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A Region and Its Journal

Guy Gautreau

Not long ago, I spoke to a friend's father who explained to me how in the 1970s he and a few others adopted 'alternative' farming methods in areas of Northeastern New Brunswick. As I was being educated on the adventure of the project, which had created heartfelt memories for the golden-aged man (perhaps because of the tinge of entrepreneurial anarchy involved), I couldn't help but make associations with International Relations. Specifically, the project in question seemed to both defy and illustrate principles of the Green Revolution and the Green Perspective.

The group experimented with a biodynamic farming technique whereby a historically significant food staple for the region—buckwheat—was used in rotation with other crops. This plant is very good at drawing nutrients back into the soil and in addition, a white-flowered type of buckwheat is particularly attractive for bees. This man, having been trained in the almost abstruse art of apiculture, knew that good honey could be produced along with the growing of buckwheat. In a matter of months, agricultural yields increased, buckwheat flower was being sold to a small supplier in Japan and the honey, apparently of fine quality, was being exported to a kosher food market in New York. The project's dynamic wilted when the Japanese buyers insisted on there being less sand particles mixed in with the flour, which was impossible due to the soil quality.

The connection between the lives of local farmers, local call-center employees or local golf course managers and international affairs is made less arbitrary by a deeper understanding of how both the local and the global spheres are interrelated. Making these types of connections is most often the purpose of International Studies journals such as this one. So what of the lives of Atlantic Canadians? What parallels and responsibilities then, if any, exist between

what the *Atlis* journal explores and the events taking place this side of the sea? Although Atlantic Canada is often characterized as being predominantly 'local' (due to its small population, its high rural to urban demographic ratio and its almost tangential place in federal politics) its relation with the larger international stage is more problematic. Theoretical frameworks such as those applied in this journal may surely be applied similarly to Atlantic Canada as a whole in an attempt to answer this question.

Regionalism concerns political integration among neighbouring states and economic integration among free-trade areas, but also multidimensional relations between governments and citizens. Coping with lower equalization payments than in years past, replacing the fishing industry with sporadic local tourist sites and the emergence of new institutions all have significant impacts on Atlantic Canada.

Consider the following example. The concept of *Atlantica*—also dubbed the International Northeast Economic Region—is based on the idea that a trade corridor would extend roughly from Halifax to Buffalo. The project is promoted by the Atlantic Institute for Market Studies (AIMS), a Halifax-based think tank, which asserts among other things that *Atlantica* would lead to trade-related growth. The Halifax-Boston gas pipeline appears to be one of their selected symbols for this alliance. *Atlantica* they argue, would allow for increased competition in the airline industry, ensure Halifax benefits from Chinese cargo destined to Boston or New York by intercepting naval trade routes passing via the Indian and Atlantic Oceans, and lead to the formation of a more coherent common market (of 5-8 million people) for goods and services. The theory is rooted in a book by Perry Newman, and holds that the region is characterized by common historical, economic and political bonds, as well as underemployment and

low population and should thus somehow be amalgamated. As a result however, more resources would have to be invested in infrastructure, especially roads, and countless other concessions made.

As for social capital, apart from the fact that people can travel to the most hidden hamlet in the area and begin a conversation based on the weather, there are obviously very complex systems of meanings binding the inhabitants of Atlantic Canada. In her attempts to find exactly what these are, Margaret Conrad, Canada Research Chair in Atlantic Canada Studies at UNB, looks with a certain curiosity at the factors behind social relations in Atlantic Canada and identifies 'historical consciousness', among others, as especially relevant. For instance, prominent Acadian cultural figures have argued that the modern significance of the Deportation lies in the fact that its memory has been appropriated to fill an identity void left open by the fact that there exists no distinct Acadian territory; in this sense, the Deportation represents the cornerstone of a common social structure.

Furthermore, Conrad argues that a 'debilitating conservatism in social outlook and public policy' is sustained by 'romanticized notions of pre-industrial utopias,' with regards to Atlantic Canada. The significance of history in creating regional identities appears at once authentic and subservient. Even now, it is not clear to me whether lighthouses are being saved because of historical importance or as tourist attractions. Atlantic Canadians seem attached to the idea of self-sufficiency despite the fact that they import more than three quarters of their food.

A couple years ago, I attended a presentation by John Ralston Saul during which he declared that he was likely one of the few who believed 'globalization' was already nearing its end. Instead, he proposed that regions exactly like Atlantic Canada exemplified a type of social livelihood to come, which to me seemed to be explained by a synthesis of Huntington's 'Clash' and Fukuyama's 'End'. Economic integration across borders will persist, but alongside a resurgent desire among individuals to discover cultural roots, reconfigure social identities and 'attach' themselves philosophically to something more timeless than social trends that come and go.

Although theoretical frameworks in most cases elucidate the impact of international affairs on localities, sometimes the locality becomes the model explaining international affairs. The processes of globalization are not restricted to international events; they are also evident in the smallest of anecdotes. Learning about one will teach us about the other. Increased awareness of issues such as the plight of AIDS victims, economic development in India and melting ice caps may finally encourage Canadians to be more attentive to aboriginal communities' hardships and successes in the region. I have met many people who have traveled to sub-Saharan Africa, but none to this day who has really visited a Canadian aboriginal reserve. Some writers in this journal undoubtedly have little in terms of relationship with Atlantic Canada yet took part in this project. They may ultimately reveal things about another 'Atlantic Canada.' Making links between 'local and local' instead of 'local and global' might eventually be where these types of projects are bringing us.

The Canadian State and Human Rights: the importance of *idealpolitik* and legitimacy

Antonio Franceschet

Abstract

Prepared for the January 2005 Atlis Conference, hosted at Mount Allison University. This special contribution examines Canada's commitment to human rights as an important element of its foreign policy. It argues that Canada has supported human rights not only through diplomatic, moral, and military means, but also by upholding the theoretical perspective of liberalism in order to legitimize its foreign policy.

Abstrait

Préparé pour la conférence d'Atlis en janvier 2005 à l'université Mount Allison. Cette contribution spéciale examine l'engagement du Canada vers les droits de l'homme comme élément important de sa politique étrangère. L'auteur propose que le Canada a soutenu les droits de l'homme non seulement par moyen diplomatique, moral, et militaires, mais également en soutenant la perspective théorique du libéralisme pour rendre légitime sa politique étrangère.

Canada is a unique, exceptional country in many ways. However, Canada's international human rights policies should be viewed against the ethico-political standards that we might reasonably apply to any agent of its class, i.e., against any state, or any "middle power" state, or any "liberal" state, and so on. This helps to avoid both extremes of self-congratulatory celebrations of Canada's policies and the opposite, cynicism. Cynicism is the view that nothing any state or Canada does can be viewed in ethical terms or as succeeding in any way to realize the morality behind international human rights.

International human rights are a significant and evolving part of Canada's foreign policy. Canada has been a committed advocate of key international developments in international human rights since World War II. Such developments include the creation of the United Nations Charter, the Universal Declaration of Human Rights, the two main international Covenants of Human Rights, and the dense network of international treaties on more specific issues like refugees, racial discrimination, torture, women, children, and genocide.

Canada's commitment to human rights is evident also in the campaign against Apartheid in South Africa during

the 1980s, the steadfast commitment to democracy and rights in the former Eastern block in the context of the Cold War, or the military intervention in Kosovo, something that was justified in terms of human rights (but whether it was justifiable is another question). Yes, Canada is among the most ardent supporters of international human rights norms, laws, and standards. Canada has clearly used its resources, diplomatic, moral, and even military, to attempt to promote and protect universal human rights beyond borders. But these truths have to be put into more general theoretical perspective. How do we explain the commitment to human rights in any state's foreign policy?

Political scientists have put forward at least two, related explanations:

First, the power of liberalism in

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global politics. After World War II a convergence of ethical principle and political interests occurred in liberal democratic states. As David Forsythe argues, in the wake of a brutal war against fascist aggression, *liberal states in particular* (and the US and Canada chief among them) made a vital ethical and political connection between respect for individual rights and international peace and security.¹

This should be put into perspective. The *realpolitik* calculation, one that has arguably dominated the history of global politics, has always been *if you want peace prepare for war*. After World War II, this lesson was, if not supplanted, at least supplemented in liberal democratic states with the following maxim: *if you want peace, make sure that your values, and the values that promote peace, are accepted globally*. This view can be labeled *idealpolitik*.

Liberal states, and Canada as a liberal state, have promoted human rights because human rights dovetail with their own security concerns. In this explanation, human rights are *not* simply and only a means to an end (although they have been used as such). Rather, human rights are a fundamental part of a progressive and reformist vision of political ethics. This vision can be described as finding practical reasons and prudential opportunities to pursue ethical ends.

As Stanley Hoffmann claims, liberal states have sought to project their values abroad because these values have the greatest potential to domesticate and civilize the global state of nature.² Liberal values such as individual rights have worked at home in this respect, so they *must* (perhaps as an article of faith) have the same efficacy abroad. Human rights are not only worthy in themselves but because they are constitutive of a global order best suited to the basic goals of

liberal states. Promoting human rights promotes a liberal global order.

A second explanation often put forward for why states promote international human rights is the need of (capitalist) states to generate legitimacy. States as political actors, and the state system itself as a larger global structure, depend upon, require, and must generate political legitimacy or consent. This search for consent occurs in a particular setting -- capitalist production and social relations -- a setting that shapes more particularly how states seek out legitimacy.

Capitalism generates and is driven by contradictions and inequalities. Within states, individual rights were extended slowly and unevenly to various portions of national society, to labour, to women and other minorities, as part of a process of the state legitimizing itself. States are open to the pressure of moral norms for inclusion and for equality, and have used rights as a way of generating precious legitimacy. In this explanation, state legitimacy in turn is needed to ensure the continued evolution of capitalist social relations.

As Craig Murphy argues, this process has an international dimension.³ Things like international labour rights (pursued by the International Labour Organization for almost a century), universal human rights, and women rights are products of international governance institutions that help

states to manage their legitimacy problems as they face certain problems endemic to a capitalist world order (inequalities, instabilities, and disorders). In this explanation, capitalist states (like Canada) support human rights because, and to the extent that, they help legitimize the state -- say, by offsetting or smoothing over the most disruptive, inefficient, and unnecessary harms that occur in and across modern societies.

"Liberal states have promoted human rights because human rights dovetail with their own security concerns"

¹ David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000).

² Stanley Hoffmann, "The Crisis of Liberal Internationalism," *Foreign Policy* 98 (1995): 159-177.

³ Craig N. Murphy, *International Organization and Industrial Change: Global Governance Since 1850*. Oxford: Oxford University Press, 1994.

"no state has a perfectly consistent human rights policy"

To be clear, in this explanation, human rights are *not* simply and only a means to the end of functionally securing the goals of capitalism or any particular capitalist owner of the means of production (say, indirectly, Paul Martin). (Certainly human rights have often been subordinated to economic ends.) Rather, human rights emerge as a fundamental part of the dialectical relationships among states, markets, and societies at both national and global levels. As long as legitimacy and consent are essential ingredients in any political order, individuals and groups can agitate, sometimes successfully, sometimes not, for states to promote human rights.

Viewed from both of these somewhat different, certainly incomplete explanations, Canada's commitment to human rights is perhaps unexceptional. Canada is a liberal state, one tied to the capitalist order constructed mainly *via* American leadership. Like other liberal states, Canada has found – in varying manifestations and guises – that projecting its key values into the global order is a prudent way to enhance its own security interests. Like other states in the capitalist world system, Canada has legitimated itself, and has taken steps to sustain the capitalist order, in part by promoting human dignity in an economic system that has proven time and again to be indifferent to individuals as moral ends-in-themselves.

Two salient features of Canada's international human rights policies can be interpreted through the lenses of these explanations:

First, these explanations provide reasons for why a pattern "consistent inconsistency" has marked Canada's human rights policies. David Black, a political scientist at Dalhousie University, suggests Canada's overall human rights policy is best characterized in such paradoxical

"ethical and political matters can often lead to more harm than good"

terms.⁴ He acknowledges that no state has a perfectly consistent human rights policy; he also acknowledges and that consistency in ethical and political matters can often lead to more harm than good. Obviously Canada has to pay attention to calibrating intentions, means, and ends in crafting appropriate responses to any concrete human rights situation. A policy designed to bring about the best ends in terms of human rights might require very different means *vis-à-vis* China versus, say, the Sudan.

But Canada has, for example, only soft pedaled human rights in Asia, particularly China, compared to the more robust stances taken *vis-à-vis* African regimes like South Africa, Nigeria, and Zimbabwe. One can interpret this as follows: Canada can shore up its legitimacy as a humane internationalist state in relation to Africa, where fewer commercial or trading linkages are at stake, and attempt to reap benefits of basically acquiescing to the human rights violations of more powerful states (economically and politically) in Asia.

There is another manifestation of consistent inconsistency: Canada has promoted human rights *standards* of every type, civil, political, social, economic, cultural, women's, aboriginal, and other rights. But for the most part, Canada has contributed to and benefited from a global trading system, financial system, and international rules that have undermined the potential of developing countries to actually provide for social and economic rights. In other words, Canada has basically acquiesced to increased global poverty, inequality, and human misery.

Especially in the last decade or so, promoting humanitarian law, human security initiatives like the banning of land mines, and other less costly initiatives has been a way to for Canada to retain a humane internationalist reputation while benefiting from an economic and political order

⁴ David R. Black, "Human Rights and Canadian 'Foreign Policy': Methods and Meanings" (draft chapter, 2002).

that undermines a tremendous chunk of humanity's very basic human rights to food, shelter, and a reasonable standard of living. Recent estimates are that about 18 million people from the developing world die each year from poverty related causes.⁵

Ultimately, although we shouldn't be surprised by consistent inconsistency, it does erode Canada's credibility, and it cumulatively undermines international human rights standards. If Canada seems and is seen to be unconcerned or less concerned with human rights in particular countries for commercial or selfish interests, a message is communicated: The human rights of some people are worth more than others. Also, Canada chooses to use its institutional power to support the Canadian peoples' interests at the expense of outsiders. In other words, the forces that propel Canada to pursue human rights – again, a liberal vision of *idealpolitik* and the concern for legitimacy – are limited and shaped by the pressures of serving Canadian interests first, and by the need to manage Canada's own place in the capitalist global economy.

A second thing that emerges from the two theoretical accounts of human rights described above is the realistic hope that judging, criticizing, and pressuring Canada to do better in its policies can and will work. States, including Canada, are not amoral machines. They are ethical agents that perceive international duties. Truly, we can say that Canada did, in some cases, do better in its policies than it otherwise could have (and in the circumstances). Similarly, we could say that Canada could conceivably do better than it currently does. The notion of Canada as an international citizen captures this idea of a state's moral agency. Jennifer Welsh's recent book, *At Home in the World*, argues that Canada should be viewed in terms of the notion of a "model citizen."⁶

"where Canada is failing is in allowing global poverty and inequality to get worse"

Is it reasonable to hold Canada up to standards such as the "model citizen"?⁷ The two dynamics noted above, the power of liberal political ethics and the legitimacy requirement are potentially effective means of influencing the Canadian state's policies for the better. Yes, these factors can limit the extent of Canada's human rights policies, as I've noted. Canada as an international citizen might not always be able or willing to risk steps to further humanize or politically (and not just economically) liberalize the global order. And Canada may not believe it needs to legitimize itself much further, i.e., it has sufficient consent or approval at home and abroad. However, Canada must still and in the future take risks and steps in defence of its liberal values. And Canada must still and in the future seek out legitimacy. Canada as a state has to *choose* again and again. In its deliberations Canada is open to being pressured to make the right and better

choices.

It is important to avoid self-congratulation but one consequence of states being moral actors is that they will vary in moral performance. States will make different choices from each other. We can compare them against moral criteria and evaluate how they perform. Clearly, Canada did well to pursue with vigour the International Criminal Court, a treaty banning landmines, and the end of Apartheid in South Africa. Canada does well now to pursue where possible solutions to the global AIDS crisis, to promoting global debt relief, and to pursuing a duty of humanitarian intervention in cases of genocide.

Again where Canada is failing, however, and it is not alone here, is in allowing global poverty and inequality to get worse. Canada acquiesces to and benefits from a world economic system with manifestly harmful impact on human rights and

⁵ Thomas W. Pogge, *World Poverty and Human Rights* (Cambridge, UK: Polity, 2002), 2.

⁶ Jennifer Welsh, *At Home in the World: Canada's Global Vision for the 21st Century* (Toronto: HarperCollins Publishers, 2004).

⁷ See Antonio Franceschet and W. Andy Knight, "International(ist) Citizenship: Canada and the International Criminal Court," *Canadian Foreign Policy* 8, 2 (2001): 51-74.

dignity. Why? The kind of liberalism that influences the Canadian state does not emphasize those kinds of harms to human rights very strongly; nor does it see such threats as having the potential to undermine the global order we rely upon. Like other advanced industrialized states, Canada has managed the legitimacy problem through a variety of ways short of actually promoting fully the economic and social aspects of universal human rights.

Finally, and more optimistically, the Canadian state, like other states, is now more than ever held accountable by non-governmental organizations (NGOs), domestic and transnational. If we are going to get better foreign policy choices, it will be in large part because NGOs are able to exploit liberal norms and the concern for legitimacy that Canada has. This means that not just states, but concerned private individuals have a vital role to play in international human rights.

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Norms and Their Effect on Humanitarian Aid

Erin Jemczyk

Abstract

This paper will explore the motives behind and criteria for humanitarian aid and multilateral intervention in civil conflicts using the constructivist approach of Martha Finnemore. The intervention of international actors in the ongoing conflict in Haiti will be examined with this constructivist approach. This paper argues that norms created and enforced within the international community motivate states to participate in intervention and aid in civil conflicts.

Résumé

Cet article explore les motifs derrière et les critères pour l'aide humanitaire et l'intervention multilatérale dans les conflits civils en utilisant les études constructivistes de Martha Finnemore. L'interposition des acteurs internationaux en conflit continu en Haïti sera examinée avec cette approche de constructivisme. Cet article propose que les normes créées et imposées au sein de la communauté internationale motivent certains états à participer à l'intervention et à l'aide humanitaire dans des conflits civils.

Multilateral intervention in civil conflict has become common practice in the foreign policy of states. Recently, constructivist theory of the establishment of norms in the international community has shed new light upon the motives behind, and the criteria for, state intervention and humanitarian aid in civil conflict.

Intervention starting in the 1990's by the international community in the Haitian conflict occurred because of emerging norms regarding the responsibility to protect the citizens of states in conflict, the establishment of a democratic state, and the altruistic motives behind humanitarian aid. The constructivist work of Martha Finnemore, using the ongoing internal Haitian conflict as a case study, provides insight into the humanitarian actions of states and validation for forcible intervention.

Haiti is one of the most problem-stricken and poorest states in the Caribbean, filled with social unrest and political turmoil. The multilateral humanitarian intervention in Haiti spearheaded by the United Nations provides evidence that this altruistic ideology exists. MINUSTAH, the recently established United Nations Stabilization Mission in Haiti, involves a multitude of states that will not benefit economically or politically from their involvement in this intervention.

DEFINING NORMS: PRINCIPLES THAT SHAPE SOCIETY

Norms are "a standard of appropriate behavior for actors with a given identity."¹ In addition, norms play a role in shaping the identities and inclinations of an actor on the international stage.² Many parties or actors must share a behavior before it qualifies as a norm.³

Finnemore reminds us that norms, their development, and actors that follow norms remain part of a structured social context.⁴ One such social context is the international community. "...International social life is highly organized. Social rela-

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¹ Finnemore, Martha and Kathryn Sikkink. "International Norm Dynamics and Political Change." *International Organization* 54.2 (1998), 891.

² Boekle, Henning, Volker Rittberger, and Wolfgang Wagner. "Norms and Foreign Policy: Constructivist Foreign Policy Theory." Ed. Volker Rittberger. 1999. University of Tübingen. 13 Oct. 2004. <http://www.uni-tuebingen.de/uni/spi/taps/tap34a.htm>

³ Finnemore and Sikkink.

⁴ Finnemore, Martha. "Constructing Norms of Humanitarian Intervention." *Essential Reading in World Politics*. Ed. Karen A. Mingst, Jack L. Snyder. New York: W.W. Norton and Company, Inc., 2004. 102-118.

tionships in international life may be informal but many, especially those that most directly affect states, are structured and channeled through bureaucracies."⁵ United Nations (UN), the Organization of American States (OAS), the World Bank, and non-governmental organizations are bureaucracies in the international community that work to promote norms. However, it is important to differentiate between a norm, which refers to a single behavioral expectation or standard, and an institution, which is based upon numerous norms and their interrelation.⁶

Norm Development: A Continuing Process

Before norms are accepted, they undergo a three step process. The first stage is norm emergence, where norm entrepreneurs attempt to persuade a critical mass of states to adopt their proposed norm. A norm cascade follows, where norm leaders, representing a critical mass of states "attempt to socialize other states to become norm followers."⁷ Finally, the process of norm internalization occurs, where the norm is no longer debated or questioned.⁸

Finnemore and Sikkink explain how the development of norms begins with norm entrepreneurs, who attempt to persuade states to accept new norms. Norms are constructed "by agents having strong notions about appropriate or desirable behavior in their community."⁹ In the case of bringing human rights violations to the forefront of the international community's agenda, it is often transnational advocacy networks, non-governmental organizations, and the international media who act as norm entrepreneurs.¹⁰

The promotion of new norms occurs within the framework of existing norms.¹¹

This means that the norms that have been internalized and integral to the society are called into question. It is often the case that norm entrepreneurs work to establish their norms working from "standing international organizations."¹² This kind of socialization is true in the case of the principle of non-intervention based on the idea of state sovereignty.

Former United Nations Secretary-General, Boutros Boutros-Ghali stated in 1995 that "One of the achievements of the Charter of the United Nations was to empower the Organization to take enforcement action against those responsible for threats to the peace, breaches of the peace or acts of aggression. However, neither the Security Council nor the Secretary-General at present has the capacity to deploy, direct, command, and control operations for this purpose, except perhaps on a very limited scale."¹³ The shift in the acceptance of intervention based on internationally guaranteed human rights, instead of non-intervention out of respect for state sovereignty,¹⁴ is present in current UN Secretary-General, Kofi Annan's statement that; "State sovereignty, in its most basic sense, is being redefined...States are now widely understood to be instruments at the service of their peoples, and not vice versa."¹⁵ The norm of intervention is being brought to the attention of the international community by a "standing international organization", in this case the UN and its Secretary-General.¹⁶

Once these norms are adopted by a critical mass of states, these state actors work to "socialize other states to become norm followers."¹⁷ This is visible in the United Nations Stabilization Mission in Haiti ("MINUSTAH"), in conjunction with the Special Mission of the Organization of

⁵ Finnemore, Martha. *National Interests in International Society*. Ithica: Cornell University Press, 1996, 3.

⁶ Boekle, Rittberger, and Wagner.

⁷ Finnemore and Sikkink, 895.

⁸ Finnemore and Sikkink.

⁹ Finnemore and Sikkink, 896.

¹⁰ Schmitz, Hans Peter and Kathryn Sikkink. "International Human Rights." *Handbook of International Relations*. Ed. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons. London: Sage Publications, 2002. 521-532.

¹¹ Finnemore and Sikkink.

¹² Finnemore and Sikkink, 899.

¹³ Reisman, W. Michael. "Why Regime Change is (Almost Always) a Bad Idea" *American Journal of International Law* 98.3 (2004). 520.

¹⁴ Semb, Anne Julie. "The New Practice of Unauthorized Interventions: A Slippery Slope or Forceable Interference?" *Journal of Peace Research: Special Issue on Ethics of War and Peace* 37.4 (2000). 469-488.

¹⁵ Reisman, 517.

¹⁶ Finnemore and Sikkink, 899.

¹⁷ Finnemore and Sikkink, 895.

American States for Strengthening Democracy in Haiti ("OAS Special Mission") to establish strong democratic processes and social institutions in the Haitian state.¹⁸

Eventually, the norm becomes internalized and the validity of the norm will not be disputed.¹⁹ The establishment and maintenance of democratic states is an example of a norm that has been internalized by the international community. This is evident in the MINUSTAH Mandate, where one of the missions main goals is "to support the constitutional and political process under way in Haiti including through good offices, and foster principles and democratic governance and institutional development."²⁰ The mandate goes on to say that the mission will "...assist the Transnational Government in its efforts to organize, monitor, and carry out free and fair municipal, parliamentary, and presidential elections...".²¹ This mandate is echoed in the Special Mission of the Organization of American States for Strengthening Democracy in Haiti Work Plan Proposal where the OAS Secretary General states "The OAS is in a position to provide expertise and technical assistance, not only to the preparation and holding of elections, but also towards the consolidation of the democratic process..."²² Establishing democratic processes in states has become an internalized norm because it has been legitimized by several charters and official documents. As such, the proposed type of government is not a topic of debate

within international bureaucracies that have legitimized the norms.

LEGITIMATION OF NORMS: ACCEPTANCE AND ADOPTION IN THE INTERNATIONAL COMMUNITY

According to Finnemore and Sikkink, the strength of norms and their acceptance is dependant upon their commonality and their specificity. In terms of commonality, the validity of a norm increases when it appeals to a larger audience.²³ The more universal a norm, the more widely accepted it can become.²⁴ With wide acceptance of a norm, the norm becomes legitimate.²⁵ It must be noted that the expectations of actions and interpretations of norms often varies from actor to actor.²⁶ If a norm and its expectation of behavior are not clearly specified, it allows for wide interpretation of the norm and its corresponding actions.²⁷ The legitimacy of a norm increases if its precise meaning is formally expressed in such documents as written conventions and treaties.²⁸

In the early 1990's forcible intervention was not a common practice because constitutional independence meant sovereignty for a state, resulting in non-intervention.²⁹ In 1994, three years after Haitian president Jean-Bertrand Aristide was ousted by a military coup and following ineffective sanctions placed on the Haitian state, the United Nations adopted resolution 940 determining Haiti to be a "threat to peace and security in the region."³⁰ Resolution 940 authorized a multinational force to use any means necessary to force the military government out of power and reinstate Aristide as president.³¹ This intervention, which was not a norm during this time, was

¹⁸ Organization of American States. Permanent Council. *Work Plan Proposal for the period July 2004-June 2005 of the OAS Special Mission for Strengthening Democracy in Haiti*. 2004.

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¹⁹ Finnemore and Sikkink.

²⁰ Organization of American States. *Work Plan Proposal*. II:a.

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²² Organization of American States, *Work Plan Proposal*.

²³ Finnemore and Sikkink.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Boekle, Rittberger and Wagner.

²⁹ Semb.

³⁰ United Nations. Security Council. Resolution 940. 1994.

<http://daccessdds.un.org/doc/UNDOC/GEN/N94/312/22/PDF/N9431222.pdf?OpenElement>

³¹ United Nations, Resolution 940.

validated by the establishment of a UN resolution.³²

When the United Nations decided to launch MINUSTAH and the OAS initiated the OAS Special Mission, each organization created a mandate establishing the goals and purposes of the joint mission.³³ This was done after determining that "...the situation in Haiti continued to constitute a threat to international peace and security in the region..."³⁴ By establishing these mandates and citing motivation for action, the UN and OAS clearly specified their reasons for intervention. The UN and OAS actions are now legitimate because they are acting under norms that have been legitimized by their mandates.

Constructivists hold the view that the "international distribution of ideas" determines the international structure, which in turn, provides stability and order.³⁵ International norms define the "value-based expectations of appropriate behavior shared within international society."³⁶ These norms are indicated by international law, through treaties and conventions.³⁷ For example, the UN Charter is a voluntarily accepted international obligation (International Commission on Intervention and State Sovereignty). Membership includes "...the shared pursuit of the three goals of state building, nation building, and economic development"³⁸. Under the direction of the twenty five UN member states, the OAS, and CARICOM (Caribbean Community) are involved in the current joint missions to stabilize Haiti.³⁹ This is evidence that there is a shared norm and that intervention for the purposes of

humanitarian aid is widely accepted and expected.⁴⁰

Finnemore concludes that "mutually reinforcing and consistent norms appear to strengthen each other; success in one area...strengthens and legitimates claims in logically and morally related norms."⁴¹ This being said, "The normative context also changes over time, and as internationally held norms and values change, they create coordinated shifts in state interests and behavior across the system."⁴² This is evident in the increasing advocacy in the international community for military intervention for the purposes of human protection. Currently, most "armed conflicts are internal, not inter-state."⁴³ There is presently a shift in the concept of state sovereignty. Sovereignty as control is being replaced with the idea of sovereignty as responsibility. This responsibility is to protect human rights of the national population and citizens of other states.⁴⁴ If a government suppresses the popular will and this suppression could be brought to an end by military intervention, intervention is justified.⁴⁵ This is reflected in UN Security Council Resolution 1542 "Deploing all violations of human rights...and urging the Transitional Government of Haiti...decides that MINUSTAH will consist of a civilian and a military component in accordance with the Secretary-General's report on Haiti..."⁴⁶

NORM COMPLIANCE: MORALITY IN THE INTERNATIONAL COMMUNITY

States comply with norms for reasons that are both moral and political. Finnemore and Sikkink argue that states often begin to comply to norms because norm entrepreneurs attempt to socialize states to adopt the norms they are promoting. "State preferences are malleable..." and their interests

³² Semb.

³³ United Nations, *MINUSTAH – Mandate*.

³⁴ Ibid.

³⁵ Finnemore and Sikkink, 895.

³⁶ Boekle, Rittberger and Wagner, 19.

³⁷ Boekle, Rittberger and Wagner.

³⁸ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect_Report of the International Commission on Intervention and State Sovereignty*. 2001. http://www.iciss.ca/report2-en.asp#chapter_2

³⁹ United Nations. Department of Peacekeeping Operations. *United Nations Stabilizations in Haiti. Haiti – MINUSTAH – Background*. 2004.

<http://www.un.org/Depts/dpko/missions/minustah/background.html>

⁴⁰ United Nations, *MINUSTAH – Background*.

⁴¹ Finnemore, Martha. "Constructing Norms of Humanitarian Intervention." 105.

⁴² Finnemore, *National Interests in International Society*. 2.

⁴³ International Commission on Intervention and State Sovereignty, 2.12.

⁴⁴ International Commission on Intervention and State Sovereignty.

⁴⁵ Semb.

⁴⁶ United Nations, *MINUSTAH – Background*.

and preferences can be formed and changed by international norms that provide international political life with structure and meaning.⁴⁷ In the case of the UN and OAS' joint intervention in Haiti, the UN and the state actors involved are not only trying to participate in humanitarian aid, but begin a social reconstruction.⁴⁸ Haitian people and government comply to the norms of maintaining a secure and safe environment, democratic political process, and human rights that are followed by the international community, specifically the norms legitimized by the UN.⁴⁹

Finnemore and Sikkink contend that actors conform to norms for altruistic reasons, not to get what they want. This altruism is based on actor's norms regarding what is right, good, and humane.⁵⁰ After examining the ongoing problems in Haiti, specifically the overthrow in February 2004 of President Jean-Bertrand Aristide, the United Nations acted under the norms established by Chapter VII of the UN Charter, where "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."⁵¹ Article 42 states "Should the Security Council consider that measures provided for in Article 41 (non-military) would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."⁵²

The Intrinsic Characteristics of Norms: A Reason for Action

Finnemore and Sikkink argue "that the intrinsic qualities of the norm itself de-

termine its influence."⁵³ Norms that exist for the common good, often stemming from humanitarian ideals, have a larger influence because of their universality.⁵⁴ Five principles that are integral to world culture are universalism, individualism, voluntaristic authority, rational progress, and world citizenship. These principles are incorporated into the norms of the international community, and legitimized by international organizations. These norms are widely accepted and readily acted upon because of their humanitarian appeal.⁵⁵ In *The Responsibility to Protect*, The International Commission on Intervention and State Sovereignty states that the "...emerging guiding principle in favor of military intervention for human protection purposes is also supported by a wide variety of legal sources – including sources that exist independently...from Chapter VII of the UN Charter."⁵⁶

Helping one's fellow humans is a norm with universally appealing characteristics.⁵⁷ This is apparent in the shift of the purpose of action by international community from protection of state sovereignty to protecting human rights.⁵⁸ The multilateral humanitarian intervention of UN member states, whom have no vested geopolitical interest in Haiti's social, economic, environmental, and political crises is an example of this norm shift, as well as a recognition of universal humanity as an internalized norm within international society.⁵⁹

Recently, the international relations theory of constructivism has emerged, citing norms in the international community as the impetus behind state action. The development of norms and their function in shaping

⁴⁷ Finnemore, *National Interests in International Society*.

⁴⁸ United Nations, *MINUSTAH – Mandate*.

⁴⁹ Ibid.

⁵⁰ Finnemore and Sikkink.

⁵¹ United Nations. United Nations Conference on International Organization. Charter of the United Nations. San Francisco, 1945.

<http://www.un.org/aboutun/charter/index.html>

⁵² United Nations, *MINUSTAH – Mandate*; United Nations, Conference on International Organization.

⁵³ Finnemore and Sikkink, 906.

⁵⁴ Boekle, Rittberger, and Wagner; Finnemore and Sikkink; Schmitz and Sikkink.

⁵⁵ Finnemore and Sikkink.

⁵⁶ (International Commission on Intervention and State Sovereignty, 2.26).

⁵⁷ Finnemore and Sikkink.

⁵⁸ Semb.

⁵⁹ Organization of American States. *Situation in Haiti: Strengthening of Democracy*; United Nations. Security Council. Resolution 1542. 2004. <http://ods-ddsny.un.org/doc/UNDOC/GEN/N04/332/98/PDF/N0433298.pdf?OpenElement>

the international community are expressed through the work of Martha Finnemore. The ongoing internal conflict in Haiti and the humanitarian and military intervention by the international community reflects the

influence of international norms. The norms prescribe a responsibility to protect people, state democracy, and altruistic aid resulting in intervention by international organizations.

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Jus Ad Bellum in the Iraq War: A Matter of Interpretation?

Ellen Jean Creighton

Abstract

This paper analyses the rationales that Tony Blair and George W. Bush made, and continue to invoke, to justify the invasion of Iraq that took place in March, 2003. Emphasis is placed on how these arguments fit within established international law norms, principles, and canons of interpretation. These rationales, while supported by some of those advisors and academics closest to Bush and Blair, have also been roundly denounced in the international political and legal communities. Evidence, or the lack of it, has discredited the bases of their assertions. The paper concludes with the effect of the second Iraq War as precedent for future conflict. It argues that continuing to cling to the justifications offered as a 'legal' basis for war – or even asserting that they lend 'legitimacy' and can serve as a precedent – is at once apologetic and dangerous.

Résumé

Ce document analyse les raisons que Tony Blair et George W. Bush ont avancées pour justifier l'invasion de l'Iraq en mars 2003. L'analyse met l'accent sur le fait que ces arguments cadrent bien dans le contexte actuel des normes, principes et interprétations du droit international. Ces raisons, quoique recevant le support des proches de Bush et Blair, ont aussi été fortement dénoncées par la communauté internationale. Le manque de preuves a discrédité les bases de leurs assertions. Pour terminer, le document examine les répercussions que cette deuxième guerre en Iraq pourrait avoir en tant que précédent lors de conflits futurs. Il argumente que de continuer d'accepter ces justifications comme étant légales est à la fois apologiste et dangereux.

The United States and the United Kingdom – with the support of about 30 members of a “Coalition of the Willing” – invaded Iraq in March, 2003.¹ During the build-up to war, the main issue that emerged among the fray “was whether Iraq’s capabilities and its failure to comply with UN inspections by adequately accounting for its activities posed such a severe threat as to require military invasion and occupation in 2003.”² After the invasion, questions emerged worldwide about the

legality – or illegality – of the war, and the potential precedent created by the invasion.

