology. In Criminology somewhat better fares the question of international *criminal justice*, emphasized by the two last words, for the first one can be replaced in by the word "transnational." Broadly speaking, *international* criminal justice has considerably advanced since the Rome Statute entry into force (2002), while the two UN conventions have advanced *transnational* criminal justice against transnational organized crime and corruption.

The late Professor G.O.W. Mueller, former Chief of the United Nations Crime Prevention and Criminal Justice Branch (1974-1981) and my first UN Chief, must have meant this latter corollary sense. He used to say that the UN Security Council resembled a police precinct to which one can report a crime<sup>4</sup>. But, paradoxically, within the entire range of United Nations programmes crime prevention and criminal justice were at their tail end. Indeed, until 2002, before establishing international criminal justice courts, the Security Council was such a police authority not directly connected with that crime & justice program.

Nowadays, the Security Council has still been a precinct in its own terms, not really limited to policing. Paradoxically, the Council has the final say in what is "just" or not. It "condemns" aggression as if it were a judicial body, but it cannot adjudge aggression (that should be the job of the International Criminal Court). Normatively and institutionally, the Security Council cannot do more than it already does. It ran out of power. In sum, by and large, the UN has exhausted itself, if not for a few other universal causes important to justice but not directly relevant to peace. Among them are two hot-button issues: anti-corruption and irregular migration. The ongoing power shift, in which such issues matter shift, requires more criminological research and recommendations for actionable grassroots outcomes.

### **About the article "Whose Law and Order?"**

Corruption is a candidate crime against humanity.<sup>5</sup> The 2003 UNCAC declared corruption an insidious enemy of the rule of law. Even in any form of alternative world order, including the extreme totalitarian philosophy of Nazism of Carl Schmitt (arrested and interrogated before the Nuremberg Trial), whom I mentioned in my text "Whose Law and Order?", he recommended criminalizing corruption by international legislation!<sup>6</sup>

Fast forward: nowadays, illicit financial flows, including corruption, tax evasion, and illegal transfers from African countries abroad, could be twice as high as the aid received by these countries.<sup>7</sup> Currently, whether the US, China, or any other big or small provider of

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<sup>4</sup> Cf. F. Adler, G.O.W. Mueller, W. S. Laufer, *Criminal Justice. An Introduction*, New York, McGraw-Hill, Inc., 1991, p. 356.

<sup>5</sup> I. Bantekas, Corruption as an International Crime and Crime against Humanity, *Criminal Justice Policies Journal of International Criminal Justice*, 4 (3), July 2006, pp. 466–484.

<sup>6</sup> Reportedly, Carl Schmitt's Second-World War ideological followers, i.e., German judges serving in SS (*Schutzstaffel* - a major paramilitary organization), hence Nazi party appointees (*sic!*), were motivated by a natural sense of justice (see: H. Pauer-Strudel, *Justifying Injustice, Legal Theory in Nazi Germany*, Cambridge, Cambridge University Press 2020). These SS judges sentenced some of those other SS officers for embezzlement, abusive and excessive extermination orders, for instance, for "illegal killings" of concentration camp inmates – that is, killings outside of administrative orders. So, even within that "statutory lawlessness" - a complete denial of the RoL, corruption stood out as a crime on its own supra terms! (*Ibidem*).

<sup>7</sup> M. Camdessus, Rok 2050. *Wyzwania i Prognozy*, Wydawnictwo Nieoczywiste 2019, p. 72; W. Gadomski, 'Francuski ekonomista: Nie zatrzymamy migracji', *Gazeta Wyborcza*, 19.01.2019, <https://bit.ly/43HLvXa>.

developmental assistance to Africa, however ideologically motivated, all fall victim to local "organized corruption." This "institutional curse" is due to the lack of African "strong institutions" recommended by SDG 16, institutions that enable the fostering of inclusive societies. Development aid funding is fungible.

Rather than contemplating only that sad fact and banging my head against the wall, in my article I wanted to go around this structural flow and use the power of academic principles to overcome this hurdle. From the myriad of concepts<sup>8</sup>, I chose John Rawls's difference principle, which comes from his "Theory of Justice," translated into some 30 languages<sup>9</sup>.

On the basis of his work, I created a model to prevent irregular migration at the grassroots as a socially just progressive United Nations goal of reducing inequalities within and among countries (SDG 10). That model could be funded by the recovered money laundered assets of corrupt individuals and by investing such assets to plant and grow local RoL initiatives by those robbed by corruption.

The Agenda's slogans that encourage moving forward have positive, socially mobilizing meanings. Still, even if they are backed by solid expert knowledge based on numbers and facts, they may turn out to be empty phrases or wishful thinking if we do not ask ourselves about the motivation and weaknesses of UN Member States' aspirational, pro-development RoL drive. My text aimed at reinvigorating that drive. Kofi Annan said, "No community anywhere suffers from too much rule of law; many do suffer from too little, and the international community is among them."<sup>10</sup>

## Conclusion

As I mentioned, after the signing of the United Nations Charter, some delegates at the San Francisco conference visited Grace Cathedral for reflection. Given the cathedral's being a spiritual center, that visit was symbolic and the hope for peace and solemnity. That is why in the introduction to our book on "Reinvigorating the United Nations," we memorized it.

In 2022, a tectonic faultline emerged, documenting the UN's indolence in thwarting Russia's aggression against Ukraine. Other dramatic developments followed. Reflecting on this faultline with dismay and powerlessness, we undertook and delivered this book project.

In the 1942 book, Edward C. Tolman (1886–1959), US psychologist, claimed that a new sense of patriotism is needed. "[T]he future of a...man a supranational state would be necessary to replace the hatreds of the individual nations now displayed on battle-fields across the world. This World Federation, or superstate, or whatever we may want to call it, must command all our allegiances more strongly than our national states now do. Just as I am more loyal to the United States than I am to California, so in the future I must be more loyal to this World-Federation than I am to the United States. And not only I, but you, and the corner grocer, and the American Legionnaire, and the boys who return from this war, and the capitalist who now hates Russia, and the Russian himself who now scorns the 'backward' Chinese, and the Hindus,

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<sup>8</sup> S. Chaturvedi et al. (eds), *The Palgrave Handbook of Development Cooperation for Achieving the 2030 Agenda*, Cham, Palgrave Macmillan 2021.

<sup>9</sup> For a synthetic review of his theory, see: M. Arvan, *Rightness as Fairness. A Moral and Political Theory*, London, Palgrave Macmillan 2016, <https://doi.org/10.1057/9781137541819>.

<sup>10</sup> Secretary-General Kofi Annan's address at the Truman Presidential Museum & Library on December 11, 2006, <https://bit.ly/3UvTZx7>.

and the Africans, and the Indonesians, and the Germans, and the Italians, and the Japanese—all, all must then be made to adopt this one greater loyalty. All must feel that they belong to one such greater whole. For, if no such whole be consummated, then we may most certainly expect another and more terrible war when a fresh and unwitting generation shall have been raised to fighting age."<sup>11</sup>

If we lose sight of that point, the United Nations will have little or no role to play in the twenty-first century.

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<sup>11</sup> E. C. Tolman, *Drives toward war*. New York: Appleton-Century, quoted after Davonis, D. (2014). *History of psychology*, New York: Springer 1942, pp. 62–65.