



# Securing the New World Order: An Analysis of Representations of the Legality of Security Council Actions in the Post-Cold War Era

Anne Margaret Orford

A thesis submitted for the degree of Doctor of Philosophy of the University of  
Adelaide

in the Faculty of Law

January 1999

This work contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text.

The thesis includes parts of the following articles, which were written solely by me during the period of the candidature:

'Locating the International: Military and Monetary Interventions after the Cold War' (1997) 38 *Harvard International Law Journal* 443

'The Politics of Collective Security' (1996) 17 *Michigan Journal of International Law* 373

'The Uses of Sovereignty in the New Imperial Order' (1996) 6 *Australian Feminist Law Journal* 63

I consent to this copy of my thesis, when deposited in the University Library, being made available for loan and photocopying.

Anne Orford  
January 1999



## ACKNOWLEDGEMENTS

I have been blessed with the support of many family, friends and colleagues during the writing of this thesis. I would like to thank Dorinda Dallmeyer, Judith Gardam, W Ofuatey-Kodjoe, Peter Uvin and members of the editorial boards of the *Harvard International Law Journal* and the *Michigan Journal of International Law*, for their detailed and helpful comments on various draft chapters of this thesis. My comrades at the School of Law and Legal Studies, particularly Greta Bird, Sue Davies, Ian Duncanson, Judith Grbich, Adrian Howe, Andrea Rhodes-Little and Margaret Thornton, have provided me with a steady source of friendship, and have taught me the pleasures and responsibilities of critical scholarship and of taking chances. In addition, Ian Duncanson and Judith Grbich have patiently provided detailed and insightful comments on various draft chapters, while my lively conversations with Andrea Rhodes-Little have illuminated many of the connections made in this thesis and helped me find 'the words to say it'. Thanks are also due to Jennifer Beard, Krysti Guest, Jyoti Larke, Jindy Pettman and Ann Tickner for their support and for the many discussions that informed my ideas about feminist theory and about military and monetary interventions. I was encouraged during my work on this project by my colleagues at the Faculty of Law of the Australian National University, particularly Philip Alston, Tom Campbell, Deborah Cass, Jennifer Clarke, Judith Jones, Lynda Lee, Robert McCorquodale, Martin Phillipson and Gerry Simpson. I am also grateful to my parents, William and Rolene Orford, for the many forms of support they have given me, not least being the intensive hours of baby-sitting they provided in the long final weeks of proofreading.

Two people deserve particular thanks. I owe an enormous debt to Hilary Charlesworth for her generous supervision of this thesis. Her enthusiasm for the project from the outset and the gift of her friendship have made the experience of writing the thesis a wonderful and rewarding one. Her patient reading of each chapter and her detailed and insightful comments were of enormous assistance in shaping my arguments, while the example of her courageous and risk-taking scholarship guided my approach to writing about international law. In addition, she offered me valuable advice on all aspects of thesis-writing, from issues of style and form, to assistance in publishing chapters and presenting papers.

The constant encouragement and enthusiastic support of my dear friend and partner Andrew Robertson have helped make it possible for me to complete this thesis. My work has benefited enormously from our ongoing conversation about law, politics, life and critique, while his companionship and gentle faith in my ideas and aspirations have made all the difference. Each chapter of this thesis has been greatly improved by his careful reading and valuable comments. This thesis is for our beloved son Hamish, in the hope that he will inhabit a world in which it is safe for him to be a man in whatever wild, wonderful and subversive ways he can imagine.





## ABSTRACT

This thesis is a study of representations of international legal texts which describe and justify the post-Cold War role of the United Nations Security Council. The post-Cold War era has seen a revitalisation of the Security Council and an expansion of its role in maintaining international peace and security. The resulting debates about the legality, legitimacy and morality of Security Council actions reveal a great deal about the powerful myths that shape the identity and the identifications of internationalists.

The thesis has three principal aims. The first is to analyse the theories of collective security upon which international legal doctrines are based. I explore the underlying assumptions about the causes of security crises and the effects of military intervention which inform arguments about the legitimacy of Security Council actions. Those assumptions limit the capacity of international lawyers to achieve the goals of peace and security or to engage with the process of globalisation.

The second aim is to explore the operation of collective security texts at the ideological or cultural level. I argue that while international lawyers are not successful on their own terms in offering an account of the operation of law and politics in the collective security field, legal texts do have an effect as cultural products. Texts about intervention operate to legitimise and naturalise a new set of power relations emerging in the post-Cold War era. I draw on literary, cultural and film theory to explore the fascination, appeal and effects of intervention narratives.