Prior to the Kellogg-Briand Pact of 1928, the ability to wage war was inherent in the sovereignty of states.³ The UN Charter

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¹ It must be noted that only a few of the countries, notably Britain and Australia, provided any military presence. The rest contributed commitments to reconstruction, overflight or basing rights, and/or support. See Steve Schifferes, “US Names Coalition of the Willing” *BBC News* (18 March, 2003) online: *BBC News World Edition*

<http://news.bbc.co.uk/2/hi/americas/2862343.stm>.

² Cirincione, Joseph, Jessica T. Mathews, George Perkovich with Alexis Orton, “WMD in Iraq: evidence and implications”, online: *Carnegie Endowment for International Peace*, <www.ceip.org/intel> at 15.

³ See generally Robert Kolb, “Origin of the Twin Terms *jus ad bellum*/*jus in bello*”, *International Review of the Red Cross*, 320, 553 online: *International Committee of the Red Cross*

<http://www.icrc.org/Web/eng/siteeng0.nsf/iwplList163/D9DAD4EE8533DAEFC1256B66005AFFEF>. The doctrine of just war, a religious doctrine that made it imperative that war satisfied moral requirements, was a limiting force on nations until the Clauswitzian notion of ‘war as the extension of foreign policy’ became the practice of states. George Bush Sr. and Tony Blair ap-

emerged in 1945, and made the use of force unlawful except in a) self-defence or through b) the principle of collective security.⁴ This meant that a nation acting within its own borders, through the principle of sovereignty, enjoyed non-interference by other states so long as the peace and the security of the region was not compromised.

There have been calls to add to these two exceptions, one being an exception for humanitarian intervention. The principle of limiting sovereignty through the ability of states to use force to stop massive human rights abuses is gaining strength. The wars in Iraq and Afghanistan since the attacks of September 11, 2001 have continued to challenge the accepted norms on the legality of the use of force in the face of 'widespread terrorism', and weapons of mass destruction. Particularly in the case of Iraq, however, these challenges are not sustainable and do not amount to a precedent regarding the use of force.

This paper analyses the rationales that Tony Blair and George W. Bush made and continue to make to justify their actions in Iraq. These rationales, while supported by some of those advisors and academics closest to Bush and Blair,⁵ have also been roundly denounced in the international political and legal communities.⁶ Evidence, or the lack of it, has discredited the bases of their assertions.⁷ Continuing to cling to these justifications as a 'legal' basis for war,

or even asserting that they lend 'legitimacy' and can serve as a precedent, is at once apologetic and dangerous.

LEGALITY OF WAR UNDER THE CHARTER SYSTEM

It is established that the use of force in international relations is lawful if two requirements are met.⁸ First, the use of force and its degree must be lawful under the UN Charter regime (*jus ad bellum*). Second, the requirements of humanitarian law must be met by states who initiate hostilities. This portion will outline the relevant legal rules under which force may be lawfully used, and *jus ad bellum* established.

The purpose of the United Nations is found in Article 1(1) of the *Charter of the United Nations*.⁹ It reads:

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

Article 2(4) prohibits the use of force, and represents the most severe limitation on the sovereign ability of states to wage war. As a rule of *jus cogens*, it is applicable to all states. It reads:

All members shall refrain in their international relations from the threat or use of force against any territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

However, this general prohibition has two enduring exceptions codified in the *Charter*: 1) the right of states to use force in self-defence as outlined in Article 51, and 2) the principle of collective security, which allows nations to use force pre-emptively to

pear to have resurrected the notion in a non-religious context with the Gulf War of 1990.

⁴ *Charter of the United Nations*, 26 June 1945, Can. T.S. 1945 No. 7.

⁵ For example, Condoleezza Rice, Dick Cheney, Christopher Greenwood, William Taft, Lord Goldsmith, etc.

⁶ See, e.g., Carrell Severin and Robert Verkaik, "War on Iraq Was Illegal, say Top Lawyers" *The Independent* (25 May 2003) online: republished at <<http://www.robinmiller.com/art-iraq/b58.htm>>, along with Robin Miller's lists of those for and against the war at <<http://www.robinmiller.com/illegal.htm>>. See also Schifferes, *supra* note 1 for a list of countries for and against the war.

⁷ David Cortright, Alistair Millar, George A. Lopez, and Linda Gerber, "Unproven: The Controversy over justifying War in Iraq", Policy Brief F12A, June 2003, Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame online: <www.ciaonet.org/special_section/iraq_review/ciao/pi_jrw_04.html>.

⁸ These requirements were famously set out by Hugo Grotius and have been characterized as *jus ad bellum* (justice of war itself as a method of conducting relations) and *jus in bello* (justice in the conduct of war). See *supra* note 2.

maintain peace through the framework outlined in Article 39. An emerging third – and to date less accepted – exception is the principle of humanitarian intervention, or the use of force to avoid massive human rights abuses.¹⁰ These exceptions will be reviewed below.

Before doing so, however, it is important to note that the *Charter* has been interpreted as a 'living tree'¹¹, and the black letter of the law is modified through the practice of states¹² and the rulings of the International Court of Justice (hereafter ICJ). Through the history of the UN, a number of "seismic developments" have initiated adaptation: 1) the Cold War, 2) the export of insurgency and covert meddling as a substitute for overt diplomacy and military force, 3) the technological transformation of nuclear, chemical, and biological weaponry and the means of deployment, and 4) the rising public consciousness of the rights of the individual.¹³

SELF-DEFENCE

Though codified in Article 51 of the *Charter*, a state's right to engage in force as a matter of self-defence is a long-established rule of customary law. Article 51 recognizes this right, and brings it within the *Charter* framework through the imposition of obligations on states who choose to exercise force in self-defence. Article 51 reads:

Nothing in the present *Charter* shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right to self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and

responsibility of the Security Council under the present *Charter* to take at any time such action as it deems necessary to maintain or restore international peace and security.

Self-defence may be asserted by an individual state, or by collective of states who are aiding the state who has been attacked. The close relationship between the customary right to self-defence and Article 51 has been recognized by the ICJ.¹⁴ The ICJ has also held that self-defence must only be used when: a) it is necessary and b) it is in proportion to the goals sought to be achieved, and c) the right is exercised immediately, not as a form of reprisal.¹⁵

A very recent example of the use of self-defence to justify the use of force was the American attacks against Afghanistan after the attacks on the World Trade Centre on September 11, 2001. While some groups, including Lawyers Against the War, condemned the attacks as illegal, the reaction from the Security Council¹⁶ and states around the world was generally in support of the American right to self-defence. Although the acts of terrorism could not be directly imputed to the state, the Taliban government of Afghanistan actively harboured the terrorists and could be held to share responsibility for their actions. The Security Council has treated acts of international terrorism as threats to the peace.¹⁷ It is important to note, however, that it would

¹⁴ Case concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, ICJ Reports, 1986 at 14.

¹⁵ Ibid. See Yoram Dinstein, *War, Aggression, and Self-Defense* (Cambridge: Cambridge University Press, 2001) at 183 and 184 for further explanation of what is meant by necessity, proportionality, and immediacy.

¹⁶ Christopher Greenwood, "International Law and the Pre-Emptive Use of Force: Afghanistan, Al-Qaida, and Iraq" (2003) 4 San Diego Int'l L.J. 7 (HEINONLINE) writes at page 17: "The U.N. Security Council, in its resolutions 1368, U.N. SCOR, 56th Sess., 4370th mtg., U.N. Doc. S/RES 1368 (2001) and 1373, U.N. SCOR, 56th Sess., 4385th mtg., U.N. Doc. S/RES/1373 (2001) adopted in the immediate aftermath of the attacks, expressly recognized the right of self-defense in terms that could only mean it considered that terrorist attacks constituted armed attacks for the purposes of Article 51 of the Charter, since it was already likely, when these resolutions were adopted, that the attacks were the work of a terrorist organization rather than a state."

¹⁷ Greenwood, *ibid*, and Gardner, *supra* note 10 at 587.

¹⁰ Richard N. Gardner writes that although Article 2(4) prohibits the use of force, states have often acted outside the exceptions. One good example is in the attempt to rescue its citizens. See "Neither Bush nor the 'Jurisprudes'" (2003) 97 AJIL 585 (HEINONLINE) at 589.

¹¹ Thomas M. Franck, *Recourse to Force* (Cambridge: Cambridge University Press, 2002) at 6.

¹² One example of this is how abstentions are not viewed as vetoes, but rather as expressions of discomfort. See Franck, *ibid* at 8.

¹³ See Franck, *ibid* at pages 3 to 4.

"be a mistake to assume that self-defence would cover every military action that the United States or an ally might want to take against Al-Qaida (or other terrorist groups) in other countries."¹⁸ The use of force in Afghanistan fell within the concept of self-defence because the threat from Al-Qaida was imminent, because Afghanistan openly afforded sanctuary to large numbers of Al-Qaida personnel, and because the Taliban lacked crucial attributes for full membership in the international society.¹⁹

PRE-EMPTIVE SELF-DEFENCE

The reference in Article 51 to "if an armed attack occurs" is often construed broadly by states to include the right to engage in self-defence when an armed attack is imminent.²⁰ This notion was first enunciated in the *Caroline* incident in 1837. In *Caroline*, British forces in Canada destroyed a ship that was being used by Canadian rebels and their American supporters in a series of attacks against Canada. The British forces attacked the *Caroline* when it was in US waters and killed some members of the crew. One of the British officers was later arrested in the US and was charged with murder.

The British government, through a letter from Secretary Daniel Webster, claimed that the British acted in self-defence and demanded the officer's release. Webster's letter asserted that the right of self-defence did not depend upon having actually been attacked, but that there was also the right of anticipatory self-defence when facing an armed attack, as long as there was "a necessity of self-defence, instant, overwhelming, leaving no choice of means and

no moment for deliberation."²¹ This formulation was subsequently used as a test in the International Military Tribunals in Nuremberg and Tokyo, and practice by states suggests that the right of self-defence in anticipation of imminent attacks is part of the customary rule preserved by Article 51 of the *Charter*.²² Many scholars agree that the right of pre-emptory self-defence reflects the nature of modern warfare, including the use of nuclear weapons and weapons of mass destruction, and is more realistic than a more restrictive interpretation.²³

COLLECTIVE SECURITY

Consistent with the aims of the U.N., states may have recourse to force if a resolution of the Security Council authorizes them to do so. This use of force is often pre-emptive in nature and designed to function as a deterrent to a wider breach of the peace.²⁴ The Security Council's power to authorize military action is found in Chapter VII of the *Charter*. The Security Council must first act under Article 39, which reads:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Once this determination is made, the Security Council's decisions regarding the matter are binding, as law, on all Mem-

¹⁸ Greenwood, *ibid* at 25.

¹⁹ Richard A. Falk, "What Future for the UN Charter System of War Prevention?" (2003) 97 AJIL 590 (HEINONLINE).

²⁰ Note that the ICJ has not yet ruled on this point, and there is no open-ended endorsement by the Security Council or General Assembly for a general right to anticipatory self defence. However, the reaction of states "does recognize that, in demonstrable circumstances of extreme necessity, anticipatory self-defence may be a legitimate exercise of a State's right to ensure its survival". See Franck, *supra* note 11.

²¹ Letter from Daniel Webster to Henry S. Fox (Apr. 24, 1842), quoted in Gardner, *supra* note 10 at 587.

²² Greenwood, *supra* note 16 at 13.

²³ Greenwood, *supra* note 16 at 15. Greenwood notes some scholars believe that the right to self-defence emerges only after attack, including: Ian Brownlie, *International Law and the Use of Force By States* (1963); Christine Gray, *International Law and the Use of Force* (2000); and Louis Henkin, *How Nations Behave* (1979). Scholars who favour a more broad approach to self-defence include: Thomas Franck; Waldock, Schwebel, and Jennings, all past-Presidents of the ICJ; Michael Ignatieff; and Sir Robert Jennings and Sir Arthur Watts, *Oppenheim's International Law*. Dinstein, *supra* note 15, rejects anticipatory self-defence but favours the right of 'interceptive self-defence', where the aggressor state has 'committed itself to an armed attack in an ostensibly irrevocable way'.

²⁴ Dinstein, *supra* note 15 at 248.

ber States. The Security Council may authorize pre-emptive force²⁵, but it may also impose non-military measures like inspections²⁶ and sanctions²⁷, both of which were seen in Iraq. It may also require that states withdraw from a territory, surrender suspects for trial, or disarm.²⁸

HUMAN RIGHTS INTERVENTION²⁹

The Security Council had previously authorized military force for humanitarian intervention to stop abuses occurring within the border of a state, but only when those abuses had an international impact and threatened peace in security in the region.³⁰ Therefore, there remained a potential disparity in law regarding the ability to act on a moral impetus for imposing military force to stop human rights abuses within a state. The concept of humanitarian intervention gained strong support after the NATO air strikes in Kosovo in the 1990s. While nothing in the *Charter* supports the right of one State to use force against another to secure human rights³¹, the advocates of humanitarian intervention emphasize the significance of clauses within the *Charter* that describe the need to promote and encourage respect for human rights and fundamental freedoms.³²

²⁵ Article 43 of the *Charter* reads: Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

²⁶ For example, these were imposed on Iraq by Resolution 1441, U.N. SCOR 57th Sess. 4644th mtg., U.N. Doc. S/RES/1441 (2002).

²⁷ These were imposed on Iraq through Resolution UN SC Res. 661, U.N. SCOR 45th Sess. 2392 mtg., U.N. Doc. S/RES/661(1990), online: <http://ods-dds.ny.un.org/doc/RESOLUTION/GEN/NR0/575/11/IMG/NR057511.pdf?OpenElement>.

²⁸ Greenwood, *supra* note 16 at 18.

²⁹ For a full discussion of the right to use force for a purely humanitarian intervention, see Franck, *supra* note 11, 135-173.

³⁰ This would make the action compliant with Article 2(4) of the *Charter*.

³¹ The ICJ rejected the argument that the United States could intervene in Nicaragua on the basis of human rights violations.

³² Dinstein, *supra* note 15 at 66.

They argue that states' practice has modified international law.

NATO intervention – undertaken in the form of bombing campaigns – in Kosovo to stop ethnic cleansing directed by Serb President Slobodan Milosevic was taken in 1999. Strong resistance to this possibility was noted by Security Council members, China and Russia, and so a resolution was not sought. Instead, NATO worked as a regional organization, although NATO had no standing under international law since Yugoslavia was not a member of NATO³³. The technically illegal action gained legitimacy, however, due to a number of mitigating factors. Richard Falk writes that the doctrine is 'conditioned' in two ways:

... first by suggesting the need for the intervening side to bear a heavy burden of persuasion as to the necessity of intervention to avoid an impending or ongoing humanitarian catastrophe. Second, there was a checklist of duties that need to be fulfilled by the intervenors to achieve legitimacy, emphasizing the protection of the civilian population, adherence to the international laws of war, and a convincing focus on humanitarian goals, as distinct from economic and strategic aims. In Kosovo the moral and political case for intervention seemed strong: a vulnerable and long abused majority population facing an imminent prospect of ethnic cleansing by Serb rulers, a scenario for effective intervention with minimal risks of unforeseen negative effects or extensive collateral damage, and the absence of significant nonhumanitarian motivations on the intervening side. As such, the foundation for a principled departure under exceptional circumstances from a strict rendering of *Charter* rules on the use of force seemed present.³⁴

While some caution the extension of international law in this sphere, there have been efforts to close the gap between the legality of the use of force in human rights interventions and the legitimacy of such use.³⁵ For example, Prime Minister Paul Martin has recently called for a worldwide effort to change the approach of the Security Council when it does not find that massive human rights violations put the peace and

³³ See Franck, *supra* note 11, at 163.

³⁴ Falk, *supra* note 19 at 591.

³⁵ Some scholars who argue for this reform are Anne-Marie Slaughter, Mary Robinson, etc.

stability among nations at risk, and consequently does not agree to take forcible measures to quell the abuses.³⁶ Martin is pushing for a recognition of 'the responsibility to protect' principle, which would lower the bar for the world to intervene to stop a human rights crisis.³⁷

ARGUMENTS FOR WAR

Both the American and British governments did everything they could to make the case for war. Both George Bush and Tony Blair addressed their respective national assemblies, and their own people. Secretary of State Colin Powell addressed the Security Council with a presentation filled with what he called "solid" evidence – including grainy satellite images and snippets of intercepted telephone conversations – that were aimed at showing the danger of Saddam Hussein and the need for immediate action.³⁸

Although they gained the support of their national assemblies, the President and Prime Minister failed to secure the backing of the international community.

³⁶ Clark, Campbell, "Martin Invites Francophonie to discuss UN reform," *The Globe and Mail*, Saturday, November 27, 2004 at <http://www.theglobeandmail.com/servlet/story/RTGAM.20041126.wmart1127/BNStory/Front>.

³⁷ However, despite a more widespread acceptance and the desire to close the gap between legality and legitimacy, concerns still remain. For example, writes Dinstein *supra* note 15, "As a rule, interventionists believe that they are pursuing a higher goal: 'the ideal of justice backed by power'. The problem is that there can be divergent subjective opinions as to whether a course of action is just, and there is too much room to abuse the law in the name of justice. Indeed the human rights record of the intervening country itself (flying the banner of humanitarianism) can be distressing: the intervention may prove a mere 'opportunity to redeem its own failings in the eyes of the international community.'" Dinstein notes that the Security Council alone has the legal competency under the *Charter* to authorize forcible humanitarian intervention. Judge Rosalyn Higgins counters this assertion by drawing an analogy to the use of self-defence as a justification for force, see Franck, *supra* note 11 at 185.

³⁸ Powell Presents U.S. Case to Security Council of Iraq's Failure to Disarm, UN News Centre, February 5, 2003.

Online: <http://www.un.org/apps/news/storyAr.asp?NewsID=6079&Cr=iraq&Cr1=inspect>

Below are their arguments for the use of force against Iraq.

THE BLAIR ARGUMENT

The British position that the invasion of Iraq was legal rests on a particular interpretation of Security Council resolutions dating back to 1990.³⁹ The most important resolutions to this interpretation are resolutions 678, 687, and 1441. A synopsis of this argument⁴⁰ is as follows:

The proper way to justify the ... use of force in Iraq was by reference to previous UN Security Council resolutions requiring Iraq's compliance with an intrusive UN inspection regime. Iraq had repeatedly been found by the Security Council to be in "material breach" of the disarmament requirements spelled out in Resolution 687, which laid down the conditions of the cease-fire that suspended hostilities in the Gulf War. Since Saddam Hussein was repeatedly found by the Security Council to be in "material breach" of the cease-fire terms, the United States and other UN members were once again free to act under the authority of Security Council Resolution 678, which authorized the use of force not only to liberate Kuwait but to "restore peace and security in the area." It was not unreasonable to claim that there could be no "peace and security" in the area unless there was effective verification that Iraq's weapons of mass destruction had been eliminated.⁴¹

Blair argued that Hussein never complied with the conditions of the ceasefire

³⁹ Greenwood, cited *supra* note 16, is the main author of this position. He prepared a memorandum for use in the British Parliament outlining this position, and so he will be the main source cited here. Others who espouse this notion make very similar arguments. See, Murphy, Sean D., "Contemporary Practice of the United States" (2003) 96 A.J.I.L. 419 (HEINONLINE), William H. Taft and Buchwald, Todd F., "Preemption, Iraq, and International Law", (2003) 97 Am. J. Int'l L. 563 (HEINONLINE), Taft, William H. IV, Legal Adviser, Department of State, *The Legal Basis for Preemption*, published by the Council on Foreign Relations, Nov. 18, 2003, available at <http://www.cfr.org/publication.php?id=5250>, William D., "Comment on: The Legal Background on the Use of Force to Induce Iraq to Comply with Security Council Resolutions", ASIL Insights, March 1998, online: American Society of International Law <<http://www.asil.org/insights/insigh16.htm>> etc.

⁴⁰ This argument is described in greater detail in the online version of this article by Ellen J. Creighton, which is found at the Atlantic International Studies Journal website: <http://www.atlis.ca/journal.html>.

⁴¹ Gardner, *supra* note 10 at 588.

and was repeatedly found to be in breach of the requirements of resolution regarding international peace and security. Resolutions 707 (1991), 949 (1994), 1060 (1996), 1137 (1997), 1154 (1998), 1205 (1998), 1284 (1999), and Resolution 1441 (2002) all describe Iraq's breaches of its obligations.

Resolution 1441, specifically, recalls resolution 678 (1991) and deplored that Iraq had not met its obligations under resolution 687. The Council recalled that resolution 678 stated that the ceasefire would be based on the acceptance by Iraq of the provisions of the resolution, including the obligations in it. Most importantly, the resolution stated that the Council:

Decides that Iraq has been and remains in *material breach* of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq's failure to cooperate with the United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991). (emphasis added)

'Material breach' meant that Iraq violated a provision essential to the accomplishment of the object or purpose of the resolution. The object and purpose of resolutions 687 and 1441 were to restore international peace and security. Britain argued that Iraq violated the resolution by possessing prohibited weapons and by the failure to cooperate with inspectors.⁴²

The Council, however, decided to give Iraq a final opportunity to comply with its obligations to disarm under resolution 687. Iraq was required to submit a full declaration of all of its programs to develop weapons, and allow UNMOVIC and IAEA inspectors unrestricted access. The council decided that any false statements or omissions in Iraq's declaration would constitute a further material breach and will be reported to the Council. Paragraphs 11 to 13 deal with what would happen in the event of Iraqi non-compliance. The Council:

11. Directs the Executive Chairman of UNMOVIC and the Director General of the IAEA to report immediately to the Council

any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution;

12. Decides to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security;

13. Recalls, in that context that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations.

After a report by chief weapons inspector Hans Blix and a presentation by Secretary of State Colin Powell, the UN Security Council was effectively deadlocked. It became clear that neither a resolution authorizing military action nor a resolution that the inspectors should continue with their work would be adopted.⁴³ It was in these circumstances that the US, the UK, and a number of other states took action without a further resolution, and relied on the authorization granted by resolution 678 (1990).

While he noted that 1441 was no 'fresh mandate' due to states making it clear that there was no automatic recourse to force, Greenwood argues that a new resolution was not necessary as a matter of international law, because the authorization to use 'all necessary means' contained in resolution 678 (1990) had not been terminated by the Security Council. Rather it had been reaffirmed in each resolution from resolution 687 onwards.⁴⁴ Greenwood argues that resolution 678 was not solely about the liberation of Kuwait, but was also to restore international peace and security in the area. Further, he argues that the text of resolution 687 did not contain anything that expressly (or impliedly) indicated that the mandate set out in resolution 678 had been discharged and was no longer operative should Iraq continue to pose a threat to international peace and security.

He also notes that the condition included in resolution 1441 was that the Security Council consider the matter. Since the Council did consider the matter at several

⁴² Greenwood, *supra* note 16 at 29.

⁴³ Greenwood, *supra* note 16 at 33.

⁴⁴ Greenwood, *supra* note 16 at 34.

formal meetings and in informal conversations with other members, but showed that the Council was so divided about what to do that no decision could be taken. "In these circumstances," writes Greenwood, "the present writer believes that those governments who resorted to force were right to conclude that they could rely on the authorization of military action in resolution 678, read together with resolutions 687 and 1441."⁴⁵

THE BUSH ARGUMENT⁴⁶

One major impediment to describing the Bush doctrine is that it changed at different points along the timeline of the Iraq war.⁴⁷ First, the Bush administration set out to prove that it had the right to act in pre-emptive self-defence due to Hussein's alleged development, acquisition of, and willingness to use weapons of mass destruction. Later, it allied itself with the British in their argument that the war was justified as a matter of collective security.⁴⁸ Only much later did the administration attempt to prove that the ends justified the means in replacing a dictator who perpetrated widespread human rights abuses.

However, despite these later justifications, the original reason for war was stated clearly by George W. Bush in the lead-up to war: that Saddam Hussein had to disarm or he would be disarmed forcibly. "Other than the warnings addressed to the Iraqi military and reassurances regarding

homeland security, the declaration of war address was *only* about WMD until the closing paragraphs, which touched on human liberty and a better future for the Iraqi people"⁴⁹ (emphasis not mine).⁵⁰

The Bush doctrine on the legality of the use of force in Iraq began with the release of the National Security Strategy of the United States of America, which was unambiguous in its assertion that the U.S. had a right to strike first against perceived enemies:

... we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting pre-emptively against the terrorists, to prevent them from doing harm against our people and our country.⁵¹

In a speech he delivered in Cincinnati, Ohio in October, 2002⁵² and in his State of the Union Address President Bush set out and developed his administration's theory of the right to pre-emptory self-defence.

Knowing these realities, America must not ignore the threat gathering against us. Facing clear evidence of peril, we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud. As President Kennedy said in October of 1962, 'Neither the United States of America, nor the world community of nations can tolerate deliberate deception and offensive threats on the part of any nation, large or small. We no longer live in a world,' he said, 'where only the actual firing of weapons represents a sufficient challenge to a [nation's] security to constitute maximum peril.'

It is important to note that when Secretary of State Powell met with the Security Council to persuade them to permit force on the basis of collective security, he made no mention to the Security Council of: a) pre-emptory self-defence as a legal justification for war, 2) widespread, massive hu-

⁴⁵ Greenwood, *supra* note 16 at 37.

⁴⁶ For a thorough outline of the claims of Bush administration officials, a description of the weapons inspections, the findings to date, the failings of the intelligence community, a synopsis of statements by the administration, and texts of relevant speeches, see Cirincione et al., *supra* note whatever. See also John Yoo, "International Law and the War in Iraq" (2003) 97 A.J.I.L. 563 (HEINONLINE). Yoo argues that the U.S. was justified through both collective security and self-defense to go to war in Iraq.

⁴⁷ For a more complete analysis of the Bush argument, please see the fuller text of this article by Ellen J. Creighton, published at the Atlantic International Studies Journal website: <http://www.atlis.ca/journal.html>.

⁴⁸ By this time, however, public opinion at home and abroad had come to see the U.S. action as the first application of the new preemption doctrine. See Gardner, *supra* note 10 at 589.

⁴⁹ Cirincione et al., *supra* note 2 at 13.

⁵⁰ Cirincione, *ibid* at 14.

⁵¹ George W. Bush, The National Security Strategy of the United States of America, September 2002. Available online at the White House <http://www.whitehouse.gov/nsc/nss.pdf>.

⁵² George W. Bush, speech given in Cincinnati Ohio, October 7, 2002, text available in Cirincione, *supra* note 2 at 69.

man rights violations that would justify humanitarian intervention, or 3) the creative interpretation of resolutions 678, 687, and 1441 that had the effect of legalizing the use of force without another Security Council resolution.

President Bush addressed the nation on March 17, 2003, and referred again to the legal basis of pre-emptory self-defence alluded earlier in his State of the Union Address. He said, "The United States has the sovereign authority to use force in assuring its own national security."⁵³

He also made short mention of the British doctrine:

In the case of Iraq, the Security Council did act, in the early 1990s. Under Resolutions 678 and 687 – both still in effect – the United States and our allies are authorized to use force in ridding Iraq of weapons of mass destruction. This is not a question of authority, it is a question of will.⁵⁴

He also mentioned in one paragraph to the Hussein regime's human rights violations:

We will tear down the apparatus of terror and we will help you to build a new Iraq that is prosperous and free. In a free Iraq, there will be no more wars of aggression against your neighbors, no more poison factories, no more executions of dissidents, no more torture chambers and rape rooms. The tyrant will soon be gone. The day of your liberation is near.⁵⁵

ANALYSIS OF ARGUMENTS UNDER INTERNATIONAL LAW

Both the Blair and Bush arguments on the legality of war in Iraq rely on creative interpretations of the existing international law regarding the use of force. Blair has strung together the Security Council resolutions in such a way as to argue that the 'Coalition of the Willing' had prior authorization through the use of resolutions 678 and 687. Bush creatively interpreted the argument for pre-

emptive self-defence to find a legal basis for war in a threat that had not yet materialized, arguing that the post-September 11th world – much like the argument was made during the emergence of nuclear weaponry – significantly changed the nature of the threat to the point where pre-emptory pre-emption should be acceptable. He also attempted to achieve a Security Council resolution authorizing the use of force on the basis of collective security, and argued – though half-heartedly – that the use of force by a diverse coalition of states could be justified on the basis of humanitarian intervention, such as in Kosovo.

THE BLAIR ARGUMENT

Anne-Marie Slaughter, Past-President of the American Society of International Law, commented on the U.K.'s position that the war on Iraq was legal based on a creative reading of the previous Security Council resolutions regarding Iraq. She wrote:

The legal argument, as spelled out by the British Attorney General, Lord Goldsmith, is that the Anglo-American forces are authorized by Security Council Resolution 678, which authorized "all necessary means" to drive the Iraqis out of Kuwait, followed by resolution 687, which established a ceasefire as long as Iraq met a series of conditions, including complete disarmament. Once these conditions were no longer met, the basis for the ceasefire crumbled and the original use of force revived. An additional basis can be found in Resolution 1441, declaring that the Iraqis would face "serious consequences" if they did not take advantage of a "final opportunity" to disarm and reiterating the finding that Iraq was in "material breach" of earlier resolutions, including Resolution 687.⁵⁶

While Slaughter thinks these are "credible arguments", she also says that they "seem to fly in the face of the spirit of the UN Charter, which must be read to limit any authorization of the use of force. It is antithetical to any kind of 'blank check'."

⁵³ George W. Bush, President Bush's Address to the Nation on War with Iraq, March 17, 2003, reproduced in Cirincione, *supra* note 2 at 95.

⁵⁴ *Ibid* at 96.

⁵⁵ *Ibid*

⁵⁶ Anne-Marie Slaughter, "Notes from the President, Reflecting on the War in Iraq One Year Later", ASIL Newsletter, March/April 2004. Slaughter cites Lord Goldstone's statement of March 17, 2003, reprinted in Lord Goldstone's Statement, The Times (London), March 18, 2003 at 2.

Furthermore, Slaughter and a number of other scholars cite the British and American efforts to obtain a second resolution, and how these efforts undermine the position that they were previously authorized.⁵⁷ In response to the common assertion that the effort to seek a second resolution was 'politically desirable' rather than 'legally necessary', Slaughter says that the distinction between politics and law is too fine:

If a second Security Council resolution simply would have provided political authorization, then how can we say that the earlier string of resolutions on which the United States and Great Britain based their case was legal rather than 'merely political'?

In the face of these arguments, the view that the use of force was legal risks stretching the Charter beyond any plausible meaning, making it the plaything of great powers. And to add that it was illegitimate is to acknowledge the weight of global public opinion against it, the same global public opinion that held a majority Security Council members from voting for a second authorizing resolution.⁵⁸

Further, it is important to note that the French government and others on the Security Council were adamant that Resolution 1441 contained no element of automaticity. Much negotiation occurred to nailing down the final draft of the resolution, and though Greenwood can track uses of certain terms back through previous resolutions authorizing force, there is no mention of 'all necessary means', the usual clause that authorizes the use of force in Security Council resolutions.

The expressed intent and understanding of other Security Council members is important – even indispensable – to any interpretation of the Council-made law. Particularly important is the view that Security Council members considered themselves seized collectively of the Iraq matter due to the language of earlier resolutions, and that none of them had the legal right to act unilaterally. Writes Thomas M. Franck:

There are several reasons for (why the Security Council can be seen to have the stuff of a credible jury). First, most conflicts that come before the United Nations. (sic) do not directly engage the national interest of any but a few states, leaving the judgment of the others relatively unencumbered by commitments to one side or the other (since the Cold War). ... A second reason is that most governments are conscious of the importance of practice as precedent. They know that how they (individually and collectively) respond to an issue before the Assembly or Council affects the systemic rules of conduct in which they have a greater stake than in the outcome of one particular controversy. They therefore tend to speak and vote as members of a jury who are not without feelings and biases, but whose first concern is to do the right thing by the norms under which all must live. Finally, the response of many (especially smaller) states to issues put before them is significantly influenced by a preference for being seen as good institutional citizens who are highly regarded by those other states who look to them for leadership and prefer them for election to the system's important organs and subsidiary bodies.⁵⁹

Franck writes in a later article that he believes the interpretation is unsupportable. This is mainly because the ceasefire was struck between all members of the U.N. Security Council, not with each country individually, since Iraq had to notify the Secretary General and the Security Council of acceptance. He writes,

In legal form, then, as also in substance, this proviso manifests that it is the Security Council and the United Nations, and not individual members, who are the parties, with Iraq, to the cease-fire agreement. It is they who are entitled in law to determine whether Iraq is complying with its commitments to the Council, how long these are to remain in effect, and what is to be done in the event of their violation.

To construe a legal argument based on this creative interpretation of the resolutions – and in the face of those states who have explicitly stated their understandings to the contrary – amounts to a sort of legal trickery. For states to have meant one thing, attempted to state it, and then be told that

⁵⁷ Slaughter, "An American Vision of International Law?" (Paper presented to the American Society of International Law, June 2003) (2003) 97 Am. Soc'y Int'l Law Proc. 125 at 126

⁵⁸ Slaughter, *supra* note 60.

⁵⁹ Franck, *supra* note 47 187.

the effect of their words is the opposite seems unsupportable.

Lastly, Mary Ellen O'Connor argues that Resolution 678 was adopted to liberate Kuwait, and should be seen through the lens of that conflict.⁶⁰ The US has acknowledged that the coalition had authority for these purposes only, and hence that is why they did not depose Saddam Hussein in 1990-1991. "Resolution 687 established a demilitarized zone between Kuwait and imposed disarmament obligations on Iraq, without calling for regime change in Iraq," she writes, and so the US and the UK – even under Resolution 687 – did not have authority to forcibly overthrow the Hussein regime.

THE BUSH ARGUMENT

Since I have dealt with the British argument espoused by President Bush in his State of the Union Address above, I will examine the other two justifications for war: humanitarian intervention, and pre-emptory self-defence.

Due to the limited and cursory mention of human rights abuses originally made by the Bush administration, they will accordingly receive limited analysis here. Firstly, the Bush administration did not present the Security Council with an argument based on humanitarian intervention.

Secondly, as opposed to Kosovo, the Bush administration did not assemble a wide-ranging collective force to depose of the human rights abuser. While Bush, in his State of the Union Address, pointed to the list of countries that were part of the 'Coalition of the Willing', most contributed very little to the cause, and openly received rewards for their actions in the form of aid or reconstruction contracts. This delegitimizes any claim the Bush Administration may make to a global effort of disinterested nations acting together to stop human rights abuses. Thirdly, the Iraqi people have not

benefited from the war in any measurable way. Reconstruction moves forward at a grinding pace. Many Iraqis still have no access to amenities such as electricity. There is a high unemployment rate in Iraq. Most reconstruction contracts have gone to firms outside of Iraq instead of businesses within its borders. Perhaps most importantly, the security situation in Iraq is atrocious. While the Bush Administration points to upcoming elections, many other nations and commentators have called for a delay until the security situation can be stabilized.

Although some doubt the legality of pre-emptive self-defence as the basis of recourse to force, as noted above, the principle has been recognized in practice by many states. However, those that do recognize a right to pre-emptory self-defence still require that the test be met; self-defence must only be used when: a) it is necessary and b) it is in proportion to the goals sought to be achieved, and c) the right is exercised immediately, not as a form of reprisal. Each of these factors is contingent upon the others. Therefore, if even one is not met, the action fails the test for pre-emptory self-defence.