The third aim is to consider how international lawyers might develop the ethical practices necessary to think critically about the power effects of the knowledge they produce. I argue that such issues can only be addressed by complicating the way in which power is understood to be operating in and through international law. While international law remains concerned primarily with attempts to develop constraints on the exercise of power as it operates through repressive means at the level of the state or international organisations, it ignores forms of power that operate in more productive, private and personal ways. Those who participate in shaping perceptions of the legality of the actions of multilateral institutions need to develop a self-reflexive intellectual practice, one which recognises that law's stories are both an exercise and an effect of power relations.



## TABLE OF CONTENTS

<b>Chapter 1: Law, Power and International Intervention</b>	<b>1</b>
I. INTRODUCTION	1
II. OUTLINE OF CHAPTERS	7
III. CRITICAL QUESTIONS ABOUT INTERNATIONAL LAW	11
A. <i>Beyond sovereignty: law, power and knowledge</i>	11
B. <i>Images of international law</i>	24
C. <i>Economic globalisation after the Cold War</i>	28
D. <i>The gender of intervention</i>	31
E. <i>Critical engagement: strategy and ethics</i>	40
1. Reading and writing security	40
2. Speed and strategy	42
 <b>Chapter 2: The Politics of Collective Security</b>	 <b>47</b>
I. INTRODUCTION	47
II. THE SILENCES OF INTERNATIONAL LAW	50
A. <i>The impact of Security Council actions on women</i>	51
1. Rape, militarised masculinity and UN peacekeeping	51
2. The gendered effects of economic sanctions	54
3. The remilitarisation of US culture	55
4. Mainstream analyses of international law	58
B. <i>Proposals for reforming the collective security system</i>	61
1. Democratic participation	63
2. Accountability	70
III. UNACCOUNTABLE KNOWLEDGE PRACTICES	72
A. <i>Protecting the security of states</i>	74
B. <i>Representations of internal security and external threats</i>	76
C. <i>Representations of the naturalness and inevitability of state power</i>	78
D. <i>Images of crisis</i>	79
E. <i>Violence and difference</i>	83
F. <i>Situating knowledge about collective security</i>	87
IV. CONCLUSION	90
 <b>Chapter 3: Locating the International – Collective Humanitarian Intervention after the Cold War</b>	 <b>93</b>
I. INTRODUCTION	93
II. REPRESENTATIONS OF THE INTERNATIONAL	95
III. LOCATING THREATS TO THE PEACE – THE CASE OF THE FORMER YUGOSLAVIA	103
A. <i>The nature of restructuring in the former Yugoslavia</i>	104
B. <i>Threats to the peace</i>	109
IV. THREATS TO DEMOCRACY AND HUMAN RIGHTS	114
A. <i>Defining democracy and human rights</i>	115
B. <i>The impact of international institutions on human rights and democracy</i>	120
1. The World Bank and the IMF	121

2. Multilateral and regional trade agreements	130
3. Democracy, human rights, and the idea of internationalism	136
V. POWER, KNOWLEDGE, AND INTERNATIONAL INTERVENTION	138
VI. CONCLUSION	145
<b>Chapter 4: The Private Life of Intervention</b>	<b>149</b>
I. INTRODUCTION	149
II. SUBJECTIVITY AND IDENTIFICATION	151
III. THE SUBJECTS OF INTERVENTION	163
A. <i>Disruption of the established order</i>	164
B. <i>'Knights in White Armour'</i>	167
C. <i>Symbols of helplessness</i>	173
D. <i>Fear of powerlessness</i>	179
E. <i>Reaffirmation of the existing order</i>	180
F. <i>Violence and narrative pleasure</i>	182
IV. CONCLUSION: DANGEROUS FICTIONS	184
<b>Chapter 5: Embodying Internationalism - The Making of International Lawyers</b>	<b>189</b>
I. INTRODUCTION	189
II. REPRESENTATIONS OF INTERNATIONAL LAWYERS	192
A. <i>New world order professionals</i>	192
B. <i>Agents of humanitarianism</i>	197
C. <i>Handmaidens and gentle civilisers</i>	200
III. THE DISCIPLINING OF INTERNATIONAL LAWYERS	202
A. <i>Legal education as a technology of the self</i>	205
B. <i>Imperial pleasures</i>	214
IV. ANXIOUS IDENTITIES AND THE USES OF INTERVENTION	216
A. <i>Disciplinary threats</i>	217
B. <i>The need for enemies</i>	223
C. <i>Making globalisation palatable</i>	228
D. <i>Power without responsibility</i>	231
V. CONCLUSION	232
<b>Chapter 6: Engaging with Internationalism</b>	<b>235</b>
I. INTRODUCTION	235
II. 'PERSONAL HISTORY'	239
III. 'THEORETICAL REFLECTION'	246
IV. AFTER INNOCENCE	252
A. <i>Academics and the work of community</i>	253
B. <i>Experts, power and authority</i>	260
V. CONCLUSION: ON AMBIGUITY	266
<b>BIBLIOGRAPHY</b>	<b>269</b>