Scholars, journalists, and even members of the Bush Administration itself have noted the conspicuous lack of discovery of any weapons of mass destruction.⁶¹ They have also not discovered the means by which any of these weapons could be deployed. Therefore, through the benefit of hindsight, we see that the threat was not imminent, and the need to defend against it was not necessary.⁶² This demonstrates that the American use of force in Iraq cannot be justified on the basis of pre-emptory self-defence, and either failures in the intelligence community or exaggeration by the administration are to blame for the portrayal of imminence. The Policy Brief for the Joan B. Kroc Institute for International Peace Studies at the University of Notre-Dame has

⁶⁰ Mary Ellen O'Connell, "Addendum to Armed force in Iraq: Issues of Legality", ASIL Insights, April 2003, online: American Society of International Law at <<http://www.asil.org/insights/insigh99a1.htm>>.

⁶¹ Cirincione et. al., *supra* note 2, and see also Oliver Burkeman, and Julian Borger, "War critics astonished as US hawk admits invasion was illegal" *The Guardian* (20 November 2003), online: The Guardian Online <http://www.guardian.co.uk/uk_news/story/0,3604,1089042,00.html>.

⁶² Franck, *supra* note 47 at 611.

gone even further to note that the requirement of necessity had not been fulfilled. Its authors cite the adoption of the president's advisors of the worst-case scenario provided to them by the intelligence community as a major failure. Further, they posit that the administration inflated and manipulated certain data, "possibly even requesting that material sent to it be redone to fit preconceived notions."⁶³ They argued that inspections worked to prevent Saddam Hussein's development of weapons of mass destruction, and that sanctions restrained Iraq's weapons development program. They provide proof that Iraq cooperated with inspectors, that no weapons have been found at the time of writing, and that there was no evidence of Iraqi nuclear weapons activity or active chemical and biological weapons programs, along with lack of evidence for the other claims.

The Carnegie Endowment for International Peace recommended that the National Security Strategy mentioned above should be revised to eliminate a U.S. doctrine of unilateral preemptive war in the absence of imminent threat (that is, preventative war).⁶⁴

A true preemptive attack remains, as it has always been, a legitimate tactic to be used when necessary. However, for the reasons cited here, as well as others, a doctrine of unilaterally asserted and executed preventative war does not serve U.S. national security interests.⁶⁵

The Bush Administration argues that like nuclear weaponry, worldwide terrorism networks have fundamentally changed the nature of acts of aggression so as to permit a doctrine of unilateral, 'poten-

tial threat'-based, pre-emptive self-defence to emerge on the world scene. However, this is highly questionable. While American perception of the world has changed since the attacks on the World Trade Centre towers of September 11, 2001, for the rest of the world, the situation is not so much different than it was before, *except for* the bungled American response to terrorism that has left so many disaffected.

Even if the concerns are considered pressing, observers like Richard N. Gardner caution against the abolition or significant variation of 'those wise restraints that make men free'.⁶⁶ He was involved in drafting Secretary of State Adlai Stevenson's speech to the Security Council during the Cuban Missile Crisis. Even with the advent of nuclear war, caution was taken to fit within the legal norms, and if not, then to go outside those norms as little as possible. He writes:

The fact that the world had entered the nuclear age was not a good reason, in our view, to stretch the careful limits on preemption that had been set by Webster more than a century before. Accordingly, we sought to develop a different legal rationale based on the action of the Organization of American States in voting to endorse the Cuban quarantine. Admittedly, the OAS rationale was not entirely convincing, given the requirement in Article 53 of the UN Charter that no "enforcement action" can be undertaken by a regional organization without Security Council approval. But at least we had avoided opening up the "Pandora's box" of Article 51. To vary the metaphor, we felt that if we had to punch a hole in traditional legal restraints on the use of force, the hole should be as small as possible.

The considerations that led us to avoid enlarging the concept of preemptive self-defense in 1962 are just as valid today. The Bush doctrine, if it is intended to assert a right available to the United States alone, is obviously unacceptable. If it is intended to assert a new legal principle of general application, its implications are so ominous as to justify universal condemnation. For such a doctrine would legitimize preemptive attacks by Arab countries against Israel, by China against Taiwan, by India against Pakistan, and by North Korea against South Korea, to give some obvious examples. It would even

⁶³ Cortright, David, Alistair Millar, George A. Lopez, and Linda Gerber, "Unproven: The Controversy over Justifying War in Iraq", Policy Brief F12A, June 2003, Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame online: www.ciaonet.org/special_section/iraq_review/ciao/pi_jrw_04.html at 1.

⁶⁴ See also Sapiro, Miriam, "The Shifting Sands of Pre-emptive Self-Defense" (2003) 97 A.J.I.L. 599 (HEI-NONLINE). She argues that taking the doctrine of preemptive self defense further to where the point is not yet imminent is inherently subjective and dangerous.

⁶⁵ Circione, *supra* note 2 at 61.

⁶⁶ Gardner, *supra* note 10 at 587.

serve to legitimize ex post facto Japan's attack on Pearl Harbor.⁶⁷

INTO THE FUTURE: IMPLICATIONS FOR WAR

The value of actions as precedents in international law stems from the interplay between legality (the question of law) and legitimacy (the question of politics). Where an action is technically illegal, such as the humanitarian intervention in Kosovo, it can still be seen as legitimate and be accepted by the world. This gap between legality and legitimacy is the impetus for reform in international law.⁶⁸ Hence, we see the increasing acceptance on the limitations of states' sovereignty through the use of force in humanitarian interventions. We also see lobbying on the parts of governments and NGOs alike to reform and legalize such interventions.

Slaughter wrote in an editorial in the New York Times that the war in Iraq was illegal, but potentially legitimate.⁶⁹ Legitimacy would be achieved if three conditions were met: 1) the coalition forces uncover undeniable and substantial evidence of weapons of mass destruction maintained by Saddam Hussein's government despite increasingly intrusive weapons inspections; 2) the Iraqi people welcomed the ousting of Saddam Hussein; and 3) the United States and Great Britain turned back to the United Nations to help rebuild Iraq and establish an Iraqi government.

Notably, absolutely none of these conditions were met with regard to US and UK intervention. Slaughter has reversed her position, and has written that the invasion was both illegal and illegitimate.⁷⁰ 1) The coalition forces have uncovered no undeniable and substantial evidence of mass destruction. 2) The Iraqi people, who arguably initially welcomed the ousting of Saddam Hussein, have come to see the Americans as

occupiers, and many do not feel better off than when Hussein was in power. 3) The United States and Great Britain severely limited the role of the UN in post-war reconstruction, sidelining the organization to aid-related activities, and hoarding the political, legal, and economic power over the country. They have only more recently asked for the assistance from the UN, as the situation becomes more out of hand.

Legitimacy may be obtained during the use of force by widespread acceptance of the act and a coalition of diverse countries ready to act in concert. This did not occur in the case of Iraq. There was widespread, loudly-voiced opposition within the Security Council, by leaders of governments, and elsewhere by citizens of most states. Furthermore, the 'Coalition of the Willing' is better described as a 'Coalition of the Opportunistic', allowing the US to take a lead role, contributing little but some limited moral support, and receiving huge dividends by way of reconstruction contracts, aid packages, and political power vis-à-vis the US. Where legitimacy may be gained in the aftermath of an illegal act and some value as precedent may be attached, this has certainly not happened in the case of American and British intervention in Iraq.

The invasion serves no precedent whatsoever. As Slaughter wrote,

The coalition's decision to use force without a second Security Council resolution cannot stand as precedent for future action, but rather as a *mistake that should lead us back to genuine multilateralism*. ... If the nations seeking to use force cannot mount strong enough evidence of a security threat to convince a majority of the Security Council and to avoid a veto (provided that the veto is not clearly motivated by countervailing political interests), then the world should wait and try another way before sending in the troops. [emphasis added]

Worldwide efforts to stop terrorism are better handled through international treaties such as the International Treaties on Terrorism⁷¹ and increased cooperation, not

⁶⁷ Gardner, *supra* note 10 at 588.

⁶⁸ See Anne-Marie Slaughter, "An American Vision of International Law?", 97 Am. Soc'y Int'l L. Proc. 125 (2003) at 127.

⁶⁹ For a similar analysis, see Falk, *supra* note 19 at 595-598.

⁷⁰ Slaughter, *supra* note 60 at 2.

⁷¹ For a link to text of the treaties, please see <http://untreaty.un.org/English/Terrorism.asp>.

through the pre-emptive use of force against perceived – and not proven – threats. While much of the world sees American action in Iraq as a mistake and breach of international law, other ‘rogue states’ may be tempted to use such justification for the use of force unilaterally against other nations. In pushing for the ability to wage war pre-emptively, the United States is, essentially, creating a loaded weapon.⁷² This is a Pandora’s box that should remain closed.⁷³

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⁷² Gardner, *supra* note 1 at 588.

⁷³ For further analysis of the effects of the Iraq war on international law, effectiveness of the Security Council, and the impetus for future reform, please see the extended version of this article published in the Atlantic International Studies Journal online: <http://www.atlis.ca/journal.html>.

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APPENDIX A
KEY EVENTS ON TIMELINE OF IRAQ WAR

August 2, 1990	UN Security Council Resolution 660: Condemns Iraqi invasion of Kuwait and imposes crippling sanctions.
November 29, 1990	UN Security Council Resolution 678: Authorized U.S. and rest of coalition to 'use all necessary means' to secure Kuwait and establish international peace and stability in the area.
April 3, 1991	UN Security Council Resolution 687. Called the 'mother of all ceasefires', this resolution spells out the obligations Iraq must meet in order to maintain the ceasefire.
September 17, 2002	<i>National Security Strategy</i> issued from White House, detailing doctrine of pre-emption and 'adapting' the concept of imminence to meet today's needs.
October 7, 2002	Bush makes first detailed case for War in Iraq
October, 2002	US Congress authorizes use of military force to defend the US against Iraq and enforce resolutions.
November 8, 2002	UN Security Council Resolution 1441: Afforded Iraq a 'final opportunity to comply with previous Security Council Resolutions', said the Security Council would convene to consider reports of Iraqi malfeasance, and warned "that it will face serious consequences as a result of its continued violation of its obligations."
November 27, 2002	UNMOVIC and IAEA inspectors commence daily inspections in Iraq.
December 7, 2002	Iraq submits a declaration of almost 12,000 pages to the United Nations, containing "currently accurate, full, and complete" details about Iraq's chemical, biological, and nuclear programs and maintaining that Iraq does not have weapons of mass destruction.
December 19, 2002	UNMOVIC Executive Chairman Hans Blix provides preliminary assessment of Iraq's declarations. He stated his "overall impression is that not much new significant information has been provided in the part of Iraq's declaration which relates to proscribed weapons programs, nor has much new supporting documentation or other evidence been submitted."
January 9, 2003	Blix makes a further report to the Security Council, stating Iraq had not provided adequate answers to questions. Admits there is no 'smoking gun' evidence that Iraq had resumed its weapons programs.
January 11, 2003	NATO says no to providing military assistance to US in the event of war in Iraq.
January 27, 2003	Further report by Blix to Security Council.
January 28, 2003	President's State of the Union Address, where Bush outlines the necessity to use force unilaterally against Iraq should the Security Council fail to pass a resolution authorizing force.
February 5, 2003	US Secretary of State presents the case for war to the Security Council.
February 14, 2003	Blix reports again to Security Council. He notes some faults but also a more cooperative attitude.
March 17, 2003	Declaration of war on Iraq.
March 20, 2003	US and UK invade Iraq.
March 21, 2003	UK, US, Australian and Spanish governments send letter to Security Council adopting legal position that resolutions 678, 687, and 1441 give them authorization to go to war.
April 9, 2003	Iraqi ambassador to the UN reports that Iraqi government has been defeated.

The Intension of Human Rights

Kurt Holukoff

Abstract

This essay argues that conceptions of human rights that can be modeled by a mere extension fail. If human rights are claims grounded in the fact that the agent belongs to the human species then when claims become meaningless due to conflict, for example with democratic values, one is entitled (by modus tollens) to assert that any agent who cannot make a claim is not human. This illustrates the need to consider rejecting the liberal conception of human rights as unreasonable. Furthermore, these types of arguments demonstrate that there is a problem with our current conceptions of human rights and our deeper intuitions that give rise to human rights in the first place. I argue in this essay that by positing intension in human rights, that this satisfies the apparent non-linearity of human co-existence, productivity and history. I will then offer a theory of intension in human rights grounded in a (Neo) Marxist account and a conception that all human rights are negative rights and that all democratic rights are positive rights.

Résumé

On argumente dans cet essai que les conceptions des droits humains formées seulement à partir d'extension échouent. Si les droits humains sont des réclamations fondées sur le fait que l'agent appartient à l'espèce humaine et que ces réclamations deviennent sans significations durant un conflit, lorsqu'il s'agit par exemple de comprendre des valeurs démocratiques, on peut donc (par modus tollens) affirmer que quelque agent ne faisant pas de réclamations n'est pas humain. Ceci oblige de considérer le rejet de la conception libérale des droits humains comme étant irraisonnable. J'argumente dans cet essai qu'en prenant comme vrai l'intension des droits humains, on aboutit à une explication pour l'apparente non-linéarité de la co-existence, la production et l'histoire humaine. Je propose ensuite une théorie d'intension des droits humains fondée sur un compte néo-marxiste et une conception que tout droit humain est un droit négatif et que tout droit démocratique est un droit positif.

This essay¹ is an attempt to demonstrate that the liberal or traditional approach to human rights is oversimplified and thus an injustice to the complexity of the human life. For this reason, we will examine one problem that putatively undermines universal human rights by offering clarification and a distinct formulation of it. The thesis of this paper is in two parts; firstly, I attempt to demonstrate that the liberal or traditional paradigm regarding human rights is unreasonable because of its dependence on a simplistic and individualistic account of the human species. It then follows that an insurmountable problem with human rights occurs since there can be no exceptions in the extension of human rights if one is to maintain their truth-value. However, because democratic rights can be

seen to be in conflict with human rights, there are justifiable exceptions to the recognition of some human rights in some cases.

Secondly, I attempt to show that intension in human rights follows from these considerations. Since the liberal conception of human rights is incapable of accommodating such intension, the liberal paradigm needs some shifting.

The first section of this paper will establish two arguments by *modus tollens*. Their premises appear uncontroversial. Their conclusions may be controversial, but it serves to demonstrate the common misconception arising out of a simplistic account of 'being human'. The second section will examine human rights and democratic

¹ Special Thanks to Dr. Antonio Franceschet, Dr. Andrew Brio, Dr. Greg Pyrcz, Steve Herbert, Robyn Holukoff.

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rights occurring as preliminary procedural obligations and rights. The third section will offer evidence and arguments that a (Neo) Marxian theory is the best framework for explaining the occurrence of intension in human rights.

THE RIGHTS FORMULA

My first formal premise is a derivation of the rights formula. By the 'rights formula' I mean, 'x has a claim, R, against y in virtue of z'. Here, 'x' is the subject of the right, 'y' is the right respondent or duty-bearer, 'R' is the specific right, and 'z' is the basis or foundation of the legitimacy of the right. So for example, 'My wife Robyn has the claim, 'free to determine the use of her body' against the Canadian government in virtue of being a member of the human species. Here is the derivation for the first premise:

If x has z then x has claim R against y

With human rights, let 'z' represent *being a member of the human species*. Since all possible instantiations of x will be members of the human species, then all possible rights' bearers will be actual rights' bearers.

For the second premise, 'Q' is a specific democratic citizen of a liberal democracy; since Q satisfies x in the human rights formula for the human right of 'free to determine the use of one's own body', and since her respective government would satisfy y, we should expect that Q has the claim 'free to determine the use of one's own body' in virtue of being a member of the human species. But in virtue of Q being also a democratic citizen, Q is (putatively) justifiably coerced into spending a certain amount of Q's total time and effort i.e. her body, in working for Q's government (paying taxes)². If 'being a member of the human species' determines absolutely whom possesses human rights and obviously this condition is satisfied also absolutely, then the extension of human rights is necessarily likewise absolute. This entails that since one is either a human being or not, there is no possibility of intension in this corresponding

human rights claim. This is to assert that if one only needs to be a human to possess a certain right, there is nothing in 'being human' to indicate to what degree one possess a certain right while some other human may possibly possess the same right to a different degree i.e. some very wealthy citizens do not pay taxes in Canada. The second premise illustrates that with only an extension of the concept being considered, one ought to regard any limitation on a human right as constituting a lack of that human right given these conditions. These considerations entail that the second formal premise should also be straightforward for the liberal:

Q does not have claim R against y

Therefore, by *modus tollens*, we ought to deny the antecedent in the first premise: effectively, that it is not the case that Q is a member of the human species. Since it is absurd to assert that a specific human is not a member of the human species, it must be that z, i.e. being a member of the human species, is *insufficient for determining the distribution of the human right*. Rather than recognize this reasoning, some may want to reject the second premise instead. The following points are representative of arguments I find most plausible in undermining the second premise; and why I find them failing in making a critical distinction:

a) If one were to argue that the obligation to pay taxes is instead a qualification of Q's right R, not an exception, then this problem remains, as quality presupposes intension in the concept which is not obtained in 'being human'

b) If one were to add a caveat i.e. 'Q has a limited claim R against y', this too is a qualification of the claim and if the accepted z is the only source of justified human rights claims, this qualification or caveat is unjustified as demonstrated above.

c) If one argues that Q agrees to limit her claim R, this still results in the second premise being straightforward; any agreement to limit a claim presupposes an intension in the claim which does not occur in the formula implicit in the first premise.

d) That the second premise illustrates not a limitation on the human right but rather demonstrates a violation of the

² or for the Marxist: q by agreement spends some portion of her total time and effort working in reproducing herself in society, for which the government takes the responsibility in distributing the value produced

human right. For a violation of a right to occur, the possession of the right is always presupposed. This line of argument depends upon the notion that democratic interference can justify such a violation. This in turn depends upon some higher ground for rights than merely being a member of the human species.

Therefore to deny the second premise is to deny the soundness of the first premise. This argument should persuade the reader that 'being human' is insufficient for determining the distribution of 'human rights' if 'being human' is considered as an abstract, universal or objective standard³. On the other hand, if for any x , 'being human' is examined as being embedded in a particular society and not abstractly (communitarian) human rights can hardly be universal.

Liberal theorists may claim that pluralism can solve this dilemma by appealing to 'plural selves'. Nancy Rosenblum grounds pluralism on the negative rights found in liberal democracies⁴ and furthermore these negative rights are based on the liberal notions of 'impartiality' and 'personal liberty'. Surely there is intension in a 'plural self'; but if impartiality and personal liberty are grounded by such a plural self, it is meaningless to talk about an impartiality that can be had by degrees, and likewise personal liberties that have intension based on location in a society are inconsistent with any plausible account of autonomy.

Without a liberal or a communitarian conception of the self i.e. being human, taking into account either the complexity or the universal quality of 'being human' (which appear incommensurable with each other) these traditional paradigms are also incapable of doing justice to our everyday experience of the relevance of human rights.

A SECOND FORMULATION OF THE PROBLEM

³ Abstract, universal, or objective standards can only be modeled by a mere extension.

⁴ Rosenblum, N. (1989). *Pluralism and Self-Defence. Liberalism and the Moral Life*. Harvard, Cambridge: pp. 207-227.

A reformulation of this problem will shed further light upon the incoherence that results from asserting that being a member of the human species grounds the distribution of human rights. The first premise of this argument is identical to the previous instantiation:

If x has z then x has claim R against y

Again, z is 'in virtue of being a member of the human species'. In this second version of the problem P is the last human alive after some catastrophe. Clearly P still satisfies the condition required by z but it becomes meaningless to consider P as possessing any human rights⁵: for when any set is coterminous with an empty set, that set is also empty.

The second premise is:

There is no R that P can claim against y

The result by *modus tollens* is a denial of the membership of P in the human species, which is clearly unacceptable to common sense. Though limited by the scope of this essay, it appears likely that this particular formulation will also do some harm to any attempt to ground political reasoning in some abstract or 'original' position.

These two formulations of grounding human rights in being a member of the human species and the incoherence that results necessitate a further distinction to be drawn. Consider: 'if x is a human being then x has human rights' where a 'human being' is understood as referring to the satisfaction of certain biological or mental (or both) conditions; contrast with: 'if x is a human being* then x has human rights' where a 'human being*' is understood as referring to the satisfaction of certain biological or mental (or both) conditions and also the condition of being embedded in a rational⁶, historical and non-linear coexistence. Where being a member of the human species is a linear set (simple on-off switches), on the other hand, being human* is unavoidably non-linear (codeterminate relationships with no simple distinctions).

⁵ This line of reasoning presupposes that the domain of y cannot include P

⁶ By rational I mean the 'capacity to set ends'.

This distinction solves the dissonance created by both *modus tollens* arguments. One no longer denies an obviously true biological/mental fact, but rather reinforces the essential non-linearity of being embedded in a material and historical process of developing human production. There is no simple extension in a non-linear system by definition, but in fact is replete with descriptions involving the intension of relevant concepts. This distinction also avoids a communitarian reduction of human rights to merely instantiating pre-existing community values and interests. These considerations are made explicit when Marx theorizes that the processes by which material production interacts with social relations does so according to apparent regularities (albeit framed by complex and sometimes indistinct expansion) which is common to all human social systems.

THE DISTINCTION BETWEEN NEGATIVE AND POSITIVE RIGHTS

Tom Pocklington wrote in *Democracy, Rights, and Well-being in Canada*, that the mere extension of "democratic values" engender contradictions, both at the level of the regime and at the level of particular public policies.⁷ For example, a 'thoroughgoing freedom of choice requires a predominantly capitalist economy⁸ whereas rights to 'equal opportunity ... are inconsistent with the flourishing of capitalism, which ensures that inequalities are legion.⁹ Pocklington then argues that to solve such contradictions one is to 'confine freedom of choice to the freedoms essential to democracy and, likewise, impose *limitations on the range* (my italics) of equalities required by democracy.¹⁰ Pocklington seemingly grounds his argument in the intension of rights, not their mere extension. He argues implicitly that this intension is based on what is essential to democracy, but a democratic being has no intension¹¹ in

the same manner in which being human has no intension. His other option is that these rights have intension derived from the structural nature of democracy; unfortunately, this entails a communitarian basis of democratic values (and it seems implausible that democratic values would exclude human rights), rather than an individual basis. David Morrice argues convincingly that such a communitarian basis reduces to cultural or ethical relativism¹². On the other hand, it is presumably a fact that such intension does occur in political rights, so it must be that we should look elsewhere for the respective grounding of these rights.

The argument so far presupposes the relevance and value that both human and democratic rights have in ordinary and political discourse. This paper is an attempt to give a fuller account of the force behind human and democratic rights; therefore this section is designed to illustrate that human rights and democratic rights are preliminary (or if preferred, *prima facie*) procedural obligations whose relevance are conditioned by the circumstances which complicate the moral¹³ lives of various agents. I will argue that the basis upon which circumstances operate upon the preliminary procedural obligations is how and where the agents involved are situated in the productive relations of their society. This is a Marxian account of how an agent's location in the productive forces of a society can eliminate some preliminary procedural rights and obligations in virtue of helping to create or sustain a system approaching optimal extraction of value from the society's productive forces.

In the formula for rights, 'x has a right against y in virtue of z', there are two distinctive grounds for z that are of importance in this discussion. The first has already been outlined: 'in virtue of being a human'. The second is 'in virtue of being a democratic citizen'. The second may superficially

⁷ Don Carmichael, T. P., Greg Pyrcz (2000). *Democracy, Rights, and Well-Being in Canada*. Toronto, Harcourt Canada.

⁸ *ibid*

⁹ *ibid*

¹⁰ *ibid*

¹¹ At least not in liberal theory

¹² Morrice, D. (2000). "The liberal-communitarian debate in contemporary political philosophy and its significance for international relations." *Review of International Studies*(26): 233-251.

¹³ I am using 'moral' here indicating rule-based expectations, but not as an exhaustive nor definitive claim.

appear to be a form of legal positivism, i.e. some rights may exist only in law because of the whim of legislators. However, I would argue that in this overall discussion, the truly interesting aspect is that the rights which are given in virtue of being a democratic citizen are rights which are pre-conditions for being democratic citizens. This would mean that in order for any particular person to function as a democratic citizen they need these particular rights.

We have two formulae for political rights thus far: I will argue that one establishes a set of preliminary entitlements necessary for the possibility of human society, and the other establishing preliminary entitlements necessary for the possibility of a democratic society i.e. a particular type of human society. There is nothing so far in this analysis to give any explicit indication that these two groups of entitlements would conflict. I understand that the essential distinction between negative rights and positive rights will give some guidance in examining human rights vis a vis democratic rights because of the presumably dependent origination of all rights on human co-existence. Negative rights are entitlements to be free from some action, whereas positive rights are entitlements to have some thing for free. When outlined in this fashion, to consider these both as 'freedoms' it is apparent that 'free' is abused linguistically; there is an equivocation regarding the meaning of the word 'free'.

I wish to argue that all 'human rights' are negative rights, since negative rights are the type of entitlements which are the necessary and sufficient conditions for the abrogation of the *security dilemma* or alternatively, the *prisoner's dilemma*. The conditions which propel the dilemma forward are ambiguity, uncertainty, opaque intentions, and concern with self-protection and values. To solve the dilemma in a social situation, a structure needs to be built in which agents can be reasonably certain of freedom from basic security concerns. In fact, being 'reasonably certain' defeats one of the criteria necessary for a security dilemma. Human rights are necessary to solving the security dilemma, and the security

dilemma is sufficiently undermined with recourse to negative rights; therefore human rights are negative rights (though not all negative rights are necessarily human rights). This is demonstrated by the following sentential function: (x , being reasonably concerned that y will do harm, takes steps to diminish as much as possible y 's capacity to do such harm; likewise y , being reasonably concerned that x will do harm, takes steps to diminish as much as possible x 's capacity to do harm) & (x and y are not permitted to do harm) results in: x needs the condition ' y cannot harm me' against y in virtue of this claim being necessary to the possibility of co-existence i.e. human society. The weaker claim also follows: x has a claim 'I am to be free from being harmed' against y in virtue of this claim being necessary to human society.

I understand that human rights derive their emotional force and intuitional content from this aspect, which is that all humans should be reasonably free from fear. This would be sufficient for human society to flourish if the only thing we had to fear was humans (which is not the case). Concerns that this treatment forgets the intrinsic value of human rights, in favor of an instrumental conception should recall that being a member of the human species should be considered insufficient for determining the distribution of rights. This treatment does not necessarily ignore any putative intrinsic value of humans, but merely contextualizes such value in a sphere in which such putative intrinsic value has meaning. Thus I am arguing that the putative intrinsic value of humans which ground human rights ground human rights as only preliminary procedural obligations, not absolutely. Likewise, I will argue that democratic values ground only preliminary democratic rights.

So I believe that it is evident that human rights are negative rights because in order for social coexistence to be even possible, which is to live as humans, preliminary negative rights are necessary, whereas I will now argue that any particular positive right is only possible and preliminary in its particular type of society.

Then the other half of my agenda lies with convincing the prudent and reasonable person that all democratic rights are positive rights but that not all positive rights are democratic rights. This would mean, in part, that for anything to qualify as a democratic right, it would need to be demonstrated that this right entails distributing something to citizens for free because it is necessary to their participation in the democratic process or democratic society at all. The 'right to vote' is an object which readily satisfies the implicit sentential function in the following sentence: 'My wife Robyn has a claim "I must be given the opportunity to vote" against the Canadian government in virtue of being a Canadian citizen.' The formula that establishes this statement is: 'x has the claim 'I need to be given R for free' against y in virtue of R being necessary for participating in the democratic process/society.' Human society, by which I mean the preliminary structure necessary for any human co-existence, is produced by the recognition and establishment of preliminary negative rights, but that the establishment of a democratic society and its preliminary positive rights is then merely a particular and concrete style of human society.

In order for democracy to be successful, the positive rights necessary to its success must obtain, by definition, for each of its citizens. For any particular type of society, it will be positive rights which will establish its solvency, as negative rights can never be used in designing a specific type of system, as systems are sets of positive relations interacting with preliminary negative relations. Purely negative relations i.e. anarchy, don't operate as a definable system, as 'anarchy' is most plausibly construed as a-systematic¹⁴. But sometimes in designing a specific type of society, some presumably new negative rights might show up as part of a strategy for introducing a set of positive rights.

To call these 'new' negative rights democratic rights is a hasty conclusion. If no

procedural right or obligation is absolute, but can always be conceivably overridden by some condition, then all procedural rights and obligations are preliminary and contingent upon circumstances to some degree. It would be conceivable that when a 'new' negative right appears due to the instantiation of a set of positive rights, the 'new' negative right is only the epiphany of a latent and preliminary human right given rise according to a new condition. This model, while simple, is still elegant enough to account for the occurrence of intension in human and civil rights, whereas liberal or communitarian models are informative, but ultimately incoherent.

This argument, that the distinction between human rights and democratic rights is the same distinction between negative and positive rights respectively, presupposes that it is implausible that there is any human right to a particular type of society. Preliminary human or negative rights are necessary but not sufficient for establishing any particular type of society, since any particular type of society relies on its specific set of positive rights to distinguish itself from other types of societies. And no positive right occurs exclusively on its own, but in the various sets that compose diverse societies. Then to claim that a human right entitles humans to some positive right, is to claim that there is a human right which entitles humans to a particular type (or types) of society. Since there is no relevant duty-bearer to such a claim (though a world government could conceivably satisfy such a requirement), such a right loses any context and thus meaning. Therefore there should be no intelligible positive human rights, only negative human rights since so-called imperfect rights i.e. without a relevant duty-bearer, are by definition¹⁵ an empty set in human rights discourse.

For positive rights to be anything more than nominal, the rights must be furnished by the right respondent and at the right respondent's own cost. This statement should be sufficient for establishing the in-

¹⁴ Anarchy here is distinguished from a chaotic system: anarchy is without rules, while a chaotic system still operates from rules, albeit of a very complex nature.

¹⁵ Insofar as the formula for a right's claim is comprehensive.

evitable conflict between meaningful positive rights and negative rights. There will be inevitable conflict between human rights and democratic rights. This argument should also hold for any type of particular social arrangement, not just democracy.

THE INTENSION OF POLITICAL RIGHTS

I find that the most plausible manner in which to theorize the reconciliation of a conflict between positive and negative rights is to consider these rights not merely to whom they are extended, but also the comparative intension of the rights¹⁶. For when *Q* has a human right, say *R(h1)* which conflicts with *F* who has a democratic right, say *R(d1)*, the resolution tends towards whomever possess their respective right to the largest degree, which is to rely on the intension of the rights, rather than a mere extension. Since there is no intension in either the human species or in democratic being¹⁷, we ought to look elsewhere for the actualization of these rights. I assert that the most plausible explanation for the operation of these rights is 'in virtue of economic (or productive) being' because as fundamental to human society, it also explains the intension of various rights by itself having an intension.

By 'economic being' I mean the function and role an agent is assigned¹⁸ within the productive forces in a society as well as the overall social relations¹⁹ that are constituted by productive, human, and communitarian conditions. When examined, economic being will be, and is in contemporary market economies, had by varying degrees; in these type of politics respective rights would also be possessed in varying degrees, hence the intension we find in 'human' and 'democratic' rights. 'Economic

being' is also essential to being human, for humans are productive beings, but in degrees. This sense of productive being is simply that humans interact with nature in order to satisfy human needs and desires: we produce from nature what we desire, rather than being merely sustained by nature.

This is not to argue that one should be persuaded that human rights and democratic rights don't exist, but that the basis for justifying how circumstances operate as an eliminative function on the preliminary rights and obligations is in virtue of economic being. Liberal theorists tend to ignore the implications of community i.e. ethical decisions presuppose a context, communitarians seem to ignore the presumably intuitive universality of some rights, but both camps ignore the inherent and complex interaction that occurs between the human species and nature vis a vis human productivity.

HOW TO SOLVE THIS PROBLEM OF HUMAN RIGHTS

I would expect that the previous conclusion is unsettling to liberal sensibilities. But the problem with human rights, as formulated earlier, is that it is impossible for any exception to occur in order to maintain their truth-value; but because of democratic rights existing in conflict with human rights, there are exceptions in liberal theory to the recognition of some human rights in some cases. In order to justify the reasonableness of these exceptions, we presuppose some higher objective which does not in fact 'exist higher', but rather any such putative objective does exist already within such a conflict. Essentially, any 'exception' is arbitrary, not impartial, and unfair, no matter how much putative reasonableness is attached to such an exception. On the other hand, if intension is seen as determining rights conflict, while we may disagree with the outcome of its resolution, it will at least be non-arbitrary.

The most potentially satisfying solution to such a problem would rely on discovering what social structure would most efficiently and optimally extract resources from the most fully developed of material

¹⁶ This is clearly seen in *R. v. Keegstra*, as well as in many judicial decisions weighing the freedom of expression against various conflicting rights.

¹⁷ According to liberal theory

¹⁸ The word 'assigned' does not necessarily entail that the role is determined solely by factors external to the agent. One could assign oneself after all.

¹⁹ Welfare considerations are embedded in the concept of social relations. The intension of rights may very well be determined in some part by welfare considerations.

productive forces. This strategy presupposes that given a fully developed productive force, any social structure capable of extracting optimal value is also a fully developed social structure. A fully developed social structure, by definition has no betters, and most likely no equals²⁰. With such a structure in place one could reasonably claim that there is no possible better way in which to resolve antinomies of rights in conflict than how the values embedded in such a structure would in fact resolve such antinomies. So that when asked 'why is this right able to trump this other right?' the only possible answer that does not fail to take the question for what it is, is the answer: 'because there is no possible better way to organize society'²¹.

If I have demonstrated that we cannot claim fairness, equality, or justice²² i.e. based merely on being a member of the human species, as our condition for structuring the hierarchy of rights in a society without begging the question, then we must critically examine our approach to spreading and encouraging human and democratic rights in different societies; for to putatively demand that certain prejudices and biases that are embedded in our specific social structures be recognized as part of the content of human and democratic rights is "To say...of what is not that it is"²³, which is the classic definition of falsity.

IN CONCLUSION

Due to theoretical commitments to the Analytic tradition in Marxism, I find the most plausible 'fully developed social structure' to be one in which all humans are owners. I understand that this appears to call for a monolithic community, but disregarding

Marx' commitment²⁴ to central planning i.e. macro-socialism, as inconsistent with his own theory of history²⁵, I posit that a micro-socialism i.e. economic democracy or workplace democracy is far less repugnant to many people's romantic aspirations of diversity. Economic democracy coupled with political democracy is the best fit for determining the intensions of what we now know as 'human' and 'democratic' rights. Likewise, if one finds repugnant that the intension of rights as based on the intension within economic being, a thoroughgoing socialism i.e. all members are owners, creates a society in which all citizens possess the same rights and in the same degree.

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²⁰ In relation to other societies

²¹ But this would only be reasonable in regards to the productive forces this structure fits; any other type of productive forces i.e. less developed, would deny such a fully developed structure much relevance

²² Fairness, equality and justice appear to be satisfied only in a linear model of human interaction, with the linearity and homogeneity grounded in some common biological or mental trait.

²³ Aristotle *Metaphysics*

²⁴ In at least one stage of developing the communist state

²⁵ See charts on pg 65 in particular. Cohen, G. A. (1978). *Karl Marx's Theory of History: A Defence*. Princeton, Princeton University Press.

Sovereignty, Norms and the Alien Tort Claims Act: An inquiry into the sovereignty implications of the ATCA

Jacob Stone

Abstract

This paper examines the impact of the United States Alien Tort Claims Act (ATCA) on the concept of state sovereignty. The ATCA holds that any foreign national(s) can be found liable in a United States civil court for torts committed on foreign soil. A recent increase in the use of the ATCA has raised concerns within the international community over the degree to which the ATCA infringes on individual state sovereignty. This paper argues that while the Act represents a unique category of action with respect to international human rights abuses, the traditional sovereign authority afforded to states and state leaders remains intact. Thus, established concepts of sovereignty have been left relatively unchanged.

Résumé

Cet article examine l'impact du 'United States Alien Tort Claims Act' (ATCA) sur le concept de souveraineté nationale. L'ATCA soutient que tout étranger peut être tenu responsable devant un tribunal civil pour tout délit civil commis à l'étranger. Récemment, l'appel de plus en plus fréquent à l'ATCA soulève des inquiétudes au sein de la communauté internationale vis-à-vis le degré auquel l'acte viole le principe de souveraineté nationale. Cet article maintient que, bien que l'acte représente une catégorie d'action unique en ce qui concerne les abus internationaux de droits de la personne, l'autorité souveraine traditionnelle accordée aux états et chefs d'états demeure intacte. Ainsi, les concepts de souveraineté établis demeurent relativement intacts.

The Alien Tort Claims Act, title 28 under section 1350 of the United States Code¹, is causing quite a controversy in the field of international law. The Act states that essentially any non-US citizen who causes harm in any region of the world can be found liable in any United States civil court. As such, the act gives American courts jurisdiction over any civil offense committed by anyone, anywhere, as long as the defendant may be located on American soil in order to be subpoenaed. Such jurisdiction is unique to any court system currently active in the world today, including the International Criminal Court. Recently, there has been an unprecedented increase in the citation of this act in suits against foreign nationals. Beyond suits involving an individual plaintiff and defendant, class-action suits are being filed against multi-national corporations and foreign governments in an attempt to redress alleged human rights violations.² As a result, the United States

lations.² As a result, the United States civil court system is fast becoming a legal battleground for suits involving exclusively non-US citizens. The impact of this act on international law notwithstanding, it is also of particular relevance to the concept of sovereignty.

What are the sovereignty implications of the Alien Tort Claims Act? With

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²To date, there has yet to be an instance where a multinational corporation has been found liable under the Alien tort Claims Act. Though suits have been won against military figures, such as Radovan Karadzic, efforts to collect damages have been unsuccessful. See Anne-Marie Slaughter and David L. Bosco, "Alternative Justice," *Crimes of War*, May 2001.

¹United States Code, 28 USC. Sec. 1350.

respect to this query, the purpose of this paper is twofold. The first is to establish whether or not the recent embrace of Alien Tort Claims Act (hereafter ATCA) has changed the notion of sovereignty; the second is to determine the nature of this change. In order to accomplish these tasks I will employ Thomas Biersteker and Cynthia Weber's social constructivist approach as the theoretical basis for the concept sovereignty, as well as Martha Finnemore and Kathryn Sikkink's work on norm dynamics to provide a framework to evaluate the ATCA and its ability to transform current conceptualizations of sovereignty. Ultimately I will argue that although the ATCA has the potential to transform significantly the popular meaning of sovereignty, to date the sovereignty implications of the ATCA have been minimal.

SOVEREIGNTY AND SOCIAL CONSTRUCTIVISM

Sovereignty, one of the most enduring concepts in the study of international relations, has been receiving a great deal of attention as of late. The emergences of phenomena such as globalization and humanitarian intervention that threaten to transform the notion of sovereignty have caused many to re-examine its nature. In order for sovereignty to undergo a change however, its current form must first be defined. Therein lays a highly contentious academic debate. What is the definition of sovereignty? Moreover, can such a fluid concept be restricted to the confines of a definition or is it simply too diffuse? Those who are ambitious enough to try to answer these questions find themselves embroiled in this debate.

The attempts of those who have risen to the challenge can be categorized into four separate theoretical approaches: The realist approach, interdependence and dependency theory, recent conceptual analyses, and social constructivism.³ Each of these approaches contributes to an overall understanding of the phenomenon of sov-

eignty. In addition, despite the differences in approach, the theories they yield share some significant characteristics. For instance, each theory acknowledges to some extent the external and internal aspects of sovereignty. Furthermore, in spite of the rigour with which some of these explorations are carried out, each theory maintains sovereignty's function as an organizational mechanism in international relations.

While the first three approaches - realism, interdependence and dependency theory, and recent conceptual analyses - help us to understand the complexity of sovereignty, they either fail to account for or qualify changes in it as a conceptual entity.⁴ The latter however, social constructivism, not only allows for changes in the meaning of sovereignty but also illustrates how these changes take place. Editors of the book *State Sovereignty as Social Construct*, Thomas Biersteker and Cynthia Weber see sovereignty as a socially constructed set of meanings and practices that are subject to change over time. I will use this compelling and comprehensive interpretation of sovereignty as the theoretical basis for this paper.

According to Biersteker and Weber, in order to grasp fully the concept of sovereignty, one must consider the "ways that the practices of states and non-state agents produce, reform and redefine sovereignty and its constitutive elements: population, recognition, authority, and territory."⁵ When perceived as an evolving set of meanings and practices, sovereignty becomes a living, breathing creation of a nurturing social climate that, like all creatures, changes over time. Sovereignty in this sense is socially constructed; its aggregate meaning is "negotiated out of interactions within intersubjectively identifiable communities" while practices help to "construct, reproduce, reconstruct and deconstruct" this meaning.⁶

⁴ In *State Sovereignty as Social Construct*, Thomas Biersteker and Cynthia Weber provide an in-depth analysis of each of these contributions to sovereignty theory. Their collective dissatisfaction with each of their inquiries stems either from an insufficient acknowledgement of the normative origins of sovereignty or an absence of challenges to the 'traditional' concept of sovereignty.

⁵ Biersteker, Thomas J. and Cynthia Weber, 11.

⁶ Ibid.

³ Biersteker, Thomas J. and Cynthia Weber, *State Sovereignty as Social Construct* 1996. 4-11.

While Biersteker and Weber do not investigate the different meanings that form this aggregate meaning (perhaps because they vary across time and space), they do point out that these meanings are informed by practices. In terms of these practices, they hint towards several that assist in the construction of sovereignty, chief among them being recognition. They go further by stating that certain practices are inspired by other practices. For example, the practice of recognition may owe its current form to various cultural, political, or economic practices.⁷ Some practices may be the sum of other sub-practices.

NORMS: FOUNDATIONS OF SOCIAL CONSTRUCTION

Biersteker and Weber's assertion that "as the prescriptions for sovereign recognition change, so does the meaning of sovereignty"⁸ is central to the forthcoming analysis of the Alien Tort Claims Act. In order to observe changes in the prescriptions for the practice of sovereign recognition, however, we must first explore the nature of practices in general. What are the origins of practices? What informs practices besides other practices? It can be argued that any practice has some sort of normative foundation. Be it a single norm or a set of norms, practices are the act of observing norms. The process of inquiry then leads us to examine the nature of norms if we are to further understand the nature of practices.

In their article "International Norm Dynamics and Political Change", Martha Finnemore and Kathryn Sikkink provisionally define a norm as a "standard of appropriate behaviour for actors with a given identity."⁹ Within this context, norms can be classified in three ways: as regulative, constitutive, or evaluative/prescriptive. Regulative norms govern behaviour, constitutive norms create "new actors, interests, or categories of action" and evaluative/prescriptive norms are used to evaluate the behaviour that regulative norms regu-

late.¹⁰ Norms are recognized by the reaction that their observance or non-observance generates.¹¹ The origins of norms lie either in human agency, structural circumstances, a dialectical combination of the two, or in chance occurrences.¹²

According to Finnemore and Sikkink, not all norms are equal in strength or influence. Norms, they argue, undergo a three-stage growth process that they call the norm "life cycle."¹³ Stage one in the cycle is "norm emergence", stage two is "norm cascade", and stage three is "internalization."¹⁴ The first stage, "norm emergence", is when a norm is in the initial stages of its development. At this stage, emerging norms are championed by so-called "norm-entrepreneurs" that seek to have norms accepted en masse.¹⁵ Usually aided by some kind of organizational platform such as non-governmental organizations (NGOs), these entrepreneurs are motivated in most instances by a sense of empathy, altruism and/or ideational commitments. These entrepreneurs, however, in order to make a case for the norms they promote, must also take into consideration the interests of those whom they are trying to persuade. As a result they find themselves having to compromise these motivations in order to sell their norm(s).¹⁶ An example of a norm in this stage is the legal union of homosexuals in the United States.

The second stage of the norm life cycle is the "norm cascade". Norms enter this stage after having successfully reached a "threshold or tipping point."¹⁷ At this point, norms are recognized and adopted by states and other major institutions like international organizations. In order to tip over the threshold from norm emergence to norm cascade, Finnemore and Sikkink argue that at least one third of the world's states must embrace these norms. Furthermore,

⁷ Ibid., 12.

⁸ Ibid., 13.

⁹ Finnemore, Martha and Kathryn Sikkink, 1998. 891.

¹⁰ Ibid.

¹¹ Ibid., 892.

¹² Ibid., 896.

¹³ Ibid., 895.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid., 898-899.

¹⁷ Ibid., 901.

because some states carry more influential weight than others, the population, power and international prestige of these states must be substantial or else more states will be required to allow the norms to graduate unto the next stage.¹⁸ Once having reached the second stage, norms gain legitimacy through socialization and institutionalization processes as more and more states choose to adopt them. The decision to adopt norms is linked directly to the state's identity which is itself derived from the cultural and institutional features of that state and the context within which it operates.¹⁹ Finnemore and Sikkink suggest that a state's motivations for adopting norms are usually associated with some form of peer pressure from other states. States are motivated, they argue, by the threat of losing some of their legitimation, and the need or desire to conform and be held in relatively high esteem.²⁰ An example of a norm that has cascaded can be found in the momentous though yet to be completed internationalization of democracy.

The third and final stage of the norm life cycle is internalization. At this point norms are fully indoctrinated and incorporated into international society. Internalized norms become uncontroversial and difficult to discern due to their uncontested nature. Having reached this stage of the life cycle, norms enter the sub-conscious, become features of habit and are scarcely considered by the vast majority of those who observe them.²¹ These norms only reveal themselves when they are violated, an instance that would most likely be met with an overwhelmingly negative reaction. Today, the abstention from the use of nuclear weapons in war is an example of an internalized norm. It should be mentioned here that not all norms are destined to be internalized, nor are they guaranteed to remain internalized forever.²² Different norms reach different stages; some are shot down by pre-existing norms, others are supplanted by

new ones. I will use Finnemore and Sikkink's concept of the norm life cycle to evaluate the normative nature of the Alien Tort Claims Act.

THE ALIEN TORT CLAIMS ACT

The focus of this paper now turns to Alien Tort Claims Act. Having established social constructivism as the theoretical basis of this paper and the norm life cycle as the evaluative tool of choice for investigating the normative effects of the ATCA, I will now take a more in-depth look at the act itself and its implications for sovereignty. I will begin by providing a history of the ATCA, addressing both its origin and recent history. I will then engage in a normative analysis of the ATCA, examining its nature, where it is located in the norm life cycle and its influential properties. Upon completing this analysis, I will explore the potential impact of the ATCA on the notion of sovereignty. Considering both the normative basis of practice and the role of practices in the social construction of sovereignty, I will conclude with an examination of both the real and potential effects of the ATCA on the concept of sovereignty. It should be clarified here before I proceed that the ATCA is not a norm itself, but the pattern in its use and observance is.

The Alien Tort Claims Act was written in to the United States Code in 1789. Listed as title 28 under section 1350, the act states that "the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."²³ The act gives American courts jurisdiction over any tort²⁴ committed in any country by a foreign national against another foreign national(s). Under the law, the accused need only be on American soil for the amount of time it takes be served a

¹⁸ Ibid.

¹⁹ Ibid., 902.

²⁰ Ibid., 902-903.

²¹ Ibid., 904-905.

²² Ibid., 895.

²³ United States Code, 28 USC. Sec. 1350.

²⁴ A 'tort' is defined as a damage, injury, or a wrongful act done wilfully, negligently, or in circumstances involving strict liability, but not involving breach of contract, for which a civil suit can be brought. See *The American Heritage Dictionary of the English Language*, Fourth Edition Copyright. 2000 by Houghton Mifflin Company.

subpoena. The act, originally drafted to help combat piracy, was intended to have a very narrow application given that criminal courts were still used exclusively for hearing cases involving harm and negligence. However, because pirates resided in international waters, the ATCA afforded victims a venue within which to seek reparations. As pirate activity waned off the coast of the United States, so too did any memory of the act that was meant to address it. As a result, the act essentially lay dormant for almost two hundred years before it re-emerged in the 1980s with the case of *Filartiga v. Peña-Irala*.²⁵

In the precedent-setting case of *Filartiga v. Peña-Irala*²⁶ which took place in the United States District Court of Appeals in the Eastern District of New York, three separate judges ruled in 1980 that Paraguayan Americo Norberto Peña-Irala, then a resident of New York city, was liable for the 1976 murder and torture of Joelito Filartiga, a fellow in countrymen, in Paraguay. The court ordered that Peña pay the Filartiga family \$10 million in damages, an amount far beyond the means of Peña whose total assets were valued at significantly less than this amount.

Since this verdict was reached - the first of its kind in the United States that makes reference to international human rights- it has been cited as a precedent in a slew of cases involving human rights violations. The emergence of international human rights laws has broadened the jurisdictional reach of the ATCA, an act that preceded these major juridical developments. In 1991 the United States Congress passed the Torture Victim Protection Act which extended the scope of the ATCA so that it covered US citizens as well. Unlike the ATCA, the TVPA isolates anyone acting under "actual or apparent authority, or color of law"²⁷ as being subject to liability. For instance, the ATCA and TVPA have been cited in civil action suits against Serbian

leader and suspected war criminal Radovan Karadzic, former Guatemalan defence minister Hector Gramajo and Indonesian military officials.²⁸

More recently, the ATCA has been invoked in various class-action suits against multinational corporations. In the past decade, twenty-five multinational corporations have been sued for harm allegedly caused by crimes ranging from property theft to wrongful death in countries where they have invested in production operations.²⁹ The majority of these suits, which are usually facilitated by non-governmental organizations or activist law firms, are filed by plaintiffs in countries where domestic courts are deficient. The Coca-Cola Company, Exxon Mobil, Chevron, Unocal, Shell, and Texaco are some of the more high-profile companies that have been or are currently being sued under the ATCA.³⁰

To date, no multinational corporation (MNC), American or foreign, has been found liable and ordered to provide compensation for harm allegedly committed on foreign soil. In fact, eight of the twenty-five suits against MNCs have been dismissed.³¹ Furthermore, while cases have been successfully argued against Karadzic and ex-defence minister Gramajo, efforts to collect reparations have so far ended in failure. Despite these discouraging statistics, those who hope to bring irresponsible MNCs to justice are anxiously awaiting the results of cases that are currently in court.

Of particular interest to proponents of the ATCA and its capacity to bring MNCs to justice is the current suit against Talisman Energy of Canada brought on by the Presbyterian Church of Sudan. In March of 2003, Judge Allen G. Schwartz of the Southern District Court of New York ruled that the suit against the Canadian oil firm, who is listed on the New York Stock Exchange,

²⁸ Ibid.

²⁹ Ibid.

²⁵ Rosen, Mark E. 2003. See also *Filartiga v. Peña-Irala*, 630 F.2d 876 (No. 79-6090, June 30 1980).

²⁶ See *Filartiga v. Peña-Irala*, 630 F.2d 876 (No. 79-6090, June 30 1980)

²⁷ Human Rights Watch. "Defend the Alien Tort Claims Act." New York, NY: July 29, 2003.

³⁰ Business and Human Rights Resource Centre, "Alien Tort Claims Act (USA)", April 12, 2004. There does not appear to be any correlation between the fact that each of these companies process and sell an essential dark liquid and the suits that are being brought against them.

³¹ Human Rights Watch, 2003.

should proceed.³² Having successfully cleared a major legal hurdle, the ruling allows the Presbyterian Church of Sudan to pursue its claims that Talisman aided and abetted gross violations of human rights during its operation in Sudan in the late nineties and the early part of this decade. The Church alleges that Talisman was complicit in a genocidal campaign launched by the Sudanese government against occupants of land wanted for oil extraction. According to the Church, Talisman provided funds and a base for helicopters used to bomb villages and massacre their inhabitants.³³ The Church is seeking to disgorge a significant amount of the \$700 million dollars in profit that Talisman was reported to have made through its Sudanese operations.³⁴ Because of the significant evidence to support the Church's claims, in particular a memo that documents a request made by Talisman to remove villages at prospective extraction sites,³⁵ it appears as though the suit against Talisman has a good chance of being the first case to find a foreign MNC liable for damages committed in a country outside of the United States. A victory by the church would set a monumental precedent for current and future suits against MNCs and would cause many foreign businesses to reconsider their operations under increasingly liable scenarios. Because settlements involving corporations are likely to entail larger settlements than in cases involving individuals, a statute like the ATCA would not only carry more weight in terms of governing behaviour, it would also be likely to see its use increase.

Although the ATCA has been praised by human rights advocates as an invaluable resource for victims of human rights abuses the world over, the apparent increase in the trend of its use has been met with substantial protest from at least three

parties: the international business community, the US Federal Government and foreign governments. Each of these parties have publicized statements or submitted *amici curiae*³⁶ briefs to the US Supreme Court arguing one way or another for the revision of the ATCA. In a statement published in the New York Times addressing the ATCA, the National Foreign Trade Council, an international business lobby group claimed that the ATCA "interferes with foreign affairs", "discourages investment", "permits suits against bystander companies", and that the ATCA is being "misapplied," giving US courts the authority "to decide international law".³⁷

In May of 2003 Attorney General John Ashcroft issued the Supreme Court an *amicus curiae* articulating the US Justice Department's opposition to the statute.³⁸ The act, he argues, "could not be used as a basis to file civil cases and that victims should sue under other laws; that the "law of nations" covered by the ATCA did not include international human rights treaties; and that abuses committed outside of the United States would not be covered under the law."³⁹

Foreign governments have also voiced their protest over the ATCA. In January of 2004 representatives of the governments of Australia, Switzerland and the United Kingdom issued a joint *amicus curiae* briefing to the US Supreme court stating that the ATCA undermines national sovereignty.⁴⁰ While each of these governments

³⁶ *Amicus curiae*: "A party that is not involved in a particular litigation but is allowed by the court to advise it on a matter of law directly affecting the litigation." (See *The American Heritage Dictionary of the English Language*, 4th Ed. Houghton-Mifflin. 2000). Affidavits issued by *amici curiae* are considered by the judge(s) as they come to a decision on a given case.

³⁷ Earth Rights International, "Big Business Attacks ATCA in New York Times: ERI's Rebuttal." April 12, 2004.

³⁸ Since its resurfacing, the ATCA has generated minimal opposition in Washington from both Democratic and Republican governments. As the ATCA began to receive more attention, however, the current Bush administration became concerned.

³⁹ Human Rights Watch(a), "US: Ashcroft Attacks Human Rights Law: Justice Dept. Undermining Key Precedent." New York, NY: May 15th 2003.

⁴⁰ Business and Human Rights Resource Centre, 2004.

³² Hamblett, Mark. "Suit Alleging Firm Aided Genocide Proceeds." *New York Lawyer*. March 20, 2003.

³³ Ibid.; United States District Court for the Southern District of New York, Court Records of Class Action Complaint, 2001.

³⁴ Smith-Windsor, Meagan. "Lawsuit against Talisman proceeds: Judge ruling critical of Talisman's legal skills." *Alberta Independent Media Centre*. May 07, 2003.

³⁵ Business and Human Rights Resource Centre, 2004.

share with the US the recognition that all human rights abusers should be brought to justice, they "believe that any broad assertion of jurisdiction to provide civil remedies in national courts for such violations perpetrated against aliens in foreign places is inconsistent with international law and the practice of other nations."⁴¹ They stress that their respective countries are fully equipped to bring justice upon any alien individual who liable for damages committed on their soil and that they are concerned that "an expansive reading of jurisdiction by one country will undermine the policy choices made by other sovereign nations with regard to the proper vindication of rights and redress of wrongs."⁴²

THE NORMATIVE NATURE OF THE ATCA

Is the trend that appears to be forming in the use of the ATCA as a means of addressing human rights abuses a new sovereignty norm? Recall first Finnemore and Sikkink's provisional definition of norms⁴³ and that the ATCA indicates standards of appropriate behaviour for actors with a given identity. Given that the ATCA is being championed by a relatively small group of human rights lobbyists (so-called 'norm entrepreneurs'), the observance and use of the ATCA can be classified as an emerging norm. The novel nature of this norm - the trend in the use of the ATCA - however, is problematic. While the use and subsequent recognition of the ATCA may be described as a new development, the trend in the use and observance of the law and in particular the US Code is not. Laws themselves are norms in that they inform practices. So while the trend in the use of the ATCA may be considered 'new', because its existence relies completely on an older more established norm - the law - it can also be argued that

the emerging sovereignty norm is just another example of a previously established norm.

To argue this, however, would also mean to deny the existence of a multitude of norms. Many norms are born out of pre-existing norms and rely on them for legitimacy. Human rights norms are the natural product of the co-evolution of domestic and international law, institutions built with a normative foundation. Similarly, the trend in the use of the ATCA is a natural product of the growth in human rights norms. So although the existence of this emerging norm is incumbent on pre-established norms, it exists nonetheless. For the sake of brevity, the trend that appears to be forming in the use of the ATCA will hereafter be referred to as the ATCA norm.

Having established the existence of the ATCA norm, it must now be classified. Even though the ATCA is over 200 years old, its frequent use is only a recent development. Recall that Finnemore and Sikkink classify norms that create new actors, interests or categories of action as constitutive. Because the 'discovery' of the ATCA in the 1980s has created or at least revealed a new category of action, it would seem as though the ATCA norm would fall into the constitutive category of norms.⁴⁴ As a component of the law, however, the ATCA norm may also be classified as a regulative norm in that it helps to order and constrain behaviour. In their analysis of norms, Finnemore and Sikkink do not address the possibility of norms having multiple classifications. Based on the regulative and constitutive characteristics of the ATCA norm, it would appear as though this is indeed a possibility.

Perhaps the most important feature of the ATCA norm is where it is located on the norm life cycle. The influential properties of a norm are largely determined by its stage of growth. Once again, however, the new ATCA norm defies singular categorization. There is a case to be made for placing it at both the emergence and internalization stages of the life cycle.⁴⁵ One of the domi-

⁴¹ Brief of the Governments of the Commonwealth of Australia, The Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland as *Amici Curiae*, 2004. 3-5.

⁴² *Ibid.*

⁴³ Martha Finnemore and Kathryn Sikkink define a norm as "a standard of appropriate behaviour for actors with a given identity," Finnemore and Sikkink, 891.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 896.

nant mechanisms of the first stage of the norm life cycle is the persuasion of important actors to adopt a given norm.⁴⁶ Since the ATCA is already a statute of law, important actors such as states and international organizations need not be persuaded to grant legitimacy to the ATCA norm (a function of the second stage, 'norm cascade') because it has already been institutionalized in the United States. One might argue that because only one state has internalized the norm it has yet to reach the final stage internationally. Due to the enormity of the ATCA's jurisdiction (the planet) however, the ATCA norm needs only to be internalized in one state to perform its function effectively, that is, to curb human rights abuses. Because the ATCA is law, the ATCA norm has managed in some respects to forgo stage two and proceed directly to stage three, internalization.

Despite the backing of US law however, the ATCA norm still lacks a major characteristic of internalization: habit. Due to the ATCA's relatively recent discovery, its use has yet to become main-stream. Regardless of the fact that institutions and states need not be persuaded to adopt the ATCA norm in order for it to be effective (because it has already been incorporated into the American legal system); the norm has yet to undergo a period of frequent and extended use. Until such an event takes place in which the ATCA norm experiences its normative 'cascade' unto the international legal scene, it can also be argued that the ATCA norm is only in the first or 'norm emergence' stage. The norm entrepreneurs in this case are lawyers and activists and their organizational platforms are human rights organization. If one were to apply the analogy of the human life cycle to describe the ATCA norm, it might be envisioned as some sort of prepubescent wunderkind who is far more developed than his/her peers would recognize and his/her elders would admit. The ATCA norm then falls somewhere between the two extremes of the life cycle, legally internalized by the United States, but hardly recognized by those who

would subscribe to it.

The influential capacity of the ATCA norm is affected by its abnormal development with respect to the norm life cycle. While the influential power of the norm lies fully in its presence in the American legal system, the scope of its influence is limited to by its current relatively unknown status. As awareness of the ATCA spreads, it may cause some significant behavioural changes. If the ATCA norm continues to gain strength it could have a major impact on the behaviour of MNCs and governments alike. Faced with the threat of suit under the ATCA, MNCs could change their policies in troubled foreign countries or choose not to invest in them at all so as to avoid litigation. Governments, in order to protect investment, might pass legislation to help prevent the filing of suits under the ATCA or pass their own version of the ATCA to gain equal jurisdictional footing with the United States. To date, reaction to the ATCA norm is still in the protest stage. If the ATCA is somehow dismissed or revamped as a result of lobbies against the statute, then things will return to the status quo. If the ATCA norm gains momentum, it would be reasonable to expect some behavioural changes.

THE SOVEREIGNTY IMPLICATIONS OF THE ATCA

Having dissected the normative nature of the ATCA, it is now time to examine its implications for the notion of sovereignty. Taken as a set of meanings and practices, is the aggregate meaning of sovereignty affected or even altered by the emergence of the ATCA norm? I have decided to approach this query by posing two questions: *Has* the aggregate meaning of sovereignty changed and if so how; and if not, *will* the aggregate meaning of sovereignty change?

In order to respond to the first question, Biersteker and Weber's conceptualization of sovereignty must be revisited. Recall that: the "ways that the practices of states and non-state agents produce, reform and redefine sovereignty and its constitutive elements: population, recognition, authority,

⁴⁶ Finnemore, Martha and Kathryn Sikkink, 1998, 898.

and territory"⁴⁷ must be considered in order to understand the social construction of sovereignty; that its aggregate meaning is "negotiated out of interactions within intersubjectively identifiable communities" while practices help to "construct, reproduce, reconstruct and deconstruct" this meaning;⁴⁸ and that the different meanings that form this aggregate meaning are informed by practices.

In keeping with this approach, in order for the aggregate meaning of sovereignty⁴⁹ to change, it must be communally renegotiated or altered by changes in practice. While no discernable process of renegotiation has taken place, it appears as though there has been a change in practice. The discovery of the ATCA has given the United States the authority to perform a duty traditionally reserved for individual states: the prosecution of aliens found liable for harmful acts committed within these states' respective territories. Whether they desire it or not, the United States enjoy more legal authority than any other state in comparison. Because this authority (a constitutive element of sovereignty) has changed, it would follow that so too has the practice of the recognition of this authority. This change in authority would indicate that there has been a change in the prescription for sovereign recognition practices which further implies a change to the aggregate meaning of sovereignty.⁵⁰ This, however, is not entirely the case.

While it is true that the constitutive element of authority has changed, it has done so only with respect to the US. All other states still retain the same authority they had before the emergence of the ATCA norm to sue foreign perpetrators, however now they each share that authority with the United States. Because their authority has been duplicated and not usurped, the

world's states retain all aspects of the sovereignty they enjoyed prior to the introduction of the ATCA norm into the international system. Has then, the aggregate meaning of sovereignty changed? Yes; but only slightly. While the meaning of sovereignty may have been modified significantly in the US, the rest of the world is left having to amend its conception of sovereignty so as to accommodate the unique authority vested in the US by the ATCA.

Ultimately, while the aggregate meaning of sovereignty has changed (albeit minimally) in theory, in reality it has not. Regardless of the fact that suits have been allowed to proceed against citizens and MNCs, the courts have yet to exercise their authority to bypass the diplomatic immunity that states and state leaders are traditionally afforded by the US government. For instance, suits brought against the Saudi Arabian government and former Haitian President Jean-Bertrand Aristide have since been thrown out on these grounds.⁵¹ The claim made by the governments of Australia, Switzerland, and the UK that the ATCA undermines national sovereignty is therefore erroneous.⁵² Given the protection that states and their representatives enjoy from the ATCA, the ATCA's power to infringe upon state sovereignty is severely hindered, as is its ability to have a meaningful impact on the notion of sovereignty itself. Thus, while the prescriptions for sovereign recognition have technically been altered by the ATCA, the tradition of diplomatic immunity trumps any change the ATCA would bring about in practice. Nevertheless, the 'rediscovery' of the ATCA has revealed a new category of action in the field of international law and serves as a valuable means for redressing human rights abuses or any other tort. Due to the realities of diplomacy, however, it is a relatively impotent device when applied to matters involving states.

As such, the sovereignty implica-

⁴⁷ Biersteker, Thomas J. and Cynthia Weber, 1996.

⁴⁸ Ibid.

⁴⁹ Biersteker and Weber's aggregate meaning of sovereignty may be summarized as a socially constructed set of meanings and practices, including but not limited to population, recognition, authority and territory that is subject to change over time.

⁵⁰ Ibid, 13.

⁵¹ Slaughter, Anne-Marie and David L. Bosco, "Alternative Justice," *Crimes of War*, May 2001.

⁵² Brief of the Governments of the Commonwealth of Australia, The Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland as *Amici Curiae*, 2004. 3-5.

tions of the ATCA are relatively minimal and should not cause a major shift in the universal understanding of sovereignty. Given the level of both protest against and support for the ATCA however, this situation is subject to change. This leads us to a modified version of the second question: will the aggregate meaning of sovereignty change *significantly*? The answer to this question depends on the likelihood of two scenarios.

The first scenario is that courts in the United States overturn the precedent set in 1989 that acknowledges the legal immunity of states and their leaders.⁵³ In normative terms this would represent the 'cascade' or second stage of the norm life cycle. This would mean a major alteration of current conceptions of state authority and, on a broader scale, state sovereignty. Such an event seems extremely unlikely, however, given the potentially disastrous diplomatic implications of such suits and the behaviour of the courts thus far in dealing with suits against foreign leader. Furthermore, members of the US government, concerned states and lobby groups who are opposed to the ATCA are directing their efforts towards the realization of the second scenario, the revision or dismissal of the ATCA. Judging by the size, momentum and influential strength of this opposition movement, this scenario may soon become a reality. If those who disapprove of the ATCA are successful in having its unique authority revoked, the aggregate meaning of sovereignty would return to its original state, awaiting another challenge to its identity.

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⁵³ See *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989).

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Peacekeeping and Peacebuilding: Canada's New Role in Building Capacity Abroad

Allison Sephton

Abstract

The Post-cold war era presents many new challenges to international peace and security, since wars are now not only fought between states, but within them, and civilians are now more often the actors and targets of violence. Traditional militaristic peacekeeping needs to be revamped in order to deal with these non-traditional conflicts. Furthermore, it is recognized that political, social and economic instability can deepen conflicts, and new innovative strategies for conflict resolution need to combine non-militaristic capacity-building, or "peacebuilding," in these areas, along with militaristic peacekeeping. It will be argued in this essay that Canada should continue to be a forerunner in international peacekeeping (under the guise of the UN), and that Canada is particularly well-suited to pair its military strengths with non-governmental organizations and civil society actors in these new holistic peacekeeping and peacebuilding operations.

Résumé

La période suivant la guerre froide présente plusieurs défis à la paix et à la sécurité internationale, puisque les guerres d'aujourd'hui ne se font pas entre états, mais plutôt à l'intérieur d'eux, et que les civils sont maintenant plus souvent acteurs et cibles de violence. Le maintien de la paix traditionnel doit être amélioré afin de traiter ces conflits non-traditionnels. De plus, c'est reconnu que l'instabilité politique, sociale et économique peut approfondir des conflits, et que les nouvelles stratégies de résolution de conflit doivent combiner le développement de capacités non militaires, ou de consolidation de la paix avec le maintien de la paix militaire traditionnel. On argumente dans cet essai que le Canada devrait continuer à être à l'avant-garde du maintien de la paix international (sous la tutelle de l'ONU), et que le Canada est particulièrement bien adapté à joindre ses forces militaires avec ses organisations non gouvernementales dans ces nouvelles opérations de maintien de la paix et de consolidation de la paix holistiques.

Many things have changed in the world since 1989. Global power is no longer defined in terms of military strength and ideological alliances with a dominant superpower. The bipolar stability has been shattered, making the world a considerably less secure place. Today, wars are fought not only between states, but within them. Conflicts are fought over ethnic, religious, and economic divisions and not only between militaries, but amongst civilians as well. The post-Cold War era is marked by increasing threats to human security as failed states are ever-increasing in number. The world's wealthiest countries no longer have vested interests in helping these states build the capacity to restore, and more importantly to maintain, peace. During the Cold War, Canada was seen as an influential middle power and an effective multilateral actor, with a strong record of peacekeeping. However, over the past decade, the global

human security agenda has shifted its focus from pure militaristic peacekeeping to encompass more holistic peacebuilding processes, which focus on political and socioeconomic (rather than militaristic) ways to build human security within a state, focusing on democratic governance, human rights, the rule of law, sustainable development and environmental protection.¹ The advent of the Responsibility to Protect in 2001 (which was largely sponsored by the Canadian government) is bringing the de-

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bate between sovereignty and humanitarian intervention to the forefront, as the world community is placing increasing value on the protection of human rights over the protection of self-determination. The Honourable Lloyd Axworthy made clear that a new foreign policy paradigm is needed for human security.²

Given its extensive experience as a globally-recognized competent peacekeeping country, Canada should continue to devote its (currently fewer) resources to militaristic, UN-sponsored peacekeeping operations (PKOs). This paper will examine Canada's historical evolution of peacekeeping to exemplify Canada's militaristic and multi-lateral strengths, and also to bring to light some of the problems and debates behind peacekeeping that bear weight on international attitudes towards humanitarian intervention today. The focus will then turn to how, given the new global context surrounding human security, Canada should also explore more creative and comprehensive avenues of involving international organizations, non-governmental organizations (NGOs), and the private sector in the peacebuilding process. Military involvement can now be combined with new strategies, such as soft power. Furthermore, Canada should commit to building capacity in failed states post-conflict – that is, helping to build the economic, social and political bridges that will maintain peace and garner the stability that will ensure enduring peace in these states.

However, a more vivid picture of the current world order needs to be painted before further discussion of the issues at hand. In 1994, in his famous essay "The Coming Anarchy," Robert Kaplan predicted that the end of the Cold War would result in the proliferation of anarchic regionalisms. As client states of the rivaling superpowers,

these countries were given economic and military assistance in return for their alliance. Now, as "failed states" in the developing world, they have been left behind to inevitably experience the "withering away of central government, the rise of tribal and regional domains, the unchecked spread of disease and the growing pervasiveness of war."³

Human security no longer means merely ending military conflict – issues of economic crisis, political instability, hunger, and disease can prove to be just as deadly as war. The effects of underdevelopment are threefold in conflict, as they tend to be precursors to civil and regional conflict, they are exacerbated during the violence, and they are an impediment to state rebuilding after the violence has ended. While militaristic humanitarian intervention from the international community still plays a vital role in ending the violence, development assistance is critical in preventing further conflict and rebuilding societies after the fighting has ended.⁴

Due to this changing world order, traditional peacekeeping methods need to be revamped. According to the *Penguin Dictionary of International Relations*, peacekeeping is "an activity engaged in by military and/or civilian actors operating in a neutral and impartial way, with the consent of the parties and using force strictly in self-defense: the object being the cessation of violence...and assisting in the establishment of a truce or cease-fire."⁵ The United Nations began engaging in peacekeeping activities (called "preventative diplomacy")⁶ in the 1950s, specifically with the Suez crisis of 1956. The concept of peacekeeping was actually invented by Canadian Foreign Affairs minister Lester Pearson, when he pushed for global involvement in the withdrawal of

¹ Canadian International Development Agency, "Peacebuilding Initiative Strategic Framework." Available Online.

² Lloyd Axworthy, "Introduction." In Rob McCrae and Don Hubert, eds. *Human Security and the New Diplomacy*, (Montreal and Kingston: McGill-Queens University Press, 2001), 3-4.

³ Robert D. Kaplan, "The Coming Anarchy." *The Atlantic Monthly* 273, no. 2 (February 1994): 44-65. Available on-line from ProQuest.

⁴ Lloyd Axworthy, 4.

⁵ Graham Evans, and Jeffrey Newnham. "Peacekeeping." *The Penguin Dictionary of International Relations*. (London: Penguin Books, 1998), 425.

⁶ *Ibid*, 425.

troops in the Suez crisis.⁷ This initiative ultimately made peacekeeping an international concern, with many countries acting multilaterally in larger initiatives than ever before to end violence in conflict-ridden areas outside of their jurisdiction.⁸

The United Nations then became the primary vehicle for organizing and financing peacekeeping operations (PKOs).⁹ During the Cold War, the UN facilitated 13 PKOs in countries with long-term conflict.¹⁰ All of these classical PKOs were multilateral acts that were primarily military-based and dependent on volunteer national capacity. They were "a unique expression of the operation of political will... [Reflecting] the ideals and the habits of the cooperation traditional to the international community, and particularly to the UN."¹¹ It would be naïve, however, to assume that these states were acting altruistically. As realist theory dictates, states act in self-interest. This was especially evident during the Cold War when the US and Soviet Union were desperately trying to garner allies. In his essay "Peacekeeping: Did Canada Make a Difference?," Granatstein states in regards to peacekeep-

ing that "while it often served US interests...it nonetheless had about it a powerful aura of independence and the implicit sense that it served higher interests than simply those of the US, or even the West."¹² This obviously leads one to believe that perhaps there was general concern for promoting human security at the international level. It should also be remembered that the international system had just emerged from two great wars; states realized that "isolation was no guarantee of safety in the modern world and that isolationism as a doctrine was equivalent to fool's gold."¹³

Canada's role in peacekeeping during the Cold War was significant. Granatstein asserts that "if there is any one area of foreign policy and defense policy in which Canada did unquestionably make a difference, it is surely the area of peacekeeping."¹⁴ As a "middle power" during the Cold War, Canada had "room to maneuver with respect to constructive endeavor in a changing international context."¹⁵ Beginning with Lester Pearson, Canada pushed the importance of peacekeeping on the international stage, and was involved in several PKOs, such as the ones in Congo (1960) and Cyprus (1964), for example.¹⁶ Canada was considered to be a strong and effective multilateral actor, pushing for human rights and global democracy through its involvement in the UN as well as other multilateral institutions such as the Conference on Security and Cooperation in Europe (CSCE) and the Organization of American States (OAS).¹⁷ Oran Young alleged that Canada was an exemplar of "entrepreneurial" and "technical" leadership in the multilateral arena.¹⁸

⁷ The Suez Crisis of 1956 was between Egypt and an alliance consisting of France, the United Kingdom, and Israel. The conflict was over the control of the Suez Canal, which the alliance had economic and trading interests in. On October 29, Israel, backed by the alliance, successfully invaded the region, resulting in war. Lester Pearson helped create the United Nations Emergency Force (UNEF) to sustain conflict in the area. The US governed a ceasefire and the invading forces withdrew in March 1957. Only Israel gained significantly from the war. For more information, please see "Suez Crisis" at www.Wikipedia.com

⁸ J.L. Granatstein, "Peacekeeping: Did Canada Make a Difference? And what Difference Did Peacekeeping Make to Canada?" In John English and Norman Hillmer, eds. *Making A Difference*. (Toronto: Lester Publishing Limited, 1992), 222.

⁹ Graham Evans and Jeffrey Newnham, 426.

¹⁰ www.Wikipedia.com has an extensive list of UN PKOs between 1948 and 1989, listed under "Timeline of UN peace-keeping missions." These have included Israel 1948, India-Pakistan 1949, Suez 1956, Lebanon 1958, Congo 1960, West Guinea 1962, Cyprus 1964, Syria 1973, Lebanon 1978, Afghanistan-Pakistan 1988, Iran-Iraq 1988, Namibia 1989 and Angola 1989.

¹¹ Patricia Fortier, "The Evolution of Peacekeeping." In Rob McCrae and Don Hubert, eds. *Human Security and the New Diplomacy* (Montreal and Kingston: McGill-Queens University Press, 2001), 42.

¹² J. L. Granatstein, 225.

¹³ *Ibid*, 224.

¹⁴ *Ibid*, 222.

¹⁵ Andrew F. Cooper, "Multilateral Leadership: The Changing Dynamics of Canadian Foreign Policy." In John English and Norman Hillmer, eds. *Making A Difference*. (Toronto: Lester Publishing Limited, 1992), 200.

¹⁶ J. L. Granatstein, 229.

¹⁷ Harald Von Riekhoff and Maureen Appel Molot. "Introduction: A Part of the Peace." In Maureen Appel Molot and Harald von Riekhoff, eds. *A Part of the Peace: Canada Among Nations 1994*. (Ottawa: Carleton University Press, 1994), 17.

¹⁸ Andrew Cooper, 201.

Canada's dedication to UN peacekeeping efforts was consistent due to the fact that, according to James Eayrs, "Canada came of age internationally at the time the United Nations was forming."¹⁹ Thus, it was quite natural that Canada "incorporated an identity of purpose between itself and the UN into the definition of its foreign policy."²⁰

Now that the Cold War is over, the nature of peacekeeping is changing as new patterns of global conflict emerge. It is now recognized that military intervention alone is no longer sufficient – capacity building is required to maintain peace and order. Every regional conflict requires a tailored response linking objective with local context and local and global capacity.²¹ Strategies need to be three-dimensional and address the local roots of conflict, the capacities for change in the local context, and finally the degree to which international commitment is available to assist sustainable peace.²² The UN has renewed its multilateral efforts and PKOs have increased in number, scope and domain. From 1988 to 1997 there have been 28 new operations, including Cambodia, Namibia, Angola, parts of Central America, Liberia, Rwanda, Yugoslavia, Somalia and the Persian Gulf Region.²³

These new PKOs have differed greatly from their pre-1989 predecessors. In the new era of human security, a PKO needs the consent of the permanent members of the Security Council as well as military resources to deal with civilian security in addition to other traditional areas of concern. As opposed to being neutral, peacekeepers (whether military or civilian) have an impartial mandate to observe, engage and enforce peace. They also create and sustain new behaviour and institutions – but are never neu-

tral.²⁴ UN peacekeepers now find themselves performing capacity building tasks beyond their traditional mandates, as new missions included stability, protection, human rights, justice, and development.²⁵

In a study done by Doyle and Sambanis (2000), it was found that multilateral, United Nations peace operations make a positive difference in ending civil wars. It was also found that the UN peacekeeping efforts were positively linked to the democratization process after a civil war, and that the multilateral enforcement operations are typically successful at ending the violence.²⁶ Obviously, UN PKOs should continue. Now, the UN might actually be able to engage in more assertive humanitarian intervention, because since the Cold War is over, there is greater potential for consensus among member states. Globalization means that many social, economic and political problems are defying national solutions, and multilateral action might be the only way to rectify these issues.²⁷ States are openly supporting humanitarian intervention abroad, recognizing that human security transcends borders and traditional competencies within governments.²⁸

Multilateralism is still held in the utmost regard, and more than ever, coordination between the UN and member states is important. However, effective coordination between these groups is beyond the existing capabilities of the UN.²⁹ The UN is only as good as the government resources that are committed to it. The UN Security Council is still governed by the interests of member governments, who might not necessarily have vested interests in helping failed states.³⁰ Yet, "despite how quickly the concept has been validated, getting states to practice human security is a difficult and

¹⁹ James Patrick Sewell, "A World Without Canada: Would Today's United Nations be the Same?" In John English and Norman Hillmer, eds. *Making A Difference*. (Toronto: Lester Publishing Limited, 1992), 195.

²⁰ James Patrick Sewell, 195.

²¹ Patricia Fortier, 42.

²² Michael W. Doyle and Nicholas Sambanis. "International Peacebuilding: A Theoretical and Quantitative Analysis." *American Political Science Review*, 94, No. 4 (December 2000): 781. Available on-line from JSTOR.

²³ Graham Evans and Jeffrey Newnham, 426.

²⁴ Patricia Fortier, 44.

²⁵ Patricia Fortier, 48.

²⁶ Michael W. Doyle and Nicholas Sambanis, 795.

²⁷ Tom Keating, "The Future of Canadian Multilateralism." In Maureen Appel Molot and Harald von Riekhoff, eds. *A Part of the Peace: Canada Among Nations 1994*. (Ottawa: Carleton University Press, 1994), 56.

²⁸ Lloyd Axworthy, 11.

²⁹ Patricia Fortier, 44.

³⁰ James Patrick Sewell, 184-5.

uneven process."³¹ Governments are spouting a lot of rhetoric without providing concrete action. Ambitions for peacekeeping are growing, and the resources required are harder and harder to come by.³² The fact that humanitarian intervention is posing increasing financial, political and institutional risks on the actor states is another deterrent to commitment.³³ The problem of governments still not enacting at home what they support at the UN continues.³⁵ The result has been "a system too frequently unprepared and unwilling to act."³⁶ According to Fortier, by 1995, the UN had no money and appeared to be shirking its role in the promotion of international peace and security. "The UN Security Council would retain its broad authorizing role, including the use of force by non-UN multinational forces, but would revert operationally to what it knew best – modest UN blue beret mission based on Chapter VI of its charter."³⁷³⁸

Rwanda exemplifies the trend the UN's diminishing peacekeeping capacity. In 1994, ethnic conflict resulted in a genocide that killed almost 800,000 Rwandan civilians. The UN sent in a PKO, UNAMIR (United Nations Assistance Mission for Rwanda) led by Canadian Lieutenant-General Romeo Dallaire. The mission was an ultimate failure: multilateral action was unable to end the conflict and protect human security. In his book "Shake Hands with the Devil," Dallaire blames the demise of the mission on UN bureaucratic inefficiency, combined with the failure of key member states to recognize the danger of the conflict, reach a consensus on a course of

action, and provide key resources to the mission (in the form of troops, funding and equipment). He blamed the international community for not responding quickly to the scenario as well as the media for not stimulating the global motivation to get involved.³⁹ While some claim Dallaire lacked the competency required for carrying out the task, the majority of foreign policy critics agree that the failure of the mission was not his fault. They believe that "Dallaire commanded his inadequate UN forces in face of political apathy and genocidal horror."⁴⁰

The UN has tried to avoid such issues by creating smaller autonomous agencies independent of governments, for example the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF). Such agencies have proven to be much more effective in global capacity building, but are less accountable to the governments of UN member states.⁴¹ Sewell affirms that "the UN has become more effective without necessarily becoming more accountable...of late, the UN has witnessed stalemate; now it often attends decisive action."⁴² It has also been found that once the Security Council backs out of a PKO, humanitarian workers tend to back out as well. The result is a temporary end to conflict without the resources and institutions needed to sustain the peace.⁴³

Another dominant issue in peacekeeping has been that of sovereignty. Increased multilateralism means that the nature of peacekeeping is becoming more intrusive on national sovereignty.⁴⁴ The nature of peacekeeping itself has always been in conflict with the right of a sovereign state to deal with its problems independently – a right upholding the entire organization of the international system. But most international actors have legitimized the UN's Universal Declaration of Human Rights (1948), which asserts that individuals' rights are just

³¹ Lloyd Axworthy, 6.

³² Patricia Fortier, 42.

³³ The failures of PKOs in Somalia (1992), Bosnia (1992-5) and Rwanda (1994) exemplify the financial, political and institutional costs to states associated with peacekeeping operations. For more information, please refer to Keating, 61.

³⁴ Tom Keating, 61.

³⁵ James Patrick Sewell, 187.

³⁶ Lloyd Axworthy, 8.

³⁷ A UN Chapter VI mission refers to classic peacekeeping under the UN Charter, which entails the pacific resolution of disputes. For more information, please refer Evans and Newnham, 426.

³⁸ Patricia Fortier, 47.

³⁹ LGen Romeo Dallaire, *Shake Hands with the Devil*, (Toronto: Random House Canada, 2003).

⁴⁰ Patricia Fortier, 46.

⁴¹ James Patrick Sewell, 185.

⁴² Ibid, 184.

⁴³ Patricia Fortier, 47.

⁴⁴ Tom Keating, 58.

as important as states'.⁴⁵ Vaclav Havel eloquently states that "the sovereignty of the community, the region, the nation, the state...makes sense only if it is derived from the one genuine sovereignty – that is, from the sovereignty of the individual."⁴⁶

In 2000, Canada helped to establish the independent International Commission on Intervention and State Sovereignty (ICISS), whose mandate was to attempt to reconcile the conflict between sovereignty and humanitarian intervention among the international community, and to garner a global consensus on how to deal with the inefficiencies within the UN system that were hindering effective humanitarian action.⁴⁷ The wide range of members on the Commission presented *The Responsibility to Protect* to UN Secretary General Kofi Anna in 2001, which called for a shift in thinking from the "right to intervene" (which was associated with military activity) to the "responsibility to protect," which would bring about "a shift from a culture of sovereign impunity to one of national and international accountability."⁴⁸ Gareth and Sahnoun (the co-Chairs of the ICISS) speak of a new dual responsibility of sovereignty, which includes not only respecting the sovereignty of external states, but also respecting the internal sovereignty of people within a country to enjoy basic human rights. If a state is not respecting internal sovereignty, it is the responsibility of the international community to intervene for humanitarian reasons. The ICISS use a "just cause" threshold for military intervention, meaning it can only be used under exceptional circumstances if there is an actual or anticipated large-scale loss of life, or an actual or anticipated large-scale "ethnic cleansing." They also believe that that UN is "unquestionably the principal institution for building, consolidating, and using the authority

of the international community."⁴⁹ Like others, they recognized the lack of political will among the permanent members of the Security Council (for this, they called for them to revoke their veto power when humanitarian intervention is involved) and contributing member states, and the lack of human and financial resources available.

The Responsibility to Protect also spoke of a threefold responsibility, including the responsibilities to "prevent," "react," and "rebuild."⁵⁰ This is where non-military measures under the umbrella of peacebuilding become crucial in the long-term maintenance of peace, and how building capacity in the political, economic and environmental sectors is key to preventing future internal strife. Canada is still very much seen as an influential middle power in international relations, and as evidenced by our founding role in the ICISS, we still show a strong commitment to the human security agenda. Our history proves that we are an effective peacekeeping nation (it has even been a source of national pride), however recent cutbacks to the defense budget have somewhat diminished our peacekeeping capacities. Canada is still valued globally for its "anti-military military role" in peacekeeping, and for this reason we should continue our commitment to UN PKOs.⁵¹ But the world is changing, and with the widening international agenda, Canada's foreign policy needs dynamism and improvisation.⁵² Canada needs to explore other options where it can have influence besides peacekeeping. Lloyd Axworthy maintains that "the best Canadian foreign policy remains an independent policy based on our competences and capacity to deliver...the human security agenda is a basis for a new way forward."⁵³ Canada, then, can also build capacity in war-stricken areas by adopting a more encompassing, comprehensive approach through the engagement of other

⁴⁵ Lloyd Axworthy, 4.

⁴⁶ Ibid, 13.

⁴⁷ International Commission on Intervention and State Sovereignty, "About the Commission." Available online.

⁴⁸ Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs* 81 no. 6 (Nov/Dec 2002), 99. Available online from Proquest.

⁴⁹ Gareth Evans and Mohamed Sahnoun.

⁵⁰ International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," December 2001.

⁵¹ J.L. Granatstein, 231.

⁵² Andrew Cooper, 216.

⁵³ Lloyd Axworthy, 8-9.

actors such as intergovernmental organizations, non-governmental organizations (NGOs), the media, civil society and the private sector. Canada can also use soft power to enact global change.

Even though militaristic responses can be effective in peacebuilding, they are falling out of favour with the Canadian government. Soft power is today perhaps more effective in influencing global patterns than ever before. Created by Joseph Nye, the term "soft power" refers to exerting influence through economic and cultural means rather than through military ends, or "hard power."⁵⁴ Axworthy elaborates by saying that "'soft power' relies on diplomatic resources, persuasion, information capacity, and creative use of selective military tools rather than coercive force to promote a country's interests or project its influence on the world stage."⁵⁵ Perhaps soft power can enhance Canada's ability to be an effective capacity builder, and is a more viable option for the pursuit of its interests in the human security agenda.

Involving non-state actors is an effective way for the Canadian government to use soft power to achieve a well-rounded peacebuilding approach.⁵⁶ Axworthy speaks of the "internationalization of conscience," and says that "these organizations usually have greater leeway than states to speak out and take action, and are, therefore, more able to push specific agenda." The dialogues needs to be broadened across these actors, and "advancing human security is also the reason for developing innovative global partnership linking like-minded countries, institutions, and NGOs. Such coalitions between governments and civil society are harbingers of the future, demonstrating the power of noble intent, good ideas, and pooled resources."⁵⁷ Sewell and Cooper both also point out that engaging these other actors closes the accountability gap and le-

gitimizes relations between the state and society.⁵⁸

NGOs are becoming more active in capacity building today than ever before. The Canadian government is in some cases bringing non-state actors into the foreign policy process, giving NGOs (like CIDA, OXFAM, CUSO, MATCH) an enhanced status.⁵⁹ The Canadian government also has technical and administration reasons for pulling NGOs on board, as they can make up for budget constraints, decentralization, and privatization.⁶⁰ Peaceful governance requires strong state institutions, broader political participation, land reform, a deepening of civil society, and respect for ethnic identities, among others.⁶¹ Canadian NGOs are instrumental in helping to establish these core components required for enduring peace. Their development work in health care, hunger relief, refugee assistance, education, agricultural development, etc., is evidence of this commitment.

The Canadian Peacebuilding Initiative (created in 1996, the Hon. Lloyd Axworthy) is exemplary of this type of collaboration between the Canadian government, academic institutions and NGOs to develop foreign policy aimed at peacebuilding abroad. The Initiative is aimed at helping conflict-ridden countries in their effort towards peace and stability, by supporting locally-generated peacebuilding initiatives (such as demobilization and strengthening democracy) to improve their effectiveness and sustainability. The Initiative, showing its Canadian spirit, also seeks to combine Canadian peacebuilding efforts in a multi-lateral fashion with other governments, the UN, and regional organizations.⁶² Highlighted by the Initiative is how Canada's experience as a peacekeeper has contributed to its expertise in the many diverse areas of peacebuilding.

⁵⁴ Joseph Nye. "Soft Power." *Foreign Policy* Vol. 80 (Fall 1990): 153-71.

⁵⁵ Lloyd Axworthy, 9.

⁵⁶ Michael W. Doyle and Nicholas Sambanis, 779.

⁵⁷ Lloyd Axworthy, 13.

⁵⁸ James Patrick Sewell, 197; Andrew Cooper, 212.

⁵⁹ Andrew Cooper, 213.

⁶⁰ *Ibid*, 211.

⁶¹ Michael W. Doyle and Nicholas Sambanis, 779.

⁶² Canadian International Development Agency, "Peacebuilding Initiative Strategic Framework." Available online.

Engaging civil society and being attuned to public interests is another way in which the Canadian government can involve other actors in building capacity abroad.⁶³ The open dialogue between state and society ensures that the formulation of foreign policy is legitimized, and it can reinforce the importance of the human security agenda. In the 1980s and 1990s, the Canadian government still tended to act in the interests on NATO, but they were becoming more sensitive to the social agenda, which showed significant interest in human security.⁶⁴ The media also plays a critical role in amassing public interest and support for issues like human security, and can lead to placing societal pressure on the government to pursue certain foreign policy. It can also be used as a tool to gauge public support or adversity to foreign policy decisions.

A strong economic foundation is critical in capacity building, and this is an area that can be best dealt with by the Canadian private sector. The UN and other intergovernmental organizations such as the World Bank are increasingly turning to the private sector for help in peacebuilding. "Low levels of economic development and other deficiencies in local capacities may motivate actors to violence, due to the low opportunity cost of war and the opportunities for private gains from violence"⁶⁵ It is for this reason that failed states need help in creating employment and other economic opportunities that will uphold peace over the long term and prevent future conflict. Canadian businesses can help with economic stabilization by assisting the failed states establish new enterprises, open investment opportunities, develop the rule of law, practice successful conflict resolution, and enter free-market trade that will lead to economic growth.⁶⁶ Examples of where the private sector has been successful in peace-making include the transition from apart-

heid to a multiracial state in South Africa, and in Mozambique's economic recovery in 1992 (the private sector worked with the government and other multilateral institutions to attract the foreign investment required for economic recovery).⁶⁷

As it has been shown, there are many ways in which Canada can contribute to the international peacebuilding process, beyond militaristic humanitarian interventions measures (which are becoming hotly debated in the international community). Canada's recent provision of \$20 million to the peacekeeping effort in Sudan⁶⁸ has shown that Canada is indeed still committed to protecting human rights abroad. However, recent statements by Prime Minister Paul Martin criticizing the UN's slow response to the Sudan crisis are indicative of the many challenges that face the implementation of humanitarian intervention today.⁶⁹ The new world era is marked with a plentitude of threats to human security like it has never experienced before. The fundamental shift in world politics has changed the way that global actors face these challenges, and old methods must be adapted to face new problems. Axworthy makes clear that a difference must be made, as "it has become clear that problems in one part of the world can have a serious impact in another, including here at home...geography is less and less of a defense...increasingly we cannot protect our citizens with armies and bombs alone."⁷⁰ By reinforcing its commitment to militaristic UN peacekeeping, alongside engaging non-state actors in broader peacebuilding initiatives, Canada will be best suited to build capacity abroad, and ultimately to assist in the development of a lasting global peace.

⁶³ Andrew Cooper, 207.

⁶⁴ Ibid, 207.

⁶⁵ Michael W. Doyle and Nicholas Sambanis, 780.

⁶⁶ Allan Gerson, "Peace Building: The Private Sector's Role." *The American Journal of International Law*, 95, No. 1 (January 2001): 103. Available On-line from JSTOR.

⁶⁷ Allan Gerson, 108.

⁶⁸ CBC News Online Staff, "Canada to give \$20 million for Sudan: report." *The Canadian Broadcasting Corporation*, 9 Sept 2004. Available online at www.cbc.ca.

⁶⁹ CBC News Online Staff, "Martin criticizes slow response to disaster in Sudan," *The Canadian Broadcasting Corporation*, 22 Sept 2004. Available online at www.cbc.ca.

⁷⁰ Lloyd Axworthy, 11.

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Children as Tools of War: Seeking Global Solutions Through Theoretical Analysis

Stephen Brosha

Abstract

In this paper on child soldiers, the author compares and contrasts two structures—neoliberal institutionalism and social constructivism—as methods for reducing or eliminating the role of children in modern war. He concludes that a response must incorporate a broader base of efforts, including child rehabilitation and a diminution in arms trafficking, acting as supplements to pre-existing international law if the growing problem is to be dealt with effectively.

Résumé

Cet article sur les enfants soldats compare et met en opposition deux structures – le institutionnalisme néo-libéral et le constructivisme social – comme méthodes pour réduire ou éliminer le rôle des enfants dans la guerre moderne. Il conclut qu'une réponse doit incorporer une plus large base d'efforts, y compris la réadaptation d'enfant et une diminution dans le trafic d'armes, agissant en tant que suppléments au droit international préexistant si le problème croissant sera traité efficacement.

Especially in the last twenty years, armed conflict has seen a drastic increase in the involvement of children under the age of eighteen, and by some estimates, over 300,000 children are now playing an active role in warfare.¹ In response to this growing problem, the international community has developed a number of legal measures that are designed to prevent children from becoming directly involved in armed conflict. While most people would agree that the actions taken thus far have been a step in the right direction, many argue that the primarily legalistic response of the international community has not and cannot effectively deal with the totality of the problem of children serving as tools of war.

This paper examines the issue of children in armed conflict, comparing the theoretical perspectives of neoliberal institutionalism and social constructivism to determine which of the two offers better insight into how to arrive at effective global solutions to the child soldier problem. A neoliberal institutionalist approach offers tangible options for dealing with the issue, contending that international institutions

can facilitate the international cooperation necessary to combat the problem of child soldiers. Social constructivism, while in many cases advocating the exact same policy options as neoliberal institutionalism, focuses on the broader importance of ideas, identities and norms in effecting change. Although neither perspective offers a complete solution to the growing problem, given the vast complexity of the child soldier issue, social constructivism seems to offer a more comprehensive and valuable approach than the more simplistic account of neoliberal institutionalism.

CHILDREN IN ARMED CONFLICT: A GROWING PROBLEM

Although the phenomenon of children playing an active role in warfare is certainly not

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¹ Rachel Brett and Margaret McCallin, *Children: The Invisible Soldiers* (Växjö, Sweden: Rädda Barnen, 1996), 19.

new,² the problem has certainly become more accentuated in recent years. Quite clearly, the international community must react quickly to prevent the unnecessary death and suffering of millions of children. This paper will follow the near-universal acceptance of age eighteen as the line of demarcation between children and adults. Although, in many areas of the world, people are deemed to be intellectually and emotionally mature at earlier ages, eighteen years of age appears to be the most widely accepted point at which individuals are no longer considered children. As Ilene Cohn and Guy Goodwin-Gill point out, the vast majority of countries in all regions of the world have set eighteen years as the voting age, and "participation in the political process is...a reasonably accurate indicator of the moment at which the community as political body recognizes the intellectual maturity of the individual."³ Though still an arbitrary figure, eighteen years at least provides a common measuring stick for addressing the problem of child soldiers, and indeed it has been accepted by nearly all researchers in the field, and incorporated into their statistical data.⁴

Before one can adequately assess exactly *what* responses to the child soldier problem could plausibly effect change on a global level, one must first examine the problem itself, and why it has become such a serious issue in recent years. One need not look far to realize that children are increasingly playing a direct role in warfare. Indeed, in the past twenty years, the issue has gained prominence on the international agenda as an increasing number of NGOs and journalists have worked to bring vivid images of child soldiers to audiences around the world. But the question remains: why has the problem of child soldiers recently become so pronounced?

Perhaps the most obvious reason for the increasing involvement of children in armed conflict is that the very nature of war-

fare has been rapidly evolving in recent years. As Rachel Brett and Margaret McCallin note, "'traditional' armed conflicts between states are now the exception rather than the rule,"⁵ and "[i]n the world today, armed conflict is predominantly in the form of internal rather than international armed conflicts and many...child soldiers are serving in armed opposition groups."⁶ In her 1999 work, *New and Old Wars: Organized Violence in a Global Era*, Mary Kaldor uses the term "new wars" to describe the manner in which conflict has evolved:

the new wars involve a blurring of the distinctions between war (usually defined as violence between states or organized political groups for political motives), organized crime (violence undertaken by privately organized groups for private purposes, usually financial gain), and large-scale violations of human rights (violence undertaken by states or politically organized groups against individuals).⁷

The varieties of conflict children are most often involved in are typified by the "blurred distinctions" outlined by Kaldor, not traditionally defined interstate conflict,⁸ and one must constantly be mindful of this fact in order to ensure that the problem of child soldiers is addressed in its entirety. Accordingly, this paper will consider children's involvement in a variety of different types of armed conflict, rather than simply in terms of a narrowly defined concept of "war."

Clearly, armed conflict has changed considerably in recent years, for a number of reasons. Importantly, the continued proliferation of small arms has been a critical factor in defining the role of children in this new type of warfare. As a result of the recent proliferation of inexpensive small arms, children are now able to contribute to warfare on a level comparable to adults, as there is indeed "no physical barrier to their serv-

² Ibid, 20.

³ Ilene Cohn and Guy Goodwin-Gill, *Child Soldiers: The Role of Children in Armed Conflict* (Oxford: Clarendon Press, 1994), 7.

⁴ Ibid, 7.

⁵ Rachel Brett and Margaret McCallin, 20.

⁶ Ibid, 160.

⁷ Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford: Stanford UP, 1999), 2.

⁸ James Garbarino, Kathleen Kostlly and Nancy Dubrow, *No Place to Be a Child: Growing Up in a War Zone* (Lexington, Massachusetts: Lexington Books, 1991), 1.

ing from an early age as combatants,"⁹ which was the case in earlier years. As Carol Thompson observes, "in the last 20 years, modern technology has provided weapons which weigh less than seven pounds, cost about US\$6, and can be stripped, reassembled, loaded and fired by an illiterate child of 10."¹⁰ The type of warfare typical of the last few decades has not been characterized by the high technology used by the US military¹¹; rather, over 90% of casualties in recent conflicts are attributable to small arms.¹² If one wishes to address the roots of the child soldier problem, the proliferation of small arms simply cannot be ignored.

Though the proliferation of small arms *facilitates* children serving as tools of war, the mere presence of such weapons does not *cause* (para)military groups to use children in their ranks. While the majority of child soldiers are adolescents, "many are ten years of age or younger. Increasingly, however, adults are deliberately conscripting or taking children as combatants or soldiers."¹³ At least on the surface, there must be some distinct attributes held by children that appear, on some level, militarily desirable to commanders of armed groups. One such perceived "edge" that child soldiers could offer is outlined by Carol Thompson, who notes that "both [boys and girls] have been used as cannon fodder (for example, Liberia, Uganda) advanced as the first wave of infantry-style assaults *with the purpose of inhibiting the enemy, who may be reluctant to fire at children* [emphasis added]."¹⁴ Romeo Dallaire, in a lecture given in Fredericton on September 25, 2003, recalled how one of his soldiers was faced with a situation in Somalia during which he was fired upon by young children using AK-47s. In that par-

ticular scenario, Dallaire noted, the soldier in question experienced almost unimaginable emotional and moral torment at the prospect of having to return fire at "innocent" children. Ultimately, however, the soldier had to protect those around him, including a church full of villagers; he fired back.¹⁵

Additionally, some commanders prefer using children as soldiers because they are "more obedient, do not question orders and are easier to manipulate than adult soldiers."¹⁶ However, this does not necessarily lead to an increase in military effectiveness, and "if this message could be spread more widely, all sorts of armed forces might be encouraged to consider improvements to their recruiting methods..."¹⁷ As the scenario recounted by Romeo Dallaire suggests, while children might seem to be an effective tool against the enemy's moral state of mind, the military outcome of the situation was not affected by the rebel group's use of children as frontline soldiers. Alarming, however, children are increasingly being used in active combat at younger and younger ages,¹⁸ which demonstrates that the military inefficiency of child soldiers has not been communicated to commanders of armed groups around the world.

In many of today's armed conflicts, children are not simply forced into service on the frontlines; rather, a large number of children *choose* to take part in political violence.¹⁹ Whether "through a process of stimulation, victimization or simply a desire for status or other rewards,"²⁰ children can and do often participate in armed conflict on their own accord, fighting for a cause "that is portrayed as being in their political and

⁹ Rachel Brett and Margaret McCallin, 21.

¹⁰ Carol B. Thompson, "Beyond Civil Society: Child Soldiers as Citizens in Mozambique," *Review of African Political Economy* 80 (1999), 191.

¹¹ Jo De Berry, "Child Soldiers and the Convention on the Rights of the Child," *The Annals of the American Academy of Political and Social Science* 575 (2001), 93.

¹² Rachel Brett and Margaret McCallin, 21.

¹³ Steven Hick, "The Political Economy of War-Affected Children," *The Annals of the American Academy of Political and Social Science* 575 (2001), 114.

¹⁴ Carol B. Thompson, 191.

¹⁵ Romeo Dallaire, "War-Affected Children," University of New Brunswick, Wu Centre, Fredericton, 25 Sept. 2003.

¹⁶ Rachel Brett and Margaret McCallin, 154.

¹⁷ Ibid, 172.

¹⁸ Ananda S. Millard, "Children in Armed Conflicts: Transcending Legal Responses," *Security Dialogue* 32 (2001), 187.

¹⁹ Ilene Cohn and Guy Goodwin-Gill, 168.

²⁰ Edward Cairns, *Children and Political Violence* (Cambridge, Massachusetts: Blackwell, 1996), 132.

economic best interests."²¹ For example, in Sierra Leone, child soldiers explained that one of the reasons they had decided to join armed groups was that they were unable to cope with the economic realities they faced due to lack of education.²² Evidently, "children are not always *passive* victims,"²³ and the global responses to the problem of child soldiers must reflect this reality.

Finally, in order to determine appropriate global responses to the child soldier problem, one must be aware of the manner in which participation in armed conflict affects children. Contemporary armed conflict involves and injures more young people than ever before, and the global community must consider itself obligated to ensure that this problem is addressed immediately.²⁴ As Claire Breen notes, "the social cost of child soldiers [is] very high because...children [do not] gain an education, skills, or any knowledge they would normally acquire by staying with their families."²⁵ As the adage goes, children are definitely more impressionable than adults. For children, the social costs of warfare are indeed considerable, but perhaps more damaging than any loss of future economic security is the intense psychological cost of growing up amidst a constant flurry of violence and turmoil. In the West, criminal and otherwise socially unacceptable behavior is routinely traced back to its roots in an unhealthy childhood—perhaps a serial killer was abused as a child, or something to that effect. With hundreds of thousands of

children now living through much more destabilizing conditions, one cannot but fear the future consequences of this recent trend of children's increased involvement in armed conflict.

While the most disturbing cases of children serving as tools of war can be found in rebel groups in remote areas of the world, one must strive to keep the truly global nature of the problem in perspective. The majority of recent scholarly research relating to children and armed conflict has, quite rightly, been directed toward eliminating the use of child soldiers by rebel groups in developing nations, but "it must be remembered that there are still many state-run armies around the world that include children in their ranks."²⁶ As Roger Rosenblatt notes, this is still a fundamental problem in the international community, for "[a] kid fighting with a bunch of rebels is far more apt to know why he is doing it than a recruit of a national guard."²⁷ Even in North America, attitudes and practices have a long way to go if the problem of child soldiers is ever to be addressed in any meaningful way, as children who are only sixteen years of age are still allowed to participate in military training on a limited scale. In general, however, every example of the child soldier phenomenon is entirely unique, and global responses must be versatile enough to handle the vast disparities evident in individual circumstances.

THE INTERNATIONAL RESPONSE TO THE CHILD SOLDIER PROBLEM

For the most part, the international community has thus far reacted to the problem of child soldiers in a legalistic manner. The primary international agreements that seek to address the problem of child soldiers are the 1989 Convention on the Rights of the Child (CRC),²⁸ and its addendum of eleven years later, the Optional Protocol to the

²¹ Jo De Berry, 98.

²² Krijn Peters and Paul Richards, "Fighting with Open Eyes: Youth Combatants Talking About War in Sierra Leone," In Celia Petty and Patrick Bracken, eds., *Rethinking the Trauma of War* (New York: Save the Children, 1998), 76-111.

²³ Edward Cairns, 133.

²⁴ For a detailed and informative breakdown of some of the ways children are adversely affected by participation in armed conflict, see Robert Beasley, "Hidden Casualties of Conflict," in Amnesty International, *In the Firing Line: War and Children's Rights* (London: Amnesty International, 1997), 32.

²⁵ Claire Breen, "The Role of NGOs in the Formulation of and Compliance with the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict," *Human Rights Quarterly* 25 (2003), 470.

²⁶ Edward Cairns, 136.

²⁷ Roger Rosenblatt, *Children of War* (Garden City, New York: Anchor Press / Doubleday, 1983), 101.

²⁸ The complete text of the Convention is available online at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

CRC.²⁹ Under Article 38 of the CRC, nearly any use of children in warfare is prohibited, and the legal age for military recruitment is set at fifteen years. In the Optional Protocol, which was implemented largely in response to pressure from children's rights advocates and NGOs,³⁰ the minimum recruiting age was increased to eighteen, in accordance with the CRC's definition of a child as anyone under age eighteen. Although there have been certain areas of contention, the Optional Protocol has been ratified by "every functioning government but the United States."³¹ As described by Amnesty International,

The most widely supported of all international treaties, the Convention [on the Rights of the Child] offers a message of hope for future protection of children's rights. But this hope will only be translated into a reality for the millions of children caught up in the world's wars if it is accompanied by a change in public, political and military attitudes.³²

Clearly, however, this CRC (and even the Optional Protocol) is not enough in itself; it must be coupled with a worldwide effort to effect a shift in global norms in order to truly be effective.

Unfortunately, the problem of child soldiers is particularly evident in intra-state conflict, in areas of the world that have seen dramatic destabilization and the erosion of traditional social and political structures. That is, many of the groups that recruit and utilize children as tools of war are non-state actors, often rebels, acting against the very state governments that have signed on to international agreements. Furthermore, many argue that such agreements do not have sufficient detection or enforcement mechanisms, and as such do not adequately promote compliance (hence the terms "conven-

tion" and "optional"). Lisa Hughes, in her 2000 article "Can International Law Protect Child Soldiers?," highlights the striking paradox of the child soldier problem: "In recent decades, international legal protection for children has reached new heights and the opportunities and reasons for their exploitation have increased as well."³³ As she makes clear, "[l]aws presume order and some sort of structure in society,"³⁴ but order can be seen as the absolute antithesis of the context in which children normally become involved in armed conflict (e.g. civil war).

NEOLIBERAL INSTITUTIONALIST APPROACHES

One of the dominant streams of international relations theory in the past century has been Liberalism, in any of a number of different variants. Perhaps the most widely accepted of those is neoliberal institutionalism, which was initially brought forth by Robert Keohane.³⁵ According to a traditional realist perspective, the anarchic nature of the world system of states causes individual states to act out of complete self interest at all times, resulting in a dominant focus on survival; that is, states will not act in any manner that would put them at risk of being subsumed by other states at any future time. Accordingly, realists accept international cooperation as extraordinarily difficult to achieve, because states will avoid cooperation if any other states would benefit more, in relative terms, from such cooperation.

Neoliberal institutionalists, while accepting the realist assumptions about anarchy and self-interest,³⁶ contend that cooperation is possible under certain circumstances. Unlike realists, neoliberal institutionalists believe that states will cooperate if they are able to achieve absolute gains in their position through cooperation. Particu-

²⁹ The Optional Protocol can be viewed online in its entirety at <http://www.unhcr.ch/html/menu2/6/crc/treaties/opac.htm>.

³⁰ Claire Breen.

³¹ Lisa Hughes, "Can International Law Protect Child Soldiers?" *Peace Review* 12 (2000), 401. The only other country not to sign is Somalia.

³² Amnesty International, Introduction, *In the Firing Line: War and Children's Rights* (London: Amnesty International, 1997), 1.

³³ Lisa Hughes, 405.

³⁴ Ibid, 404.

³⁵ The theory of neoliberal institutionalism was introduced by Keohane in his work *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, New Jersey: Princeton UP, 1984).

³⁶ Joseph M. Grieco, "Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism," *International Organization* 42.3 (1988), 492.

larly, neoliberal institutionalists argue that international institutions can mitigate the effects of anarchy, thereby making it possible for states to cooperate for mutual advantage.³⁷ Robert Keohane argues that "cooperation can under some conditions develop on the basis of complimentary interests, and that institutions, broadly defined, affect the patterns of cooperation that emerge."³⁸

As previously mentioned, realists believe that anarchy causes states to be primarily concerned with survival; for neoliberal institutionalists, on the other hand, the anarchic structure of world politics results in a great deal of uncertainty, and as such, cheating is the state's primary concern.³⁹ That is, states are preoccupied with the prospect of other states failing to follow up on promises made in good faith. International institutions, by reducing the amount of uncertainty in the system, cause states to become more willing to cooperate in order to advance their interests. Finally, neoliberal institutionalists believe that states are the most important actors in the international system, as realists do, but they also believe that other actors can play a role.⁴⁰

Although practical responses to international problems are almost never defined in theoretical terms, the initiatives that have been undertaken with respect to the child soldier problem certainly fit the characteristics of a neoliberal institutionalist response. Neoliberal institutionalists would contend that international institutions, such as the United Nations (out of which came the CRC), and international law, play an important role in enabling states to cooperate. Steven Hick, for instance, exemplifies the aspirations many neoliberal institutionalists would have with regards to the child soldier problem. As he declares, "[a]n international policy shift is required to meet the

challenges of growing and protracted armed conflicts [emphasis added]."⁴¹

Quite clearly, since 1989, there has been a major policy shift in the international arena regarding child soldiers, and the action so far has been largely neoliberal institutionalist in character. This does not mean, however, that neoliberal institutionalists would not push for more action; rather, they would certainly agree that more action is needed. One area in which neoliberal institutionalists would call for greater action is with the newly-developed International Criminal Court (ICC). Without effective enforcement and detection mechanisms, the ICC is lacking in certain regards, but according to neoliberal institutionalism, the ICC can, as an international institution, facilitate international cooperation. As Steven Hick notes,

In the former Yugoslavia, the International Tribunal attempted to prosecute people on specific charges of rape and sexual assault. Despite estimates of up to 20,000 victims, the tribunals were able to indict only eight people. Even with this dismal result, the judgments represent a historic precedent in prosecuting sexual violence within armed conflicts.⁴²

Accordingly, with an air of optimism, Hick states that "[t]he International Criminal Court also has the potential to be an innovative and effectual tool to protect the rights of children."⁴³

Likewise, Erroll Mendes is optimistic about arriving at legal and institutional solutions to the global problem of child soldiers. The concept of "universal jurisdiction," whereby *individuals* can be charged for war crimes⁴⁴ from within any state in the world, greatly increases the efficacy of international law, allowing it to serve as a proper deterrent of those who would use children as tools of war. The remaining

³⁷ Alice Ba and Matthew J. Hoffman, "Making and Remaking the World for IR 101: A Resource for Teaching Social Constructivism in Introductory Classes," *International Studies Perspectives* 4 (2003): 24.

³⁸ Robert O. Keohane, 9.

³⁹ Joseph M. Grieco, 487.

⁴⁰ *Ibid.*, 492.

⁴¹ Steven Hick, 107.

⁴² *Ibid.*, 116.

⁴³ *Ibid.*, 119.

⁴⁴ Under the Rome Statute of the International Criminal Court, conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts is considered to be a war crime.

roadblock, Mendes concedes, is the *detection* and *monitoring* of potential cases in which children are serving on the frontlines of conflict, which is most often in areas of the world that are most difficult to monitor.⁴⁵

As far as the future goes, neoliberal institutionalists would first and foremost call for the strengthening of existing international agreements pertaining to the use of children as tools of war. Specifically, seeing as the United States has not yet signed on to the Convention on the Rights of the Child—which has done major damage to the enforceability of non-compliance—neoliberal institutionalists would likely call for increased pressure on the United States to catch up with the rest of the world.

Additionally, neoliberal institutionalists would probably be aware of the drawbacks of the Optional Protocol, and seek for similar corrective action on that front. The Optional Protocol to the Convention on the Rights of the Child falls shy of that for which its advocates initially argued.⁴⁶ Instead of completely raising the minimum age for military service to eighteen, Article 2 of the Optional Protocol simply prohibits *compulsory* military service; as such, Canada and other countries are still able to recruit individuals below the age of eighteen on a *voluntary* basis, provided that such volunteers do not play a direct role in combat. Clearly, even the progress that has been made so far would not be deemed adequate by most neoliberal institutionalists, so further action through international institutions would be required to facilitate interstate cooperation on the issue of child soldiers.

There are four major difficulties with a neoliberal institutionalist approach to the issue of children and armed conflict. First of all, as proponents of neoliberal institutionalism concede, international institutions are still, for the most part, ineffectual. In world politics, "there is no common government to enforce rules, and by the standards of domestic society, international in-

stitutions are weak."⁴⁷ As of yet, international law and institutions have clearly not exerted decisive power in the case of the child soldier problem, either as a deterrent or as a means for justice after the fact.

Second, neoliberal institutionalism does not consider all aspects of the child soldier problem (many of which have been outlined above), and assumes that the problem can, for the most part, be dealt with through large-scale international "solutions." As Alice Ba and Matthew Hoffman point out, "neoliberal approaches are limited in that they...do not capture all that is taking place."⁴⁸ Specifically, in the case of child soldiers, neoliberal institutionalist "solutions" fail to take into account the role that small arms proliferation has played in exacerbating the child soldier problem, or the fact that sometimes children *choose* to participate in armed conflict. Instead, the neoliberal approach often involves viewing children as passive victims that must be saved through legal protections.

Third, in most cases in which children are used as tools of war, states are not the most important actors in the equation. One cannot forget that in nearly all instances where children are pulled into war there is one commonality. At some level, the political community surrounding these children has broken down.... In other words, the pretext upon which international law is based, the nation-state, may have crumbled.⁴⁹

Whereas most neoliberal institutionalist responses to the child soldier problem, such as the CRC, have focused on states agreeing not to do certain things, in actuality, non-state actors must be the focus of any viable attempt to deal with the child soldier problem.

Fourth, neoliberal institutionalism is limited in that it is not fully able to explain, and prescribe action which would cause, *change* in the international system, especially with regards to state identities and inter-

⁴⁵ Erroll Mendes, "Global Governance, Economy and Law: Waiting for Justice," Dr. Abdul Lodhi Memorial Lecture in Human Rights, St. Thomas University, Brian Mulroney Hall, Fredericton, 18 Mar. 2004.

⁴⁶ Claire Breen, 453-481.

⁴⁷ Robert Axelrod and Robert O. Keohane, "Achieving Cooperation Under Anarchy: Strategies and Institutions," *World Politics* 38 (1985), 226.

⁴⁸ Alice Ba and Matthew J. Hoffman, 24.

⁴⁹ Lisa Hughes, 404.

ests.⁵⁰ A comprehensive solution to the problem of children serving as tools of war necessitates changes in interests and identities, for states, non-state actors, and individuals. Only if such actors begin to see the use of child soldiers as contrary to their interests can one expect children to stop being employed as tools of war. Neoliberal institutionalism relies on a static model of international relations that does not account for the complex realities of the issue of children and armed conflict.

Neoliberal institutionalist approaches to the child soldier problem, like those outlined above, have certainly been steps in the direction of limiting the use of children as tools of war. As Lisa Hughes notes, "although they may be imperfect, legal protections [now] do exist, in increasing number, to protect children who might be drawn into military service."⁵¹

SOCIAL CONSTRUCTIVISM AND CHILD SOLDIERS: A MULTI-PRONGED ATTACK?

In recent years, social constructivism has become the main theoretical challenger to the mainstream theories of international relations, especially neorealism and neoliberalism.⁵² Social constructivism focuses on the importance of norms and ideas in international relations, with the main tenet of social constructivist thought being "the interdependent relationship between actors and their social context, and the power of ideas"⁵³ more generally. From a social constructivist perspective, the nature of actors (specifically states) cannot be described without reference to their contextual basis. For example, constructivists accept the realist and liberal notion that anarchy exists in the international system, but they do not believe that the mere presence of anarchy leads to the logical conclusions of suspicion and competition as determinants of state

behaviour, as proposed by neorealists and neoliberals.⁵⁴

Like liberals, social constructivists believe that "there exist wide ranges of actors who are important players in world politics,"⁵⁵ and in fact, the social constructivist approach can and often does subsume neorealist or neoliberal responses to particular problems in international relations.⁵⁶ Constructivists may, for example, concede that, in many cases, states do act in a manner that could be explained straightforwardly by realist assumptions, but they do not believe that means that states are *naturally* inclined to act in such a fashion. Rather, if states act in a realist manner, they do so because they exist in a social context that fosters a realist approach, and by acting according to realist assumptions, states further reinforce their identities as realist actors, while concurrently shaping their social context to continue to be conducive to realist behavior.

Because of their fixed assumptions about state behavior, neorealism and neoliberalism do not effectively explain change in the international system. As Andreas Antoniadis notes, "if one excludes the approach that the 'universe' of world politics is divinely given and once and for all fixed, constructivism, as far as we know, is the only remaining explanation of the structure and function of this 'universe.'"⁵⁷ Constructivism, as Edward Newman observes, "embraces a vision of change, and challenges the solely materialistic theories of IR"⁵⁸ by focusing on the role of ideas, identities, and norms.⁵⁹

⁵⁴ Alexander Wendt, "Anarchy is What States Make of It: The Social Construction of Power Politics," *International Organization* 46.2 (1992), 391-425.

⁵⁵ Alice Ba and Matthew J. Hoffman, 20.

⁵⁶ Jennifer Sterling-Folker, "Competing Paradigms or Birds of a Feather? Constructivism and Neoliberal Institutionalism Compared," *International Studies Quarterly* 44 (2000), 98.

⁵⁷ Andreas Antoniadis, "Epistemic Communities, Epistemes, and the Construction of (World) Politics," *Global Society* 17.1 (2003), 21.

⁵⁸ Edward Newman, "Human Security and Constructivism," *International Studies Perspectives* 2 (2001), 248.

⁵⁹ Alice Ba and Matthew J. Hoffman, 15.

⁵⁰ Alice Ba and Matthew J. Hoffman, 24.

⁵¹ Claire Hughes, 401.

⁵² Alice Ba and Matthew J. Hoffman, 15.

⁵³ *Ibid.*, 16.

Social constructivism has considerable intuitive appeal, but it can often be difficult to apply directly to problems in international relations, especially in terms of prescribing courses of action to deal with such problems. With respect to the problem of children and armed conflict, however, one can reasonably assume that social constructivists would contend that a global normative shift would be necessary to ensure compliance with any rules pertaining to the use of child soldiers. Norms, broadly defined, are ideas that express "shared (social) understandings of standards for behavior."⁶⁰ Without a doubt, "norms matter. They do not necessarily determine outcomes but they do help define and limit a range of acceptable policy choices and reformulate understandings of interest."⁶¹ Ultimately, a global shift in norms is necessary for achieving any real solution to the child soldier problem. In order to achieve such a shift, a variety of actors would have to interact in a manner that would change the collective international understanding of children serving as tools of war, so as to alter the identities and interests of the actors that might utilize child soldiers. At the same time, the very children who potentially might become child soldiers must not endure social conditions that would lead them to believe that picking up an assault rifle would be in their best interests.

Perhaps the most tangible answer to the child soldier problem that can be offered by a social constructivist approach is the strong involvement of epistemic communities pertaining to the issue. Peter Haas broadly defines the term 'epistemic community' as "a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area."⁶² Epistemic communities can consist of scholars, field

workers, and a number of other individuals with a similar worldview and understanding relating to a particular area of concern.

Aside from states, institutions, and other actors, *ideas* play an important role in realm of (international) politics, and in the case of child soldiers, the international system is definitely in need of more ideas. As noted above, the problem of children serving in armed conflict has been greatly exacerbated in recent decades. The international community has made concerted efforts to respond to the problem, but clearly not enough has been done. Because "[d]ecision makers are most likely to turn to epistemic communities under conditions of uncertainty,"⁶³ now would appear to be the key time for epistemic communities to begin seriously challenging established norms about the use of children in warfare.

In general, epistemic communities utilize "a number of methods and practices...to achieve [their international] targets: the organization of conferences, seminars, press conferences, public discussions, lectures, and so on."⁶⁴ For global norms about the use of children in warfare to change, similar methods must be employed, but in tandem with a number of other methods. Because social constructivism realizes that a vast number of actors play an important role in international relations, one can only assume that a social constructivist approach would involve as many of these actors as possible, including those targeted by neoliberal institutionalists. As such, a social constructivist perspective on the child soldier problem would advocate for nearly all of the same legal-institutional responses favored by neoliberal institutionalists, but *along* with initiatives for the dissemination of knowledge on a wide scale.

Probably the most troubling aspect of a social constructivist approach to the child soldier problem is the nature of the theory itself. Social constructivism is highly indeterminate, so *any* prescription for action from a constructivist perspective cannot be completely trusted as a practical course of

⁶⁰ A. Klotz, "Norms Reconstituting Interests: Global Racial Equality and U.S. Sanctions Against South Africa," *International Organization* 29 (1995): 451.

⁶¹ Alice Ba and Matthew J. Hoffman, 26.

⁶² Peter Haas, "Introduction: Epistemic Communities and International Policy Coordination," *International Organization* 46.1 (1992), 3.

⁶³ Ibid, 21.

⁶⁴ Andreas Antoniadis, 33.

action. For example, "the concept of influence in epistemic approaches cannot be reduced to a simple cause-and-effect relationship,"⁶⁵ and the same can be said for social constructivism more broadly. Jennifer Sterling-Folker is even more wary of a constructivist approach, arguing that social constructivism cannot be seen as a new field of IR theoretical inquiry because it fails to offer a paradigmatic alternative to liberal IR theory and neoliberal institutionalism in particular. This failure can be traced largely to theoretical misapplication. When the goal is to explain social change, constructivists have generally not followed through on the historical indeterminacy implied by the approach itself.⁶⁶

This problem of theoretical misapplication is even more pronounced when attempting to use social constructivism in a prescriptive manner.

Overall, constructivism allows for the broad-based approach that is necessary to fully deal with the problem of child soldiers on a global scale. Any possible solutions must be able to account for the complexity of the issue itself, and social constructivism at least offers the possibility of doing so.

WHAT HAPPENS NEXT? A THEORETICAL COMPARISON AND ANALYSIS

To this point, as previously mentioned, the international community has responded to the problem of children serving as tools of war in a primarily legalistic and institutional fashion. The UN Convention on the Rights of the Child and the Optional Protocol to the CRC are both legal instruments that, among other things, seek to prevent children from being recruited as soldiers in armed conflict. Though their ratification by virtually all of the world's countries represents a significant degree of global acceptance of the norms which the instruments embody, they have not been effective thus far. One might argue that "the primarily legalistic approach that dominates the international debate about

child soldiers is based on a limited understanding of the issues at hand,"⁶⁷ or, on the contrary, that such an approach is without question a step in the right direction. Regardless, one cannot deny that to this point "[t]he international community has not been successful in preventing the targeting, abduction, and suffering of war-affected children."⁶⁸ As Ilene Cohn and Guy Goodwin-Gill argue, all areas of international law pertaining to child soldiers would benefit from upgrading.⁶⁹ As it stands now, "the [perceived] non-application of international humanitarian law means that it is harder to hold the armed opposition groups to any rules: if the government does not accept that humanitarian law applies why should they?"⁷⁰

As a result of the clear shortcomings of the approach the international community has taken so far, one cannot deny that much more is necessary than the mere adoption of international agreements by states. Obviously, a more broad-based approach is essential to address the inherent complexities of the child soldier problem, and, despite its shortcomings, social constructivism seems to offer the tools necessary to bring such an approach to the issue. Specifically, at this juncture, epistemic communities may be able to offer the ideas that are necessary for the international community to move forward, for "when traditional policy patterns fail to function [as has been the case with respect to child soldiers], the demand from decision makers for 'specialized' information, advice and guidance becomes vital and urgent."⁷¹

Before one reaches any concrete conclusions about either neoliberal institutionalism or social constructivism, one must realize that *both* theoretical approaches have one key drawback: they fail to completely

⁶⁷ Ananda S. Millard, 187.

⁶⁸ Carmen Sorger and Eric Hoskins, "Protecting the Most Vulnerable: War-Affected Children," in Rob McRae and Don Hubert, eds., *Human Security and the New Diplomacy: Protecting People, Promoting Peace* (Montreal and Kingston: McGill-Queen's UP, 2001), 144.

⁶⁹ Ilene Cohn and Guy Goodwin-Gill, 177.

⁷⁰ Rachel Brett and Margaret McCallin, 25.

⁷¹ Andreas Antoniadis, 32.

⁶⁵ Ibid, 38.

⁶⁶ Jennifer Sterling-Folker, 98.

take into account the importance of specific responses for specific contexts; perhaps a truly "global" response to the problem of child soldiers is simply a pipe dream. As Carmen Harger and Eric Hoskins note, "local solutions to local problems will continue to be a critical part of preventing the targeting of children trapped in the midst of conflict."⁷²

Perhaps both neoliberal institutionalists and social constructivists have allowed their judgment to be clouded by "liberal optimism," but regardless, "culturally appropriate responses must be developed,"⁷³ directed not only toward those who would brutally kidnap and force children into combat, but also at the children who *voluntarily* serve on the frontlines of conflict. According to Edward Cairns "researchers tend to assume a universal decontextualized model of child development... That is, researchers tend to forget that childhood, adolescence and adulthood are socially defined statuses which include social expectations that differ across cultures."⁷⁴

Some have argued that the CRC, "through its acceptance by diverse cultures around the world, makes a compelling case for the universality of these standards."⁷⁵ Clearly, however, cultural specificity has been, and will continue to be, an obstacle for those seeking global solutions to the child soldier problem; only by being ever mindful of how international responses engage with local contexts will instruments like the CRC move "from its position of universal idealism to practical implementation."⁷⁶

In sum, though neoliberal institutionalism offers fairly tangible, practical solutions to deal with the problem of children serving as tools of war, it fails to match the breadth of social constructivism, which *does* allow for a broad-based, multi-pronged "attack" on the child soldier dilemma. A neoliberal institutionalist approach relies heavily on international law and institutions, and it assumes that states are the most important

actors. In the case of child soldiers, "it is often the state that is to blame."⁷⁷ Furthermore, "[g]overnments involved in civil wars are quite often unable to ensure that their opponents uphold legal standards."⁷⁸ In order to effectively deal with the problem of child soldiers, global dissemination of knowledge, with the ultimate goal of effecting a normative shift, is of the utmost importance.⁷⁹

In order to arrive at the best possible global solution to the child soldier problem, one must look beyond simple agreements between states to prevent the recruitment of child soldiers. As Steven Hick suggests, "[t]ighter controls need to be placed on the international flow of weapons, and a halt must be put to the illicit trafficking in diamonds, narcotics, and other products that fuel so many conflicts."⁸⁰ As well, more researchers must focus on the reintegration and rehabilitation of war-affected children into society after their wartime activities end, because until the problem of child soldiers is totally eliminated, such research will be absolutely necessary.⁸¹ Basically, "[w]e must find alternative ways to examine and respond to the problem, ways which will supplement the achievements made by international law."⁸²

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⁷² Carmen Sorger and Eric Hoskins, 145.

⁷³ Ilene Cohn and Guy Goodwin-Gill, 176.

⁷⁴ Edward Cairns, 166.

⁷⁵ Dan Seymour, 89.

⁷⁶ Ilene Cohn and Guy Goodwin-Gill, 102.

⁷⁷ Jo De Berry, 98.

⁷⁸ Amanda S. Millard, 190.

⁷⁹ Ilene Cohn and Guy Goodwin-Gill, 180-181.

⁸⁰ Steven Hick, 119.

⁸¹ Amanda S. Millard, 198.

⁸² Ibid, 192.

- chy: Strategies and Institutions." *World Politics* 38 (1985): 226-254.
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Sweatshops: A Dirty History of Discrimination and Ignorance

Amanda Wilson

Abstract

This essay examines the use of sweated labour as part of modern capitalist society, while focusing on the apparel industry. It undertakes a historical overview of sweatshops and an exploration of the causes of their existence. It is argued that modern apparel sweatshops in the Caribbean and Latin America do not encourage development, but rather only serve the needs of Western economies.

Résumé

Cet essai examine l'utilisation du travail sué en tant qu'élément de la société moderne capitaliste, tout en se concentrant sur l'industrie des textiles. Il entreprend une vue d'ensemble historique des bagnes et d'une exploration des causes de leur existence. Les bagnes modernes d'habillement au Caraïbes et en Amérique Latine n'encouragent pas le développement économique, mais servent plutôt seulement les besoins des économies les plus riches.

The word "sweatshop" is a term that evokes a variety of emotions from people without a great deal of understanding of what the term describes or the reasons for its existence. Sweatshops have plagued or, depending on one's viewpoint, built up economies and industry around the world. Throughout recent history there have been isolated events in which the issue of sweatshops and labour standards has taken centre stage in the media and government. A revelation of a particularly nasty sweatshop in some far off country or reports of the apparel industry's rhetoric concerning the elimination of such practices often incite such discussion. Unfortunately, there seems to be a lack of concrete comprehension and understanding of the subject.

The term "sweating" originated in the 15th century as a metaphor describing severe exertion of labour.¹ The term began to be associated with the practice of garment workers, described as sweated labour in the 1830s. The sweatshop was first defined in the 1890s. In the 19th century sweating was used to describe the system of subcontracting by which competing manufacturers farmed work out to contractors, who in turn farmed out their work to competing contrac-

tors and sub-contractors. In this system, the contractors and subcontractors would "sweat" as much labour as they possibly could from their workers. This practice then led to degradation of conditions and wages in factories.² Social activists Charles Booth and Sidney and Beatrice Webb described sweating as a variety of labour environments all containing these two essential elements: hard or excessive work and contracting.³ More recently, in 1994, the United States General Accounting Office (GAO) defined a sweatshop as "a workplace that violates more than one federal or state labour law governing minimum wage and overtime, child labour, industrial homework, occupational safety and health, workers compensation, or industry regulations."⁴ Regardless of society's recognition or understanding of sweatshops, they have existed throughout the 19th and 20th centuries, and

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¹ Nancy L. Green, "Fashion, Flexible Specialization, and the Sweatshop." *Sweatshop USA* (2003), 48.

² Ross, Andrew. *Low Pay High Profile* (2004) 23.

³ Green (2003) 48.

⁴ Ross (2004) 5

are barrelling ahead into the twenty-first. Sweatshops are generally associated with the apparel industry, but it is important to realize that sweatshops exist in a number of industries. What distinguishes garment sweatshops is their endurance over time. Moreover, garment sweatshops are often where the most gruesome labour violations occur. This essay will focus on sweatshops found in the apparel industry.

HISTORY

The modern concept of sweatshops first manifested in the United States and Western Europe (mostly England and France) in the 19th century. Following the industrial revolution people began to flock to cities in search of employment, creating an excess of labour. This excess labour mainly consisted of women, children and immigrants.⁵ In the early 20th century, sweatshops were often thought of as foreign workplaces.⁶ Sweatshop investigators blamed immigrant workers for the creation of such low wages and poor conditions, arguing that the shops were dirty because they were occupied by immigrants.⁷ There was an effort made by politicians and factory inspectors in the United States to distinguish these "foreign sweatshops" from what they referred to as the "American Factory," where all the ideas and values of the United States were upheld.⁸ The American Factory was the workplace of the middle-class white American; it was implied that these were the real Americans.

Jews represented the largest proportion of immigrants occupying sweatshops in the United States. It has been argued that racism, specifically anti-Semitism, played a primary role in defining the sweatshop and was a cause of society's general apathy towards the issue.⁹ There is substantial evidence that inspectors and observers blamed the "racial characteristics" of the Jews for

the problem of sweatshops.¹⁰ Immigrants were labelled as being workers who readily accepted and even offered lower prices for their work.¹¹ The Industrial Commission reports explain that Jews were considered unfit for factory work, arguing that their individualistic nature would not be compatible with factory discipline.¹² The "Annual Report of the Bureau for Labour Statistics for the Year Ended September 30, 1902" claimed that the Jewish immigrants were "the most helpless and inefficient immigrants that have ever entered this country." It continued by saying that the body type of Jews "naturally drew them to light occupations such as sewing."¹³

John Commons, an influential economist of the time, went a step further and argued that sweatshops were a Jewish invention, claiming that Jews were both physically and mentally suited for the sweatshop.¹⁴ Commons suggested that the industrial revolution was plagued by what he called the "substitution of the races," leading to "a downward spiral in racial standards". In this substitution of races, the garment industry was first made up of English and Scottish tailors, who were replaced by less-advanced Irish and German workers, who then had their jobs taken by the inferior Jews, hailing predominantly from Russia. According to Commons, each group of workers came from a country that was inferior to the preceding one, resulting in a demolition of labour standards and conditions.¹⁵ In the 1890s, inspections and the laws governing workplace conditions were originally intended to prevent sweatshop workers from contaminating the rest of society. There was the fear of disease, but also the concern that this racial degradation supposedly caused by immigrants would somehow infiltrate into the rest of the popu-

⁵ Daniel E. Bender, "A Foreign Method of Working." *Sweatshop USA* (2003), 22.; Nancy L. Green, 411

⁶ Daniel E. Bender, 22.

⁷ Nancy L. Green, 423.

⁸ Daniel E. Bender, 22.

⁹ Daniel E. Bender, 23; Nancy L. Green, 423.

¹⁰ Daniel E. Bender, 23.

¹¹ Nancy L. Green, 423.

¹² Daniel E. Bender, 23.

¹³ Ibid, 23.

¹⁴ Nancy L. Green, 423.

¹⁵ Daniel E. Bender, 23

lation.¹⁶ The Industrial Commission on Immigration admitted, "the legislation...has been undertaken not on behalf of the workers, but on behalf of consumers. It is the protection of the public against contagious and infectious disease."¹⁷

Immigrant workers and labour activists, of course, contested this argument, saying that it was the competition and exploitation inherent in the apparel industry that caused sweatshops, not racial characteristics. Sweatshops were a problem they faced, not one they caused. They insisted that the horrible conditions of their workplace caused their weak bodies and their susceptibility to disease, not the other way around.¹⁸ They agreed that sweatshops were linked to immigration but disagreed that sweatshops preyed on immigrants. Moris Fienstone, an immigrant worker, wrote, "when these fugitives came to America seeking the promised land, they were taken off the boats by contractors...and set to work in subhuman surroundings, for a miserable wage, and under conditions which made protest utterly impossible."¹⁹ Many social scientists have pointed to political disability as a cause of this disadvantaged labour force. Immigrants are often disenfranchised; having entered the country illegally, many of them are willing to take any job as a means of survival.²⁰

In the 1910s, public attention was first drawn to the subject of sweatshops following a series of workers strikes and workplace tragedies, most notably the Triangle Shirtwaist Company Fires. On March 25, 1911, one of the worst fires in United States history broke out at factories of the Triangle Shirtwaist Company in Lower Manhattan's East Side. In all, 146 women and children workers were killed.²¹ Public outcry following this tragedy led to a slew

of legislation aimed at preventing future incidents. Supposedly, it would also clean up labour conditions in sweatshops. Social concern and activism by labour organizations continued, leading to the creation of the Fair Labour Standards Act (FLSA) in 1935. This act set out a guaranteed minimum wage and overtime requirements, prohibited child labour, and required employees to keep adequate time and payroll records.²² To this day it is still considered the most significant piece of anti-sweatshop legislation in the United States.²³ Following the signing of this act by President Roosevelt on June 25th, many claimed the era of sweatshops over. In 1938, Life magazine declared the sweatshop a thing of the past. This declaration was followed by an article backing the claim, complete with a front-page cover depicting "wealthy American garment workers."²⁴ While this might have been the perception in the minds of many Americans, sweatshops continued to exist in full-force. The FLSA did guarantee certain labour standards, but it neglected many workers, mostly low-paid women in non-unionized sectors of the economy.²⁵ Its effectiveness depended solely on the government's ability to enforce it. The sweatshops were also kept alive in part by the increasing number of immigrants from Puerto Rico and Africa in the 1950s, and later from China, Korea and Southeast Asia. By the 1960s and 70s, this coincided with the tendency of the American government to relax many of its restrictive trade policies.²⁶ The 1970s saw a growing trend of garments increasingly being manufactured overseas.²⁷

Even the Cold War played a role in sustaining the sweatshop. Cold War analysts argued that the manufacturing of garments in the Caribbean would strengthen ties with the region and prevent its collapse

¹⁶ Daniel E. Bender 26; Daniel Weil, "Everything Old is New Again. "Regulating Labour Standards in the US Apparel Industry." (2000), 3.

¹⁷ Daniel E. Bender, 26

¹⁸ Ibid, 28.

¹⁹ Ibid, 28.

²⁰ Nancy L. Green, 424.

²¹ Jean-Claude Khoury. "Re-emergence of Sweatshops" (1998), 59.

²² Jean-Claude Khoury, 59.; Daniel Weil, 3.

²³ Daniel E. Bender and Richard A. Greenwald, "Introduction" *Sweatshop USA* (2003), 10.

²⁴ Ibid 10.

²⁵ Eileen Boris, "Consumers of the World Unite!" *Sweatshops USA* (2003), 210.

²⁶ Daniel E. Bender and Richard A. Greenwald, 10.

²⁷ Richard A. Greenwald, "Labour, Liberals, and Sweatshops." *Sweatshop USA* (2003), 86.

into communist arms. Following the Cold War, both Democratic and Republican governments loosened restrictions on garment trade and opened the door to the free-market of sweatshops.²⁸

With the return of neo-liberalism as the dominant economic paradigm in the 1980s, the sweatshop became an increasingly global phenomenon.²⁹ The majority of sweatshops moved from Los Angeles and New York to the Caribbean, Latin America, India and Asia. The labour legislation in these areas was not comparable to any legislation that had been developed during the century in Western nations.³⁰ The "American Sweatshop" that had supposedly been eradicated in the 1930s was being exported around the globe.³¹ In these sweatshops labour violations such as 24-hour workdays, sexual harassment, forced birth control, suppression of labour organizations, meagre wages or even forced labour and debt bondage were commonplace.³² Free trade agreements are often the catalyst to the development of sweatshops in their search of cheap labour.³³ Agreements such as NAFTA are wiping out sweatshops in Los Angeles and the surrounding areas, and transplanting them to Mexico and other sources of cheaper labour.³⁴

Not surprisingly, until the mid-1990s, the public was largely unaware of the continued existence of sweatshops.³⁵ The label "Made in Canada" or "Made in the USA" still carried moral weight and people seemed apathetic toward the labour conditions in countries that they knew only from clothing labels.³⁶ In 1982, New York Senator Franz W. Leichter conducted an investigation into the New York garment industry. In his report, he described contemporary contractor shops as sweatshops and esti-

mated there were approximately 3,000 sweatshops in New York City, employing 50,000 people, an increase from the estimated 200 sweatshops a decade earlier. Unfortunately, the government and the public largely ignored this report. In 1995 there was a raid on several sweatshops in El Monte, California which generated several hundred newspaper and magazine articles causing moderate public concern.³⁷ However, this was only the tip of the iceberg. On April 29, 1996, activist Charles Kernaghan testified before Congress, detailing numerous human rights violations in factories in New York and Honduras. These factories were producing clothing for, among others, the Kathie Lee Gifford line, sold exclusively at Wal-mart. This story was seized by the media throughout North America and Europe and thrust the sweatshop back into the public consciousness.³⁸ Stories began popping up everywhere about sweatshops producing clothing for companies such as Nike, the Gap, and Disney. There was a newfound concern about the existence and consequences of sweatshops and labour exploitation.³⁹ This increased attention drove the United States Department of Labor to adopt a stronger opposition to both domestic and international sweatshops.⁴⁰ It is debatable, however, whether their rhetoric will be supported by action.

Now, China is the leading exporter of cheap labour, surpassing the infamous maquiladoras of Mexico and Latin America. It claims half of all direct foreign investment.⁴¹ It is widely argued that the proposed Free Trade of the Americas will only further open-up areas for the search of cheap labour, so who knows where it will move to next.⁴²

²⁸ Daniel E. Bender and Richard A. Greenwald, 10.

²⁹ Nancy L. Greenwald, (2003), 87.

³⁰ Andrew Ross, *Low Pay High Profile: The Global Push for Fair Labour*. New York: New Press, 2004.

³¹ Daniel E. Bender and Richard A. Greenwald, 11.

³² Andrew Ross, 24-25.

³³ Ibid, 8.

³⁴ Edna Bonacich and Richard P. Appelbaum. "Offshore Production." *Sweatshop USA* (2003), 149.

³⁵ Andrew Ross, 3.

³⁶ Ibid, 3.

³⁷ Daniel E. Bender and Richard A. Greenwald, 1.

³⁸ Jean-Claude Khoury, 59; Ronald J. Adams, "Retail Profitability and Sweatshops: A Global Dilemma." *Journal of Retailing and Consumer Services*. (2002), 147.

³⁹ Ronald J. Adams, 147.

⁴⁰ Ibid, 147.

⁴¹ Andrew Ross, 8.

⁴² Ibid, 8.

CAUSES OF EXISTENCE

There have been numerous explanations for the continued existence of sweatshops and sweated industries. Most fall into two categories, those who see sweatshops as a form of exploitation, having negative effects on workers and societies, and those who view sweatshops as necessary for economic growth, eventually leading to greater prosperity. A distinction must also be made between the continued existence of sweatshops in industrial nations and the exporting of sweatshops to developing nations.

One explanation looks at the subject from a state-centered point of view. The apparel industry is widely viewed as a starting point for underdeveloped countries to begin industrialization. The barriers to entry are very low: it requires minimal capital investment and machinery and it is labour-intensive without the necessity of specialized skills.⁴³ However, their ability to attract the needed capital depends on those who control the retail industries in developed countries. It is these developed countries that take home the majority of the profits, forcing contractors and supplies in developing countries to pursue an extremely tight profit margin or risk losing the investment.⁴⁴ Countries with a high minimum wage and comprehensive regulations are not going to attract the foreign investment they want, so developing countries characteristically have extremely low minimum wages and few, if any, industry regulations.⁴⁵ Developing nations are strongly encouraged by international trade organizations to decrease or eliminate regulations that might prevent firms from extracting maximum profit, creating a favourable environment for sweatshops.⁴⁶ Even in countries where labour standards exist, the chain of contracting and sub-contracting makes it nearly impossible to enforce these laws.⁴⁷ Especially when the majority of workers are low-class immigrants, governments seem to be less eager to

enforce labour rights and standards.⁴⁸ The globalization of economies and specifically of retail has facilitated this competition for cheap labour. Jack Welch, the former CEO of General Electric, one of the largest multinational manufacturing corporations, once described the perfect factory: "Ideally, you'd have every plant you own on a barge." This barge could then be moved around to whichever country happened to have the best investment climate and cheap labour.⁴⁹

Some contend that sweatshops are a product of the extreme competitiveness in the retail industry. It is argued that due to the depression of retail prices, companies are forced to pursue diminishing profits. This spurs the search for cheaper labour to cut production costs. This has a chain effect that is passed down to contractor and sub-contractor until it is eventually put on the shoulders of the workers, who see their meagre wages decrease, their forced hours of overtime increase, sexual harassment increase, et cetera. The list goes on and on. Retailers use their bargaining power to press contractors for lower costs. Contractors fear losing investments, so they rarely refuse.⁵⁰ Retailers are forced to choose between their morals and maintaining competitiveness in the market. Consumers must choose between demanding ethically made clothing and more affordable prices.⁵¹

Many economists and defenders of free-market economies argue that sweatshops are a necessary part of economic development.⁵² The theory is that sweatshops benefit people desperate for income and that without these jobs people would starve. Sweatshops are seen as the price for economic development. Countries with no capital and an unskilled work force need to accept them as a first step toward development and industrialization. It is argued that eliminating sweatshops will hurt the growing economy and slow development. La-

⁴³ Andrew Ross, 19.

⁴⁴ Ibid, 20.

⁴⁵ Susan George, "A Short History of Neo-Liberalism." *The Other Davos* (2001), 8.

⁴⁶ Daniel E. Bender and Richard A. Greenwald, 11.

⁴⁷ Andrew Ross, 23.

⁴⁸ Ibid, 24.

⁴⁹ Ibid, 16.

⁵⁰ Jean-Claude Khoury, 60.

⁵¹ "Sweating for Fashion" *The Economist* (2002) 14-16

⁵² Chris Myers, "Wrongful Beneficence: Exploitation and Third World Sweatshops." *Journal of Social Philosophy* (2003) 319. Ross (2004), 19.

bour activists and union organizers are criticized as taking a Eurocentric approach by comparing working standards in developing nations to those in the West.⁵³ Economist Ian Maitland has argued that when determining an acceptable wage level, the appropriate test is not to compare it to some predetermined concept of a living wage, but whether or not it is freely accepted by informed workers.⁵⁴ What Maitland fails to address is that many workers do not have the opportunity to be informed, nor are they in a position in which they can "freely" choose to accept a wage or not. Many in the Western world share the view that sweatshops are an unfortunate, but necessary step to development. An article in the *New York Times* on September 24, 2000, stated:

For all the misery they can engender, sweatshops at least offer a precarious escape from the poverty that is the developing world's greatest problem... The only thing a country like Cambodia has to offer is terribly cheap wages; if companies are scolded for paying those wages, they will shift their manufacturing to marginally richer areas like Malaysia or Mexico.⁵⁵

When examining the causes for sweatshops it is important to distinguish between the sweatshops that existed in the 19th and early-20th centuries in Western nations and the sweatshops of the 21st century that now permeate many developing nations in addition to the developed ones. The sweatshops of the 19th and early 20th century evolved and progressed with the development of the apparel industry. Sweatshops built up the industry to what it is today. The sweatshops in the Caribbean and Latin America are not helping to develop industry in their countries because the apparel industry of which they are a part is already developed and powerful. Sweatshops are no longer a force in developing the national economy; they only serve the needs of over-consumption and materialism. It is true that a country that is attempt-

ing to follow a Western concept of development must begin somewhere. They cannot simply jump into a specialized, technology dependent industry that requires a highly skilled labour force. However, one could also argue that there are many other things a country needs to do in order to become a developed country. The existence of labour laws and industry regulations should also be a prerequisite for entering a certain sector of the economy, yet it rarely is. Cheap labour is often the only area in which many countries can claim a comparative advantage, yet the question must be asked: for who, exactly, is this an advantage?

There is a misconception among the public and politicians regarding sweatshops. When the public is confronted with the notion of a sweatshop by a newscast describing a raid on a sweatshop in China, most often it is seen as abhorrent or, at the very least, morally troubling. However, it is viewed as an individual problem, and not the global epidemic that it is.⁵⁶ Politicians and governments are guilty of this behaviour as well. When they do choose to address the issue, the focus is the eradication of sweatshops in a specific area: their city or country. They fail to view the connection to the global system of trade, production and consumption.⁵⁷ Any discourse on sweatshops or sweated labour must be done in an international context. Sweatshops around the world are connected to each other; the sweatshop in Los Angeles is tied with the sweatshop in India, and to the maquiladoras in Mexico.⁵⁸ Each is competing with the others in a race to the bottom to provide the cheapest wages and most favourable conditions to firms.

This issue will not be resolved until electorates in Western countries are sufficiently aroused by the issue of sweatshops. Until then, political willpower will always be compromised by the neo-liberalist argument of the necessity of sweatshops for igniting development in countries. It is hard to envision a world without sweatshops. They

⁵³ Ronald J. Adams, 150.

⁵⁴ Chris Myers, 319.

⁵⁵ Nicholas D. Kristof and Sheryl WuDunn "Two Cheers for Sweatshops" *New York Times*.

⁵⁶ Ronald J. Adams, 149.

⁵⁷ Daniel E. Bender and Richard A. Greenwald, 10.

⁵⁸ Andrew Ross, 8.

are the factories of the world that sustain our economy and our way of life. While small gains can be made by pressuring individual companies and governments to improve labour practices, the problem originates at a much deeper level. Our economic system depends on these practices and a radical shift is needed to remedy the situation at its core. The elimination of sweatshops should not cause great concern for those countries that are attempting to develop. Without large transnational corporations dictating their economy policies, their domestic industries will have a chance to develop. It is we in the West who should be concerned, for it is our way of life that feeds on sweatshops, and it is our way of life that will come crashing down.

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"Heart of Darkness"?

Genocide in the Democratic Republic of the Congo

Christie Kneteman

Abstract

Recent violence in the Democratic Republic of the Congo has been controversially labeled genocide by some media and humanitarian sources. I argue that the conflict is being undertaken with genocidal intent by numerous government armies, rebel groups, and local militia, but that it is being convoluted and prolonged by alternative political and economic motives. In addition, I examine the moral imperatives associated with acknowledging genocide in a region and how these political implications have shaped international response to the conflict.

Résumé

La violence récente dans la République de la Congo a été marquée comme génocide par certaines médias et groupes humanitaires. Je présente que le conflit a été entrepris par les armées du gouvernement, les groupes rebelles et les milices locales avec intention génocidaire, mais que ce conflit est en train d'être convoluted et prolongé par d'autres motivations politiques et économiques. En outre, j'examine les impératifs moraux liés à la reconnaissance du génocide dans un conflit et comment ces implications politiques ont formé la réponse internationale au conflit.

With global attention drawn by the 1994 Rwandan genocide and the current conflict in Sudan, many media outlets and international organization are warning that genocide is occurring in the eastern Democratic Republic of the Congo (DRC). News sources such as BBC News¹, the Observer International², and the non-governmental organization Genocide Watch³ have raised the region's profile and attempted to stimulate international demands for action. Over three million civilians are estimated to have been killed by the conflict, 2.3 million continue to be displaced, and tens of thousands of brutal rapes and sexual mutilations have been reported⁴.

¹ BBC News. "UN Warned of DR Congo genocide." *BBC News*. 20 May 2001.
<http://news.bbc.co.uk/1/hi/world/africa/1340266.stm>.

² James Astill, "Congo: Genocide as militias battle to seize power," *The Observer International*. 15 June 2003.

³ Genocide Watch, "Genocide Emergency: Ituri, Eastern Congo." *Genocide Watch*. May 2003.
<http://www.genocidewatch.org/GenocideEmergencyIturi.htm>.

⁴ Global IDP Project. "IDPs in the Democratic Republic of the Congo: Causes and Background of Displacement." *Norwegian Refugee Council*. 25 October 2004.
<http://www.db.idpproject.org/Sites/IdpProjectDb/idpSur->

While the evidence of mass violence is undeniable, its diagnosis as genocide is debatable. An investigation of human rights violations in the eastern region by the United Nations mission in the DRC concluded, contrary to local civilian and military claims, that "no genocide took place there".⁵ So given the conflicting reports, does the mass violence in the DRC constitute genocide? The conflict has degenerated

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[vey.nsf/wCountriesb/Democratic+Republic+of+the+CongoP.](http://www.un.org/apps/news/storyAr.asp?NewsID=11070&Cr=democratic&Cr1=congo&Kw1=Congo&Kw2=genocide&Kw3=)

⁵ UN News Centre. "No genocide took place in eastern DR of Congo, UN mission says." *UN News Centre*. 27 November 2004.

<http://www.un.org/apps/news/storyAr.asp?NewsID=11070&Cr=democratic&Cr1=congo&Kw1=Congo&Kw2=genocide&Kw3=>

into an extremely complex, transcontinental bloodbath. It comprises of a Great Lakes rivalry between Rwanda, Uganda, and Burundi and Angola, Zimbabwe, and Namibia. Both the violent national civil wars of Rwanda, Uganda, Burundi, Angola, and the DRC itself, as well as ethnic feuding massacres are being fought on Congolese soil⁶. The quickly shifting alliances and underlying motives of the state and non-state actors encompassing traditional ethnic hatred, regional power dynamics, and economic opportunism all complicate the nature and intent of the violence.⁷

Through examination of genocide theory, historical analysis of the conflict, and recent ethnicization campaigns, I will argue that much of the mass violence in the eastern Democratic Republic of the Congo is being committed by numerous government armies, rebel groups, and local militia; all with genocidal intent. I will present the various state and non-state actors in the conflict and contend that their alternate motives for conflict, primarily economic, encourage a predatory, genocidal environment by contributing to the polarization, escalation, and legitimization of violence. Finally, I will examine the political motivations and implications for the use of the term 'genocide' and how it has shaped international response to the conflict.

GENOCIDE THEORY

The application of the term 'genocide' has become so widespread and politically loaded that its meaning is increasingly ambiguous. Ranging from anti-abortion rallies to partisan debates on the Israeli-Palestinian conflict, the term's overuse in popular news and rhetoric has contributed to international confusion and desensitization.⁸ In addition to the exploitation of 'genocide' as a conven-

ient catchphrase, the field has also been littered by the proliferation of nearly identical alternative labels. Stuart Stein, Director of the Genocide Web Documentation Centre, for example, has identified 48 distinct terminologies significantly overlapping in their attempts to accurately describe atrocities of this nature.⁹

Genocide is defined under Article II of the United Nations Genocide Convention as:

any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.¹⁰

The UN definition has provided anchorage for genocide studies and has spawned many theoretical extrapolations. Few scholars accept the Article II definition of genocide as adequate due to the definitions' limited scope, which does not include political, economic, gender, culture, or other groups, and difficulty of ascertaining the nature and presence of intent.¹¹ While the '-cide' suffix connotes the mass murder most commonly associated with genocide, it is increasingly argued that genocidal objectives may include disintegration of a particular group's language, culture, liberty, health, dignity, economic viability, and political and social institutions.¹² Adam Jones, author and editor of some of the most progressive and in-

6 Ch. Didier Gondola, *The History of Congo*, Westport, CT: Greenwood Press, 2002.

7 Paul S. Orogun, "Crisis of Government, Ethnic Schisms, Civil War, and Regional Destabilization of the Democratic Republic of the Congo," *World Affairs* 165.1 (Washington: Summer 2002): 25-41.

8 Helen Fein, "Genocide: A Sociological Perspective," *Genocide: An Anthropological Reader*. Ed. Alexander Laban Hinton. Malden, Massachusetts: Blackwell Publishers Ltd., 2002.

9 Stuart Stein, "Geno and Other Cides: A Cautionary Note on Knowledge Accumulation," *Genocide and Genocide*. Ed. Adam Jones. Nashville: Vanderbilt University Press, 2004.

10 OHCHR "Convention on the Prevention and Punishment of the Crime of Genocide." *International Law* 1946.

<http://www.ohchr.org/english/law/genocide.htm>

11 Ibid.

12 Raphaël Lemkin, "Genocide: A New Term and New Conception for Destruction of Nations," *Genocide: An Anthropological Reader*. Ed. Alexander Laban Hinton. Malden, Massachusetts: Blackwell Publishers Ltd., 2002.

fluent recent texts on genocide and gendercide, has created a more specific foundation for his own research. Jones defines genocide as "the actualization of the intent, however successfully carried out, to murder in whole or insubstantial part any national, ethnic, racial, religious, political, social, gender or economic group, as these groups are defined by the perpetrator, by whatever means".¹³

HISTORICAL CONFLICT IN THE CONGO

Initial tension in the Eastern DRC arose in the North and South Kivu provinces between self-professed "indigenous" ethnic groups and the Banyarwanda group, which comprises of Hutu and Tutsi who speak Kinyarwanda and were accused of post-colonial immigration from Rwanda.¹⁴ Under Mobutu Seso Seke's 1981 Citizenship Law, all Banyarwanda who immigrated after the 1885 establishment of colonial boundaries were classified as non-citizens. The common Banyarwanda organization Umoja was formed in protest to the Citizenship Law, but it disintegrated by 1988 due to intra-ethnic tensions and was antagonistically replaced by the Hutu organization Maghrivi and the Tutsi organization SIDER. By the mid 1990s, Hutu and Tutsi were diametrically organized in regions across the Congo, and Hutu and Tutsi associations began to cross state boundaries and function as regional networks.¹⁵

After the 1994 Rwandan genocide, one million refugees caused an explosion of Kinyarwanda-speakers in the Kivu provinces and contributed to rapidly escalating ethnic conflict. Hutu refugee camps, controlled by the Interhamwe génocidaires, rapidly converted into armed and ethnically-volatile camps to train refugees for excursions back into Rwanda or against local Congolese Tutsi, commonly distinguished

as the Banyamulenge.¹⁶ Many young Banyamulenge crossed into Rwanda to be trained in response to the Hutu threat by the Rwandan Patriotic Front (RPF), lending public credibility to the Maghrivi claim that Congolese Tutsi were culturally and politically allied to Rwanda. In increasing resemblance to pre-genocidal militarization and polarization in Rwanda, militia generically known as "Mayi Mayi" began to form in almost every municipality in Kivu.¹⁷

As personal health problems and internal and external discontent lead to the decay of Mobutu Seso Seke's regime, a May 1997 coup d'état comprised of Rwandan and Ugandan troops, along with "indigenous" Mayi Mayi militia and Banyamulenge forces, installed Laurent Kabila as President of the DRC. The violence was fed by the eagerness of Banyamulenge to settle scores with Maghrivi Hutu, killing 6000 Hutu in Goma (North Kivu) in one week. In addition, Rwandese Tutsi's hatred of génocidaires was generalized to all Hutu and to the "indigenous" Kivu population, seeing them as willing hosts to the génocidaires. As a result, there was indiscriminate slaughter of Interhamwe, unarmed Hutu refugees, Maghrivi Hutu, and local Hutu not even connected to Maghrivi.¹⁸

The Mayi Mayi began to oppose the rebellion when it appeared to be leading an imminent Rwandan occupation. The Rwandese army commander was appointed commander of the Congolese National Army, which began to actively support Congolese Tutsi demands for a separate Native Authority in South Kivu and for the Hutu head of the Rutshuru (North Kivu) Native Authority be replaced by a Tutsi. The Mayi Mayi fed public hysteria that the Banyamulenge would annex Kivu province to Rwanda.¹⁹

13 Adam Jones, "Gendercide and Genocide," *Journal of Genocide Research* 2.2 (June 2000) 186.

14 Christian P. Scherrer, *War in the Congo*. Venlo, The Netherlands: Vijgenboom, 2001.

15 Mahmood Mamdani, "Citizenship Crisis in Eastern Congo," *When Victims Become Killers*. Princeton, New Jersey: Princeton University Press, 2001.

16 Human Rights Watch, *The War within the War: Sexual Violence Against Women and Girls in Eastern Congo*. New York: Human Rights Watch, 2002.

17 Mahmood Mamdani, 2001.

18 Astri Suhrke, *The Path of a Genocide*, New Brunswick, New Jersey: Transaction Publishers, 1999.

19 Georges Nzongola-Ntalaja, *The Congo: From Leopold to Kabila, A People's History*. New York: Zed Book Ltd., 2002.

Plagued by continuing civil war and accusations of puppetry by Rwandan Tutsis, Kabila tried to consolidate his authority in a public order on 27 July 1998 to oust "foreigners," comprising of Rwandans, Ugandans, and Banyamulenge.²⁰ The outrage from these factions that had originally lifted Kabila, once a Cuban-supported guerrilla leader and gold-smuggler, to power incited a Second Rebellion against the Kinshasa government. In response, Kabila encouraged the "indigenous" population in Kivu to indiscriminately slaughter the Rwandan invading forces, all Congolese Banyamulenge involved in the rebellion, and even all Congolese Tutsi civilians.²¹ Rwanda armed additional Banyamulenge to aid the Second Rebellion, and the Kabila government responded by arming Congolese Hutu. Civil politics and opportunities for peaceful solutions were reduced to militarization and armed politics, which crystallized volatile Hutu and Tutsi regional diasporas determined to have their extremist demands met or exterminate their ethnic opposition.

SYSTEMATIC ETHNICIZATION CAMPAIGN

The conflict from the opposing sides of the DRC leadership struggle has become increasingly centered on ethnic rivalry and extermination. The Banyamulenge have traditionally been politically persecuted and marginalized in the DRC. Furthermore, Kabila is using propaganda to stir ethnic hatred against all Tutsis by labeling them as foreign invaders and calling for Congolese to arm themselves for "a total war to totally wipe the Rwandans out".²² The Kabila government's propaganda has centered on dehumanization of the Banyamulenge, such as Kabila's public announcement, "In every village the people must get armed . . . and exterminate the enemy, for not becoming the slaves of the Tutsi".²³ Kabila also encouraged state radio listeners to use "a ma-

chete, a spear, an arrow, a hoe, spades, rakes, nails, truncheons, electric irons, barbed wire to kill the Rwandan Tutsi,"²⁴ thereby resulting in a witch-hunt against all eastern Congolese and perceived followers, often determined by facial features. In addition, the foreign minister Abdoulaye Yerodia warned "loyal citizens . . . they [the Tutsi] are like insects, and even microbes must methodically and resolutely be exterminated".²⁵ This discourse echoes the Interhamwe labeling Rwandan Tutsis as *inyenzi*, cockroaches, and encouraging their extermination before and during the 1994 Rwandan genocide. In Kinshasa alone, the state-sponsored Force de l'Autodéfense Populaire (FAP) openly massacred twelve hundred Banyamulenge, with widespread reports of public cannibalism.²⁶

As recently as August 13, 2004, a massacre at Gatumba refugee center in Burundi explicitly targeted 147 of the 152 Congolese Tutsi refugees. They were hacked, bludgeoned, or burned to death; another 106 were wounded. Eleven of the fifteen Banyamulenge refugee tents, housing mostly women and children, were totally or partially burned and riddled with bullet holes, while none of the sixteen Burundian refugee tents were touched.²⁷ Commander Laurent Nkunda published a communiqué 16 August 2004 stating the attack, "confirms there is an extermination plan against the Banyamulenge"²⁸ and condemning his military withdrawal from Bukavu under international pressure a deadly mistake. While attackers are accused of being comprised from the DRC army, ex-FAR, Interhamwe, and Mayi Mayi, other sources allude that financial and strategic support may have come from external actors involved in the Great Lakes conflict with interests in destabilizing

20 Christian P. Scherrer, 2001.

21 Ibid.

22 Kevin C. Dunn, *Imagining the Congo: The International Relations of Identity*, New York: Palgrave MacMillan, 2003.

23 Ibid.

24 Ibid.

25 Christian P. Scherrer, 2001.

26 Ibid.

27 MONUC Newswire, "Burundi refugee massacre part of genocidal plan: Rwanda," August 14, 2004. MONUC Newswire.

<http://www.monuc.org/News.aspx?newsID=3517>.

28 UN Security Council, "Joint report of the UN Mission in the DR Congo," *United Nations*. 17 October 17 2004.

attempts at demilitarization of the region.²⁹

CONGO COMBATANTS

The conflict in the DRC is comprised of three interconnected antagonisms: conflict between an alliance of the Great Lakes region's Rwanda, Uganda, and Burundi versus that of Angola, Zimbabwe, and Namibia; violent national civil wars of Rwanda, Uganda, Burundi, Angola, and the Congo itself; and finally, explosive bloodshed over the Congo's own ethnic feuding.³⁰ Each of the conflicts escalates and reinforces the others, and is also motivated by the extremely profitable opportunities for resource smuggling and concessions throughout the crisis.

Because Kabila betrayed their earlier support, Rwanda and Uganda switched their allegiance during the Second Rebellion to the Congolese Rally for Democracy (RCD) and the Congolese Liberation Movement (MLC) rebel groups. The states also sought to end joint border insecurity allowing the continual Interhamwe raids to terrorize their citizens, and to protect the Congolese Tutsi Banyamulenge. The Rwandan Interhamwe gained control of Hutu refugee camps in the Congolese province of Kivu, operating as génocidaires to attack Rwandan territory. The Congo is subsequently suffering "kin country syndrome," where ethnic conflict crosses national boundaries and escalates transnational violence.³¹

Burundi, similarly characterized by a bipolar Hutu-Tutsi population, joined the force rebelling against the Kabila regime. The Kinshasa government would have been ousted if not for the support of Angola, Namibia, Sudan, Chad, and especially Zimbabwe. The fighting is additionally complicated by the civil wars of many of the countries being fought on Congolese soil, with national rebel groups fighting with the opposing force in a "the enemy of my enemy is my friend" mentality.³² Finally, the Mayi Mayi have transformed into numerous

armed local groups committed to defense of communities against external soldiers of any side.³³

ECONOMIC OPPORTUNISM

The Democratic Republic of the Congo is extremely resource-rich, and economic opportunism both by foreign powers and internal rebel groups has contributed to escalation of the conflict and has also provided motivation for continuation of the chaos. African states fighting to maintain the Kabila regime have substantial economic interests in the DRC. Namibian President Sam Nujoma, for instance, has plans to divert water from the river Congo across Angola to northern Namibia.³⁴ Similarly, Angola intervened in the Matadi corridor to protect oil interests in its enclave of Cabinda, which produces 70% of Angola's oil and almost all of its foreign exchange earnings.³⁵ Zimbabwe is an especially potent example of military adventurism, and expects to recoup the \$40-\$200 million for military assistance owed by Kabila in concessions in the copper mines of Katanga province and the diamond fields of Mbuji-Mayi.³⁶ And similarly, Uganda is benefiting from the DRC conflict by plundering and exporting Congolese resources. For example, Uganda reaped US\$1,263,385 from diamond exports in 2000, despite having no diamond resources, and Ugandan gold production was 0.0044 tons but 10.83 tons were exported.³⁷ Overall, the 'invited' countries are pillaging the Congo's resources so successfully that they are able to repay themselves Kabila's debts from the 1997 coup, fund the current war, and turn a profit.

Increasingly, however, the economic interests in the DRC are shifting from gold, copper, and diamonds, to the highly heat-resistant metal columbite-tantalite. 'Col-

33 Ibid.

34 Ibid.

35 Christian P. Scherrer, 2001.

36 Paul S. Orogun, 2002.

37 UN Security Council, "Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DR Congo," *United Nations*.

<http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/323/54/IMG/N0132354.pdf?OpenElement>.

29 Ibid.

30 Ch. Didier Gondola, 2002.

31 Paul S. Orogun, 2002.

32 Ibid.

tan,' for short, is essential in the manufacturing of miniature circuit boards, such as those found in almost every cell phone, laptop, and VCR in the world. Since coltan demand skyrocketed in 2000, a temporary worldwide shortage resulted in a ten-fold increase in its price. Africa contains eighty percent of the world's coltan, of which at least eighty percent is located in the DRC. From numerous illegal mines, especially in the Kivu province, rebel groups sell the ore directly to multinational corporations, and Rwandan, Burundian, and Ugandan occupational forces smuggle it back to their respective countries for export. Uganda, for example, displayed a staggering increase in coltan exports, from 2.5 tons in 1997 to 70 tons only two years later.³⁸

The continuing decline of centralized authority in the Congo permits ongoing predatory practices by its neighbors. In addition, foreign economic interests, including American and Canadian multinational mining corporations, provide valuable incentives for conflict to continue.³⁹ Overall, the DRC's high population density, shortage of arable land, and lack of economic opportunities have fueled ethnic conflicts. The motives of many combatants, conversely, are convoluted by economic opportunism, which may subvert ethnic prerogatives.

APPLICABILITY OF GENOCIDE THEORY

The conflict in the DRC is less clear-cut than 'traditional' genocides, such as Armenia, the Holocaust, and Rwanda, where there is a common tendency to acknowledge a single distinguishable 'villain.' In contrast to this simplistic view of victimization, combatants in the DRC display reciprocal genocidal intent. The region is significantly characterized by the eight progressive stages of genocide delineated by Genocide Watch President Dr. Gregory H. Stanton: "classification, symbolization, dehumanization, organization, polarization, preparation, extermination, and denial".⁴⁰

The conflict is additionally complicated as economic and political motives overlap ethnicization and quickly shift alliances. It therefore becomes essential to distinguish intent from motive. There may be multiple motives for conflict in the DRC, including territorial integrity, political power, and economic gain, but the designation of genocide depends on a pattern of systematic action with the intent to destroy a particular group. There alternatives motives, however, may enhance the perpetuation of genocide by inspiring competition among different ethnic groups situated in economically impoverished, highly populated regions.

In addition to ulterior motives to the violence, it is difficult to differentiate between rape and murder in the DRC with genocidal origins and that which is inspired by a violent environment and encouraged by an absence of rule of law. Opportunistic violence and genocide are not mutually exclusive, but reinforce each other's power to terrorize and subjugate a single person or an entire race. While not all conflict in the Democratic Republic of the Congo is genocidal, these elements encourage a predatory environment by contributing to the polarization, escalation, and legitimization of violence.

CONCLUSION

The term 'genocide' has been widely utilized both in pop culture and theoretical analysis because of the moral imperative attached to it, and has developed, according to Berel Lang, to mean "a set of actions extraordinary in malevolence and heinousness".⁴¹ Attaching the genocide label has become a benchmark of moral and academic importance, and of political danger or utility. Therefore, analyses of mass killings, such as this paper, are often focused on establishing "genocidal credentials" or their absence.⁴²

As a result of its ethical implications, political acknowledgement of a con-

38 Ch. Didier Gondola, 2002.

39 Ibid.

40 Gregory H. Stanton, "Eight Stages of Genocide,"

Genocide Watch, 1996.

<http://www.genocidewatch.org/8stages.htm>.

41 Stuart Stein, 2004.

42 Ibid.

flict as genocide carries substantial obligation to act. Unwilling or unable to commit a more extensive and effective peacekeeping force in the Great Lakes region, the United Nations has carefully avoided any discussion of genocide in relation to the DRC at the same time as mournfully observing the tenth anniversary of Rwanda and pledging "never again." Alternatively, perhaps the United States has been vocal in condemning the conflict in Sudan as genocide because it has become politically expedient to galvanize international military action against Arabic governments.

The definition of the events in the Congo brings focus back to the importance of words and discourse for not only identifying but also shaping events. Joseph Conrad's representation of the Congo as the "Heart of Darkness": implicitly primitive, chaotic, and uncivilizable, has directly influenced political policies towards the Great Lakes region.⁴³ *The East African* newspaper censured that President Clinton's aim during his 1998 visit to Rwanda was to condemn the 1994 genocide and to stress that ethnic killing must be rooted out of the African psyche.⁴⁴ Ignorance of African culture and history leads to ethnocentric assumptions that violence is an irrevocable part of indigenous African tribalism.

The label of genocide similarly determines both external and internal events. The Lusaka Peace Agreement, signed July 10, 1999 ordered the withdrawal of foreign troops from the Congo, a respect for Congolese sovereignty, UN peacekeeping deployment, militia disarmament, and convening of a national dialogue. The idealistic assumption was that through an inclusive inter-Congolese dialogue "shall emerge agreement on the composition of a new national army, a new constitution, and free elections".⁴⁵ The United Nations, however,

failed to acknowledge and address the presence of genocidal intent within the conflict, and under the simplistic provisions all factions failed to obey the agreement, and the war continued by other means.

Labeling the violence in the DRC as purely genocidal, however, may have the undesirable effect of simplifying the situation, blaming chaos on irresolvable ethnic tensions, rather than examining the deeper citizenship and land crises, political manipulation, and external polarizing forces and economic adventurism that contribute to the situation. International acknowledgment of the conflict, however, as an ongoing atrocity encompassing multi-lateral crimes against humanity is essential before an opportunity can be reached in the DRC for sustainable disarmament and development.

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⁴³ Kevin C. Dunn, 2003.

⁴⁴ J. E. Lassiter, "African Culture and Personality: Bad Social Science, Effective Social Activism, or a Call to Reinvent Ethnology?" *African Studies Quarterly*. 1999. 3(2). <http://web.africa.ufl.edu/asq/v3/v3i2a1.htm>.

⁴⁵ Africa Recovery. "Key provisions of the Lusaka cease-fire agreement." *United Nations*. April 2000.
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Women's Citizenship in Contemporary Liberal Society and the Degradation of Single Mothers on Welfare

Janna Gorham

Abstract

This paper explores issues of women's citizenship and, in particular, the relationship between motherhood and citizenship. I draw upon the writings of Mary Wollstonecraft and Carole Pateman to inform my argument that maternal duties are not valued by liberal society because they are not recognized as a public benefit and they take place in the home rather than the work-force. I also examine the social alienation of single mothers on welfare to determine how poverty, social prejudice, and a systemic lack of recognition affect their sense of citizenship. I conclude that the division between the public and private spheres of society must be broken down to facilitate a change in attitude toward women's citizenship so that motherhood can be formally and publicly recognized as a valuable civil duty.

Résumé

Cet article examine la citoyenneté des femmes, en particulier le rapport entre la maternité et la citoyenneté. J'utilise les écrits de Mary Wollstonecraft et Carole Pateman pour informer mon argument que les charges maternelles ne sont pas valorisées par les sociétés libérales parce qu'elles ne sont pas reconnues comme étant des bienfaits publics et ont lieu dans le domaine privé du domicile. J'examine également l'aliénation des mères seules sur l'aide sociale pour déterminer comment la pauvreté, la défavorisation sociale, et un manque systémique d'identification affectent leur sens de la citoyenneté. Je conclus que la division entre la sphère publique et privée de la société doit être réduite pour faciliter un changement d'attitude envers la citoyenneté des femmes, de sorte que la maternité puisse être reconnue formellement et publiquement comme devoir civil valable.

"Our highly praised independence is after all, but a slow process of dulling and stifling women's nature, her love instinct, and her mother instinct..."

-Emma Goldman

Women's citizenship in contemporary liberal society is not a homogenous category that can be analyzed from a single, objective position. Rather, it is fraught by divisions of class, socioeconomic positioning, education, and marital status. In this paper I will attempt to analyze the relationship between mothering and citizenship in order to determine whether motherhood is considered a valuable civil duty and how a woman's choice to bear children can potentially undermine her civil role. The concept of women's citizenship is informed by a broad spectrum of feminist theory. I chose to consult the writings of Mary Wollstonecraft and Carol Pateman who both argue that society must

be radically transformed in order to accommodate women's unique roles as citizens.

I approached this paper on the basis that citizenship in contemporary liberal society is measured by individuals paid labour in the work force which is the underlying principle of Carole Pateman's essay,

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"The Patriarchal Welfare State"¹. According to this in the broadest sense of the term. The traditional liberal definition of citizenship is contingent upon an individual's ability to participate in the public realm. Within this context an individual's presence in the public sphere serves their "private interests rather than a common good"². If citizenship is restricted to the traditional liberal definition women who work in the domestic sphere are overlooked. Furthermore, impoverished women are subjected to socially endorsed prejudices, which diminish their sense of citizenship because they depend on state assistance to provide for their families.

Mary Wollstonecraft's conception of motherhood and citizenship calls the traditional liberal division of the public and private spheres into question. Whereas Wollstonecraft, a republican thinker, maintains that the domestic and public spheres are interdependent and equally valuable entities, liberalism is based upon the premise that they should remain divided. Wollstonecraft argues that the public and private spheres should be unified and in doing so she characterizes motherhood as a civil duty even though it is acted out in the home³. She writes, "...his wife, also an active citizen, should be equally intent to manage her family, educate her children, and assist her neighbours."⁴ Wollstonecraft highlights the educational and moral components of child-rearing to suggest that the well-being of families directly impacts the state.

Carol Pateman problematizes this conception of an all-encompassing public and private sphere by arguing that contemporary society judges women's citizenship according to their ability to participate in the

workforce. She states, "...in the patriarchal welfare state... 'women' have been opposed to the 'worker' and the 'citizen'..."⁵ Therefore, single mothers who depend upon social assistance to survive are not regarded as full citizens either. In this paper I will use Pateman's arguments to inform my criticisms of the modern liberal state to determine whether Wollstonecraft's vision of an all-encompassing political and social structure is viable in contemporary society.

Wollstonecraft insists upon the relationship between the public and private spheres; thus, she characterizes women's maternal roles as civil duties. She states, "...their first duty is to themselves as rational creatures, and the next, in point of importance, as citizens, is that, which includes so many, of a mother."⁶ In Wollstonecraft's view women's education plays a significant role in their ability to raise their children to become active members of society. She subscribes to the traditional notion that motherhood is women's primary duty. However, Wollstonecraft suggests that women's maternal duties require more than the basic nurturing of children's needs. She argues that mothers must educate their children, manage the household, and be a supportive neighbour.⁷ These particular duties support her belief that mothering extends beyond the confines of the home. She argues that the education and the upbringing of children impact the community. Thus, mothers are entrusted with the responsibility of teaching their children to be self-aware, moral beings.

In Wollstonecraft's view, education develops women's self-sufficiency by helping them to make informed decisions about issues that affect their lives. She writes, "Business of various kinds, they might likewise pursue, if they were educated in a more orderly manner, which might save many from common and legal prostitution...Women would not then marry for support...and neglect their implied duties."⁸ She argues that the state should take an ac-

¹ Carole Pateman, *The Patriarchal State In Feminism, the Public and the Private* (Oxford: Oxford University Press, 1998), 242.

² Pamela Johnstone Conover, Ivor M. Crewe, and Donald D. Searing, "The Nature of Citizenship in the United States and Great Britain: Empirical Comments on Theoretical Themes," in *The Journal of Politics*, 53, no. 3 (1991), 802.

³ Mary Wollstonecraft Selections from: *Vindication of the Rights of Women In Vindication of the Rights of Women*, edited by D.L MacDonald and Kathleen Sherf 284 (Peterborough: Broadview, 1997).

⁴ Mary Wollstonecraft, 280.

⁵ Carole Pateman, 242.

⁶ Mary Wollstonecraft, 283.

⁷ Ibid, 287.

⁸ Ibid, 286.

tive role in the education of women so that they are not reduced to desperate situations in which they either degrade themselves or neglect their duties out of disdain for their positions.

Essentially, by recognizing mothers as contributing members of society, women are afforded the opportunity to fulfill a valuable social role in a domestic or professional setting. Wollstonecraft suggests that the state is responsible for providing women with viable economic options. She states, "...is not that government then very defective...that does not provide for honest, independent women, by encouraging them to fulfill respectable stations?"⁹ In her view, education facilitates the connection between domestic and public life by allowing mothers to fulfill duties that contribute to the community.

Therefore, Wollstonecraft believes that education should be a "grand national concern."¹⁰ Her understanding of education includes a combination of maternal teachings and public schooling. She states, "Public education, of every denomination, should be directed to form citizens...for public affections as well as public virtues, must ever grow out of private character...."¹¹ She argues for the mitigation of class divisions by providing a universal education, "...where boys and girls, the rich and the poor, should meet together."¹² In any case, Wollstonecraft argues that education should be undertaken as a state initiative to socialize children and promote equality at a young age.

Wollstonecraft believes that the state can benefit from educating women. If women are educated they can be viewed as citizens in the fullest sense regardless of whether they choose to fulfill a maternal, professional, or political role. Wollstonecraft argues, "Let an enlightened nation then try what effect reason would have to bring them [women] back to nature, and their duty; and allowing them to share the advantages of education and government with

man...as they grow wiser and become free."¹³ If this is the key to women's emancipation, the opportunity to become educated and to use their rationality, then education could enrich women's maternal and civil experiences.

Women's citizenship would be broadened if women actively participated in their communities and had access to education to enrich their lives. Wollstonecraft reiterates the importance of women pursuing activities outside of the home by stating, "...women cannot be confined to merely domestic pursuits, for they will not fulfill family duties unless their minds take a wider range...."¹⁴ Therefore, if mothers were conceived as the moral and intellectual caretakers of the next generation they would improve community ties and command greater respect in the public sphere.

However, Wollstonecraft's arguments are primarily based upon the assumption that the mother's choice to remain in the home is economically compensated by a husband's ability to earn a living in the workforce. Wollstonecraft also assumes that the public and private spheres are interconnected and equally valued. Contemporary liberal society upholds the division between the public and private spheres, which undermines her understanding of women's citizenship. It is precisely because contemporary society renders motherhood as a private rather than public duty that women's citizenship is diminished and that their work is not valued. I would argue that, in theory, her arguments provide an ideal for women's citizenship; yet, contemporary society is plagued by social prejudice and economic inequality. These issues must be addressed before motherhood can be valued as a civil duty.

In "The Patriarchal Welfare State" Carole Pateman argues that the contemporary social framework is based upon liberal principles which create a definitive separation between the public and private spheres. Pateman claims that women's inability to enter the workforce because of domestic

⁹ Ibid, 287.

¹⁰ Ibid, 298.

¹¹ Ibid, 303.

¹² Ibid, 311.

¹³ Ibid, 310.

¹⁴ Ibid, 318.

obligations robs their independence and dignity. She writes,

...the central criterion for citizenship has been 'independence, and the elements encompassed under the heading of independence have been based on masculine attributes and abilities. Men, but not women, have been seen as possessing the capacities required of 'individuals', 'workers' and 'citizens.'¹⁵

Women who remain in the domestic sphere, managing their households and raising their children are not valued as contributing members of society simply because they do not participate in the labour market. Thus, women who choose to work in the domestic sphere are not regarded as workers and their labour does not warrant public recognition.

Single mothers who depend upon social assistance are even more isolated than those women whose husbands support them financially. Women who fall into the bottom of the socioeconomic spectrum are noticeably marginalized because of increasing class divisions in capitalist society. Single mothers and their children who receive welfare are arguably the most impoverished group in society. Canadian statistics indicate that 65 percent of single mother families' incomes fell below the poverty line in 1996 (Canadian Council for Social Development Website 2004). Pateman cites comparable statistics suggesting that households supported by females are three times more likely to be impoverished than males.¹⁶ Therefore, from an economic standpoint

Furthermore, Pateman demonstrates how impoverished individuals such as single mothers are subject to social prejudices that rob their dignity because of their dependence on the state. This divide between the public and private spheres infers that, "...citizens thrown into poverty lack both the means for self-respect and the means to be recognized by fellow citizens as of equal worth to themselves, a recognition basic to democracy."¹⁷ According to this ar-

gument single mothers are stigmatized by other citizens, causing them to doubt their own worth as they internalize such prejudices.

Pateman highlights the notion that single mothers who rely on state benefits are considered lazy.¹⁸ She suggests that the traditional distinction between the deserving and the undeserving poor significantly undermines the citizenship of single mothers on welfare. "Deserving poor" are those individuals who receive benefits throughout their working careers whereas "undeserving poor" refers to individuals who receive social assistance because they cannot participate in the labour market. In Pateman's view, single mothers are blamed for receiving, "... "public handouts" to barely deserving poor people."¹⁹ Single mothers and their families fall into this category because they struggle to survive in severely impoverished conditions while other citizens believe they are cheating the system. However, women cannot enter the workforce without affordable day-care because minimum wage jobs provide insufficient health benefits and barely enough money to live on. Social stereotyping diminishes women's perception of their own citizenship which economically and socially isolates their families.

A study by Seccombe, James and Walters, which explores the socially constructed image of women on welfare, concludes that single mothers do not have the same opportunities as other adults to earn a decent living because they bear the sole responsibility of household and child-care duties²⁰. Women in such situations are stigmatized as lazy and unmotivated because of the myth that all citizens have an equal opportunity to increase their own wealth and position²¹. One single mother is quoted, "I've had people who didn't know that I was on welfare and everything was just fine.

¹⁸ Ibid, 268.

¹⁹ Ibid, 250.

²⁰ Karen Seccombe, James Delores and Kimberly Battle Walters, "They Think You Ain't Much of Nothing: The Social Construction of the Welfare Mother," *Journal of Marriage And Family*, 60, no. 7 (2003). 852.

²¹ Karen Seccombe, James Delores and Kimberly Battle Walters, 849

¹⁵ Carol Pateman, 248.

¹⁶ Ibid, 243.

¹⁷ Ibid, 244.

But when people find out that you are receiving assistance, it's like, why? Why did you get lazy all of the sudden?"²² According to this account, women who are known to receive social assistance are more likely to be judged as burdens to the state.

Pateman argues that women's citizenship is undermined by liberal-feminist ideology, which advocates for a society of equal opportunities. If no distinctions are made between male and female responsibilities women must conform to a standard of citizenship based on a male ideal.²³ Furthermore, those who fulfill the traditional roles of house-keeper and mother are not considered full citizens because society does not value this unpaid work. As Pateman states, "...to demand proper social recognition and support for women's responsibilities is to condemn women to less than full citizenship and to continued incorporation in to public life as women...who cannot... earn the respect of fellow (male) citizens."²⁴ Pateman argues that single mothers are in "social exile,"²⁵ because they cannot access child-care and other means of support which could alleviate their impoverished conditions and the social stigmas which are forced upon them.

Given this bleak picture of contemporary society one might ask whether women's sense of citizenship can be improved to address the marginalization of single mothers and their families. Wollstonecraft's vision of an all-encompassing public and private realm provides a theoretical solution to the systemic exclusion of women. She envisions a society in which motherhood is valued as a civil duty thereby incorporating the domestic and private spheres. Furthermore, Pateman argues that citizenship can no longer be based on male characteristics and participation in the labour market. Pateman argues that society must radically transform its inherent values and begin to acknowledge the work that is carried out in the domestic sphere. Accord-

ing to this view, citizenship can no longer be based on a male ideal if women are to enjoy full citizenship in a society that endorses equal rights.

Women's roles in society must be publicly recognized before these changes can take place. First, the definitions of civil duty must be broadened in order to include mothering as a valuable community asset. In order to facilitate this formal recognition the barrier between the private and public spheres must be broken down, so that the unpaid labour of mothering is no longer diminished and overlooked. Adequate and affordable childcare should be implemented to increase women's opportunities for higher education and participation in the workforce. If single mothers on welfare have the opportunity to improve their families' economic condition perhaps they could eventually provide for themselves without state assistance. Finally, single mothers must no longer be stereotyped as lazy and undeserving. Society must acknowledge its role in marginalizing women so that it can begin to develop means of formally recognizing all women regardless of their social and economic position.

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²² Karen Secombe, James Delores and Kimberly Battle Walters, 849.

²³ Carole Pateman, 261.

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Has the Apple Fallen Very Far From the Tree? An Assessment of Old Modernization Theory and the New Human Security Approach

Saarah Shivji

Abstract

In comparing development approaches, this paper argues that the human security doctrine, while an improvement on the modernization approach in theoretically significant ways, ultimately means a continuation of the modernist status quo when applied practically on an international scale. The paper compares the theory behind them, arguing that human security is preferable. It then delves into their practical application, and after covering the practice of modernization theory, demonstrates how the vagueness of the human security approach in practical terms, ultimately allows global institutions to safely adopt it only rhetorically, while continuing to follow the modernist status quo. In conclusion, the paper argues that academics and policy-makers must be made aware of the dangerous similarities between old modernization theory and the new human security approach to development, and learn to avoid repetition of past missteps.

Résumé

En faisant comparaison entre diverses théories de développement, cette dissertation propose que la doctrine de sécurité humaine signifie en pratique une perpétuation des préceptes modernistes. La discussion avance les mérites de la théorie de sécurité humaine. Cependant, en analyse pratique, l'imprécision de cette théorie empêche les institutions globales de l'exécuter. En adoptant la rhétorique de sécurité humaine, ces institutions maintiennent néanmoins des perspectives modernistes. Pour éviter les méprises historiques des théories modernistes, les académiques et les politiciens doivent prendre conscience des dangereuses similarités entre ces théories traditionnelles et la nouvelle rhétorique de sécurité humaine.

Finding a way to end world poverty and human misery has been one of the greatest challenges of our time. Though unequivocal solutions have been elusive thus far, academics and policymakers remain undaunted in their efforts, and development discourses continue to evolve. The modernization school of development thought has been the dominant mainstream ideology in the West since the 1950s, and though highly criticized in recent years, continues to influence development policy in less developed countries.¹ Then in the 1990s, an increasingly popular approach to development arose: the human security approach.² For the purposes of this essay, I will refer to the definition of modernization proffered by W.W. Rostow, as well as that of Fen

Osler Hampson for human security, both to be elaborated upon below. In comparing the two approaches to development, I will argue that the human security doctrine, while an improvement on the modernization approach in theoretically significant ways, ultimately means a continuation of the modernist status quo when applied practically on an international scale. I adopt this position with full knowledge of its controversial nature. Human security has quickly reached a mythical "fix-all" status in international relations, yet I feel it important to explore the other, less popular side of the debate. After defining both modernization and hu-

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¹ Wenran Jiang, Lecture. Comparative Politics. University of Alberta, Edmonton. Jan-Apr 2004.

² Fen Osler Hampson, *Madness in the Multitude: Human Security and World Disorder*. Canada: Oxford University Press, 2002, v.

man security outlooks, I will compare the theory behind them, particularly the levels of analysis they focus on (state versus the individual). I will argue that the latter is preferable. I will then delve into their practical application, and after covering the practice of modernization theory, will demonstrate how the vagueness of the human security approach in practical terms, ultimately allows global institutions to safely adopt it only rhetorically, while continuing to follow the modernist status quo.

IN THEORY...

I will begin my discussion by providing some context to the modernization and human security theories of development. While various definitions are available, John Isbister's characterization of modernist thought is most helpful: "Modernization theorists focus on deficiencies in the poor countries – absence of democratic institutions, of capital, of technology, of initiative – and then speculate about ways to repair these deficiencies".³ According to W. Andy Knight and Sandra Rein, modernization theory became prevalent in the 1950s.⁴ Emerging in the post-World War II period, it draws upon the classical works of Adam Smith⁵ (1723-1790), Karl Marx⁶ (1818-1883), and Max Weber⁷ (1864-1920).⁸ Reaching its

height in the 1960s and 1970s, it is greatly influenced by W.W. Rostow's seminal book, *The Stages of Economic Growth* (1960). In it, he theorizes that the development of any state can be summed up in five stages:

- Traditional society
- Preconditions for take-off
- Take-off
- Drive to maturity
- Age of high mass consumption⁹

In keeping with modernist thought before and after him, Rostow held that all countries must follow the above linear path of development in order to succeed. It is Rostovian modernization that will be the basis of this paper.

Modernization theory is largely state-centric, focused primarily on domestic economic growth and the augmentation of international capitalism.¹⁰ These sentiments are incorporated heavily in structural adjustment, the modernist fix-all solution to poverty and underdevelopment. Based on Rostovian reasoning, the World Bank, International Monetary Fund, and World Trade Organization have endorsed structural adjustment-like programs¹¹ since the 1980s.¹² Structural adjustment is aptly described by Charles Hauss: "[It is] a mix of policies designed to open up the domestic economy to imports and investments, reduce government spending and national debt, slash inflation and restore a macroeconomic equilibrium, and sell off state-owned enterprises".¹³ Through conditional financing, these international institutions coerce underdeveloped states into concerning themselves almost

³ John Isbister, 6th ed. *Promises Not Kept: Poverty and the Betrayal of Third World Development*. USA: Kumarian Press, 2003, 32.

⁴ W. Andy Knight and Sandra Rein. "Chapter 20: Development and Its Future Prospects." *Critical Concepts: An Introduction to Politics*. Ed. Janine Brodie. Scarborough, Ontario: Prentice-Hall Canada, 1999, 355.

⁵ As explored in his well-known book, *Wealth of Nations*, Smith argued that development could be achieved through laissez-faire economics. He also believed that the power relationship that existed between workers and owners under capitalism, was more equitable than in previous stages of development (Knight and Rein 355-57).

⁶ Though this may surprise those familiar with the principle of communism, Marx's understanding of development was in fact quite similar to Adam Smith's (Knight and Rein 356).

⁷ In his seminal 1930 book, *The Protestant Ethic and the Spirit of Capitalism*, Weber argued that Protestantism, particularly the Calvinist branch, was an important factor in the great industrialization and economic growth of the West, particularly of Britain and the United States. Over time Protestant values took on a life of their own as capitalism developed. As for develop-

ment in the South, he believed that non-Christian societies lacked the *geist*, or spirit, to overcome their poverty (Knight and Rein 357).

⁸ W. Andy Knight and Sandra Rein, 355-359.

⁹ John Isbister, 37.

¹⁰ James Busumtwi-Sam, "Development and Human Security: Whose Security, and From What?" *International Journal* 57 (2). 2002, 258.

¹¹ Though not always called by the name of structural adjustment, they essentially incorporate the same elements into their development strategies (Jiang).

¹² Wenran Jiang.

¹³ Charles Hauss, 4th ed. *Comparative Politics: Domestic Responses to Global Challenges*. Australia: Wadsworth, 2003, 345.

exclusively with economics, the end "prize" being integration into the global market economy as swiftly and completely as possible.¹⁴ The merits of such a strategy have been criticized heavily, particularly as human needs, ignored in the pursuit of economic growth, are concerned. While citing success stories such as that of South Korea,¹⁵ modernization theorists readily admit that social programs have suffered under such policies. Indeed, it has been the combination of structural adjustment and unbridled bor-

After the human cost of modernization theory and structural adjustment became apparent, demand for a new development paradigm was inevitable.

The most apparent theoretical difference between modernization and human security is their disparate levels of analysis: the state under modernization versus the individual under the human security approach. The genesis of today's notions of human security was Robert McNamara's¹⁹ 1968 book, *The Essence of Security*, in which

Three Views of Human Security¹⁸

Conception of Human Security	Key Elements	Strategies and Instruments	Object of Security
1: Human rights/rule of law	Basic personal rights, legal rights, political and civil rights	Sanctions, co-optation, shaming, prosecution and conviction (criminal tribunals and International Criminal Court)	Individuals
2: Safety of peoples (humanitarian)	Basic personal rights, including subsistence rights	Military intervention, humanitarian and emergency assistance, peace-building, conflict prevention	Individuals
3: Sustainable human development	Economic, social, and environmental rights	Redistributive measures that address inequalities in wealth and income between rich and poor, new participatory governance structures at subnational, national, and global levels	Individuals

rowing that has tragically resulted in severe debt crises in Latin America and Africa,¹⁶ as well as a growing wealth imbalance between the north and south.¹⁷

he broadens the definition of security to include non-military aspects.²⁰ Since then, human-centred approaches to development have gradually grown, reaching the mainstream in 1994 with the United Nations Development Program's *Human Development Report*.²¹ It introduced seven separate components of human security, based on the work of Asian scholar Mahbub ul Haq: economic security, food security, health security, environmental security, personal security, community security, and political secu-

¹⁴ Tanya Narozhna, Lecture. Dynamics of Globalization and Development in the New Millennium. University of Alberta, Edmonton. July-Aug 2004.

¹⁵ Charles Hauss, 346.

¹⁶ In the 1980s, following decades of unrestrained lending and borrowing, three events occurred which condemned many LDCs to crippling debt: I) Rich countries increased interest rates, which in turn led to a substantial jump in the size of payments due; II) the price of primary commodities dropped, causing LDC incomes to also fall; and III) oil prices quadrupled, driving up production costs (Jiang).

¹⁷ Ana. Cortez, "Chapter 13: Introduction - Africa." *Global Financial Turmoil and Reform: A United Nations Perspective*. Ed. Herman Barry. USA: United Nations University Press, 1999, 202-204.

¹⁸ Fen Osler Hampson, 33.

¹⁹ Robert Strange McNamara was US Secretary of Defense from 1961 to 1968. He resigned that position to become President of the World Bank from 1968 to 1981 (Wikipedia).

²⁰ Tanya Narozhna.

²¹ Fen Osler Hampson, v.

ity.²² Despite subsequent attempts to characterize it more definitively, the term remains highly ambiguous and therefore controversial.²³ Recently however, Fen Osler Hampson of the Norman Paterson School of International Affairs, Carleton University, has distinguished three main conceptions of human security:

Although all three of Hampson's points are relevant, I will focus my analysis on the third, sustainable human development. Its all-encompassing focus makes it the most paradigmatic, and therefore the most comparable to modernization theory.

Unlike modernization, Hampson's human security outlook has a strong social justice component – a welcome reversal. Rather than focusing solely on the economy and global market, it subsumes all elements that might affect the well being of individuals, including economic, social, and environmental aspects.²⁴ Theoretically, the human security outlook is refreshingly daring:

[It is] clearly a departure from traditional liberal internationalism, which sees international order as resting on institutional arrangements that, in varying degrees, help secure the viability and integrity of the liberal democratic state by attenuating threats in the state's external environment. To the extent that individual interests are served, they are of secondary importance to those of the liberal democratic state itself. In the human security 'paradigm' this order of priority is reversed. (emphasis added)²⁵

Since the time of the original Westphalian system,²⁶ violation of state sovereignty was tantamount to a violation of international law.²⁷ It was only after the First World War and the introduction of US

President Woodrow Wilson's Fourteen Points,²⁸ that the inviolability of state sovereignty was lessened, and principles such as national self-determination recognized.²⁹ A precedent became set during the Cold War (1945-1990) as in-state interventions by the US and USSR – in the name of democracy and communism respectively – became commonplace. This precedent led to expanded avenues following the end of the war. Bystander countries began to recognize an "obligation to intervene" in extreme cases such as genocide or ethnic cleansing.³⁰ Rather than be concerned with maintaining the strength of the state, human security theory advocates the impact on *people* as the main criteria for assessing policy.³¹ This is a significant theoretical shift, and a positive one. Yet despite its refreshing theoretical take on development, in practice the human security approach does little more than allow the status quo of modernization to continue. This aspect of the human security approach will be broached below.

IN PRACTICE...

Now that the major theoretical differences between modernization and human security have been discussed, I wish to delve into the ways in which the two operate in practice. During its post-World War II pre-eminence, the Western-based modernization movement was in a position to greatly influence the character of newly minted global institutions, thereby promulgating Western values and interests worldwide. The most significant example of this is the role modernization theory played in the 1944 founding of the Bretton Woods³² institutions, the International Monetary Fund and the World

²² Amitav Acharya, "Human Security: East versus West." *International Journal* 56 (3). 2001. 445.

²³ Fen Osler Hampson, v

²⁴ *Ibid*, 33.

²⁵ *Ibid*, 4-5.

²⁶ The Treaty of Westphalia was signed in 1648, bringing an end to the "Thirty Years War" in Europe. As a result of a "stalemate" among those powers involved powers, it also resulted in the unintended emergence of the European state system. From it emerged the institutions of anarchy and state sovereignty. These principles are now the basis for our international political system (Keating).

²⁷ *Ibid*, 3.

²⁸ Wilson's Fourteen Points were proposed in 1918, following the end of the second World War. Many of the ideas therein became hallmarks of the international system and were implemented by the League of Nations (Keating).

²⁹ *Ibid*, 3.

³⁰ *Ibid*, 3.

³¹ *Ibid*, 6.

³² The name refers to the Bretton Woods Conference held at Bretton Woods, New Hampshire, USA in 1944. The event was formally called the United Nations Monetary and Financial Conference (infoplease).

Bank.³³ According to Ankie Hoogvelt, author of *Globalization and the Postcolonial World*, modernization theory and its practice are irrefutably based on Western interests and values. He notes that Rostow and other modernization theorists generally studied the historical social evolution of the West and incorporated its themes into modernization theory until the patterns became "normative and prescriptive logic".³⁴ They divided the world theoretically into two poles: "modern" (often called rational) and "traditional":³⁵ "[To them], the essence of a traditional society is that it is stagnant and unchanging".³⁶ This cleared the way for "superior" Western culture and methods,³⁷ and indeed, they wrote and promoted virtual "how-to-develop" manuals for Southern states based on Western history.³⁸ Since then, the basic assumptions and themes of modernization theory have generally remained the same.³⁹ Critics have come to recognize the problematic assumptions housed within modernist discourse,⁴⁰ and new development methods have been sought.

It can be agreed upon by most that modernization theory is outdated, and indeed, it has been criticized widely over the years for its assumption and promotion of Western universalism.⁴¹ Yet I argue that, regardless of its theoretical promise, in practical terms human security supports the international status quo, which largely represents modernism. Human security theorists may criticize our current global governance systems as being state-based and socially unjust,⁴² yet no concrete alternative systems of wealth redistribution or participatory

governance structures have actually been proposed.⁴³ Granted that the human security approach is a recent and relatively underdeveloped doctrine, yet I would still argue that it is unlikely that human security theory will ever provide any significant challenge to current models, nor that any human security-based systems aimed at rectifying global inequality and championing social justice, will ever come about. As Roland Paris points out, the very nature of the term makes it impossible for it to provide a viable alternative to current modernist global systems, and the framers of human security discourse have a hand in this: "The most ardent backers of human security appear to have an interest in keeping the term expansive and vague ... [to the point where] human security is so vague that it verges on meaninglessness".⁴⁴ Many champions of the human security approach, including Human Security Network⁴⁵ member Canada, are complicit. While championing human security and "freedom from want" in the South, the Canadian government has quietly cut its foreign aid budget for the last several years.⁴⁶ While seemingly promising on paper, the broad mandate of the human security approach makes it practically inapplicable, thus allowing the continuation of the modernist status quo.

Despite the impracticality of the concept, many international institutions seem to have readily adopted its approach. The very ambiguity and inapplicability of the human security approach has allowed our modernist international institutions to successfully veil themselves in human security "rhetoric,"⁴⁷ and express support for its broad application, while maintaining the status quo and quelling criticism of their

³³ The World Bank as it is now known, was called the International Bank for Reconstruction and Development upon its founding in 1944 (infoplease).

³⁴ W. W. Rostow, 3rd ed. *The Stages of Economic Growth: A Non-Communist Manifesto*. Cambridge: Cambridge University Press, 1990, 36.

³⁵ John Isbister, 37.

³⁶ Ibid, 33.

³⁷ Wenran Jiang.

³⁸ Ankie Hoogvelt, 2nd ed. *Globalization and the Postcolonial World: The New Political Economy of Development*. Hampshire: Palgrave, 2001, 35.

³⁹ Wenran Jiang.

⁴⁰ John Isbister, 37.

⁴¹ W. Andy Knight and Sandra Rein, 360.

⁴² Fen Osler Hampson, 33.

⁴³ Ibid, 33.

⁴⁴ Roland Paris, "Human Security: Paradigm Shift or Hot Air?" *International Security* 26 (2). 2001. 88,102.

⁴⁵ The network includes Austria, Canada, Chile, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Switzerland, Slovenia, Thailand and South Africa as an observer (The Human Security Network).

⁴⁶ James Busumtwi-Sam, 270.

⁴⁷ Note that the United Nations Development Program has adopted the human security approach more fully than the Bretton Woods institutions (Narozhna).

antiquated methods. Hampson supports this assertion:

[Organizations such as the World Bank, the United Nations Development Program, and the Development Assistance Committee of the Organization for Economic Co-operation and Development] have tended to adopt those elements among the different conceptions of human security that are most compatible with existing organizational mandates and prevailing institutional and ideological philosophies.⁴⁸

Like with almost all institutions, our global governance systems are resistant to change, and tend to maintain the principles of modernist theory on which they were founded in the post-World War II period.⁴⁹

Unfortunately, these institutions have learned to adopt in-vogue lingo, while changing very little: "The culture of conventional development has been adept at appropriating language and symbolism that appear to signify meaningful change but, in reality, simply mean 'business as usual'".⁵⁰ As Busumtwi-Sam points out, having an open multilateral trading system and liberal economic order, both products of modernization theory inspired policies, has become immutable for the West, and are likely to remain a fixture of the international scene.⁵¹

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⁴⁸ Fen Osler Hampson, 151.

⁴⁹ Tanya Narozhna.

⁵⁰ James Busumtwi-Sam, 260.

⁵¹ Ibid, 257.

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Robert Cox: *Production, Power and World Order*

A book review by Katie Kaufman

International political economic theory is a branch of the discipline of international relations that aims to break down the artificial borders between state and market, the domestic and international spheres of analysis as well as the fields of politics and economics. Therefore, for any student or academic in the area of critical political economy, this mandate requires, as Susan Strange puts it "an imperative of multidisciplinary."¹ In other words, the critical IPE theorist must familiarize themselves not only with the traditional state-centric political science method, but approach change in the international system with a combination of perspectives including, but not limited to, those of sociology, economics, anthropology and history.

In his study *Production, Power and World Order*, Robert Cox, political scientist and pioneer of the critical international political economic movement, has taken on this task with a superior understanding of the relationship between production-level, national and international levels of analysis (1987). Although Cox affirms the theoretical emphasis of his book from the very beginning, he demonstrates a great breadth of historical understanding throughout the work. Cox's in-depth look at modern world history is a reflection of some of his influences from earlier streams of IPE thought, such as Karl Polanyi (2001), Eric Wolf (1999) and Theda Skocpol (2003), and complements his theoretical analysis extremely well. However, as one progresses through the book, it becomes evident that he is not interested in history for its own sake, but about what historical evidence can illustrate about changes in the international system, and how the

international system may evolve in the future.

In other words, Cox aims to ascertain how international change might happen in the contemporary era. His methodology involves an in-depth examination of the structures that "give a framework for action and form the actors"² that can affect political transformation in our world today. Cox identifies three primary structures that, when interacting with each other in an open system of power, provide human agents with a frame within which to act: the modes of social relations of production, forms of state and structures of world order. While Cox analyzes each structure separately, he is most interested in their interrelationship: where these structures are linked, where change can happen, and how this "mutually sustaining relationship"³ reflects the interplay between production and power. Cox himself states that all of his theoretical development is based on the premise that production is the material basis "for all forms of social existence".⁴ Therefore, even changes at the international level can be traced back to the reciprocal relationship between production (which creates the capacity to use power) and power (which sets the boundaries of production).

The main body of Cox's book is divided into three distinct sections: the first examining the social relations of production in isolation, the second which looks at how the social relations surrounding production interact with state forms and world orders, and the third analyzing the possibility for future transformations in all three structures. One of the most important concepts

¹ Susan Strange, 1996. *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge, UK: Cambridge University Press, VX.

² Robert Cox, 1987. *Production, Power and World Order: Social Forces in the Making of History*. New York: Columbia University Press, 395.

³ Ibid, 8.

⁴ Ibid, 1.

that Cox uses in all three sections of the book is the Gramscian tool of the historic bloc, or the "structure defining...[the] tasks and limits [of the state] which becomes part and parcel of the state itself".⁵ Although Gramsci himself only used the historic bloc idea within a national perspective, Cox broadens the concept to encompass the dominant transnational actors that hold power in the current world order.

One of the more frustrating aspects of this book for novices in political theory is that Cox assumes that the reader already has a background in Gramscian thought and therefore never quite clarifies the precise nature of an international historic bloc. Nonetheless, Cox relies quite a bit on this concept, particularly in part three of the book when he looks into the possibility of a shift in the current world structure. Because any change in world structure depends on, according to Cox, the weakening of the existing historic bloc,⁶ a good grasp of the international historic bloc concept would be useful before attempting to delve further into the book.

Once one is able to wrap one's mind around all of the theoretical concepts that Cox addresses in the beginning of the volume, the three main sections of the book become much easier to follow. In part one, Cox examines how production has been historically organized throughout the ages according to social relations of production. Cox isolates what he calls "modes of social relations of production,"⁷ which are patterns of the social organization of power and production between dominant and subordinate groups in society. He identifies twelve modes of social relations of production that were present in the late Twentieth century, such as the peasant-lord mode of production,⁸ and the enterprise corporatism mode,⁹ and compares their development across time and across cultural boundaries. He

also looks at each 'mode' within the greater context of different social forms of distribution and reproduction; he therefore divides the section into chapters dealing with simple reproduction, capitalist development and redistributive (communist/socialist) development.

It is this section of Cox's work that is most reminiscent of earlier political economy studies that focus on political revolutions and the resulting changes in economic and social power-lord production relations. However, when Cox looks at peasantry, he looks at this group in a much broader perspective than any political economist before him, as he traces them from old regime China to Japan to the European feudal era to Latin America of the Twentieth century. Cox also sees the modes of social relations of production as they function in regards to other modes: in every society there are dominant and subordinate modes of production. And while he attempts to explain the occurrence of shifts in production relations just as Moore (1993), Wolf (1991) and Theda Skocpol (2003) do, Cox does this by looking at the relationship between objective factors, institutional factors as well as subjective factors. In fact, it is Cox's inclusion of subjectivity of things like the perception of one's work obligation and the rationality behind the meaning of production that distinguish him from many in the field of critical IPE.

To elaborate on the origins of each mode of production and how they are transformed, Cox, in the second section of the book, turns to an examination of the role of the state. While he sees the state as the primary determinant of the structure of production,¹⁰ he does affirm that the state can only be autonomous within a system of internal constraints (provided by historic blocs) and external constraints (provided by the world order). In the latter respect, Cox follows very closely in the footsteps of Theda Skocpol, who, in her book *States and Social Revolutions*, is one of the first political economists to emphasize the importance of

⁵ Ibid, 6.

⁶ Ibid, 270.

⁷ Ibid, 14.

⁸ Ibid, 39.

⁹ Ibid, 70.

¹⁰ Ibid, 105.

the international system in political and economic change (2003).

Cox examines the relationship between the social relations of production, forms of state, and world orders in the development and decline of three different eras of modern history: the liberal international economy (1789-1873), the era of rival imperialisms (1873-1945) and the neoliberal world order (1945-present). He explores two main theses in relation to the politico-economic dynamics of all three eras: the first being that the formative phases of production relations are determined by transformations in forms of state,¹¹ and the second dealing with the parallelism between changes in state forms and changes in world order structure.¹² For example, when looking at the liberal international economy, Cox looks at how the transformation of France from a continental power state towards a liberal republic determined the shift in dominant and subordinate modes of social relations of production to favour the enterprise labour market and bipartism. In addition, in regards to his second thesis, Cox looks at how the British state and British world order emerge together through a British bourgeois hegemony.

Not surprisingly, it is this section more than any other in the book, that presents the reader with the most substantial theoretical exploration of Cox's initial ideas concerning the interplay of production and power, production relations and the state, and the forms of state and world order. It is here where one can best trace Cox's ideas to Karl Polyani's *The Great Transformation* (2002) as he does an exemplary job of portraying the dialectical evolution of the international political economy of mankind in modern times.

After having established, explained and illustrated the tools with which he proposes to analyze the progression of the international system and all that it encompasses, Cox moves on, in part three, to look at how these tools might be applied to the

present day. In other words, Cox, using the theoretical framework developed in parts one and two, strives to examine tendencies of the late Twentieth century in terms of shifts in production relations and state structures. He recognizes the world economic crisis of the 1970s as the threshold of the neoliberal world order, as this world order has engendered its own internal contradictions like stagflation and the Third World debt disaster. This type of crisis, according to Cox, is what Gramsci would call an 'organic' crisis, where social forces have been misaligned and are thus causing internal tensions within states as well as international tensions.¹³

Thus, Cox believes that the very same conditions were present at the time of the publication of his book that were present at the turning points in all of the world orders in human history. All that is needed to complete the shift into a new world order is "a political movement capable of uniting sufficient elements of existing societies into a counterhegemonic bloc".¹⁴

The question most likely to perplex the reader after completing the book is whether or not Cox's prediction of an impending change in world order has occurred between 1987 and the present day. Indeed, it is difficult to convince oneself, when looking at the present forms of state and current world order under American dominance, that the structures that govern the international political economy have experienced a great transformation. What exactly has changed in our international political economy since the economic crisis of the 1970s?

It is this question that actually may bring up an inherent weakness in Robert Cox's structuralist approach to political economy: his view of state power as the political reflection of production relations leads him to inadvertently support a state-centric view of power. In her book *The Retreat of the State*, Susan Strange brings up this very criticism of Cox's overemphasis of the

¹¹ Ibid, 106.

¹² Ibid, 108.

¹³ Ibid, 274.

¹⁴ Ibid, 403.

state role in the world order.¹⁵ Strange believes, as do I, that this approach leads Cox to ignore the increasing power of the international non-state actors, like multinational corporations and NGOs, in the outcomes of international political economy.¹⁶

However, despite this oversight in Cox's theory, his theoretical framework based on the interrelationship of social relations of production, state forms and world orders is a groundbreaking work in critical IPE theory. His sweeping analysis of local, national and international changes in power across cultures in the modern era has become a classic work in the discipline of international relations. *Production, Power and World Order*, like most other works in political economy, has paved the way for more scholarship from those who do not wish to restrict themselves to a narrow view of politics, power and how they shape the international system.

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¹⁵ Susan Strange, 1996, 24.

¹⁶ Ibid, 25.