## Chapter 1

# LAW, POWER AND INTERNATIONAL INTERVENTION

### I. INTRODUCTION

The ending of the Cold War prefigured major transformations in international law and international relations.<sup>1</sup> With the end of the Cold War, great claims began to be made in these disciplines about the potential for achieving a new world order. The end of the stand off between two major powers, the Union of Soviet Socialist Republics (Soviet Union) and the United States of America (US), which supposedly represented opposing ideologies, was seen by some commentators to offer an opportunity for achieving a liberal alliance of democratic states committed to global free markets and the protection of individual rights. For others, the post-Soviet era threatened unparalleled abuses of power by international organisations and powerful states, and a new freedom for those with the power to impose grandiose visions of a liberal, capitalist order in the absence of any effective opposition.

---

<sup>1</sup> Throughout this thesis, I refer to the ending of the Cold War and the break up of the Soviet Union synonymously. The notion of the 'Cold War' describes a version of international politics that centres on the concerns and interests of the Soviet Union and the US. For the purposes of this thesis, the significant shift that was caused by the break up of the Soviet Union was that it was understood as signifying the end of the Cold War, and as a result the notion of that war was no longer available to structure the identities of those who identified with the Soviet Union or the US. In addition, certain constraints on the activities of international organisations are no longer operational as a result of that shift in power relations. Yet in other ways, the focus on the mythic 'end of the Cold War' serves to mask the similarities between this period and earlier periods, and to hide the fact that the break up of the Soviet Union did not lead to shifts in every aspect of international relations. As Gayatri Spivak argues: 'I tend to think of the much publicised end of the Cold War ... really as the end of one kind of skirmish in the whole project of neo-colonialism or re-colonisation. In my own mental shorthand, it is called the fall of the Soviet Union, whatever one thought of the Soviet Union'. See Julie Stephens, 'Running Interference: An Interview with Gayatri Chakravorty Spivak' (1995) 7 *Australian Women's Book Review* 19. As a result, I refer both to the end of the Cold War and the break up of the Soviet Union as ways of marking the start of the era upon which my thesis focuses.

This thesis is concerned with one significant change in international politics resulting from the break up of the Soviet Union. The post-Soviet era has seen a revitalisation of the United Nations (UN) Security Council and an expansion of its role in maintaining international peace and security.<sup>2</sup> The changed conditions of the post-Soviet era have meant that the Security Council is suddenly capable of exercising great power, in a manner that is largely unrestrained.<sup>3</sup> This thesis is a study of representations of international legal texts concerning the post-Cold War role of the United Nations Security Council. It analyses the ways in which actions authorised by the Security Council are described and justified.

The sphere of collective security has been central to the sense of the possibilities, limits and dangers promised by conditions since the break up of the Soviet Union. Claims made about the capacity of the Security Council to guarantee such values as order, peace, human rights, democratic governance and self-determination have mirrored the claims made more generally about

---

<sup>2</sup> Under Article 24 of the UN Charter, the Security Council is the organ of the UN charged with the authority to maintain peace and security. Unlike most other international bodies or organs, the Security Council is invested with coercive power. Under Chapters VI and VII of the UN Charter, the Security Council is granted powers to facilitate the pacific settlement of disputes, and to decide what means should be taken to maintain or restore international peace and security. For many years the coercive powers vested by the UN Charter in the Security Council seemed irrelevant. Article 23 of the UN Charter provides that the Security Council comprises ten non-permanent members elected for two year terms, and five permanent members: China, France, the United Kingdom (UK), the US and, since December 1991, the Russian Federation (formerly the Soviet Union). During the Cold War, the Security Council was effectively paralysed by reciprocal use of the veto by the permanent members. From the time of the creation of the UN in 1945 until 31 May 1990, the veto was exercised 279 times in the Security Council, rendering it powerless to deal with many conflicts. The permanent members used that veto power to ensure that no actions that threatened their spheres of interest would be taken. The ending of the Cold War meant an end to that use of the veto power. The Gulf War was the first sign of what has since been hailed by some as the 'revitalisation' of the Security Council. See Boutros Boutros-Ghali, *An Agenda for Peace*, 1992, 7, 28.

<sup>3</sup> With the revitalisation of the Security Council has come the realisation that there are very few restrictions on the exercise of its power. Although the jurisdiction of the Security Council under Chapter VII of the UN Charter is only triggered by a threat to the peace, a breach of the peace or an act of aggression, this has been interpreted broadly on a number of recent occasions, with no apparent remedy for misuse of power by the Council. This has led some international lawyers to claim that there is a constitutional crisis in the UN. This crisis is due not only to the inability of the General Assembly, where all member states are represented, to control the Security Council, but also to the relatively powerless position of the International Court of Justice as revealed by the Lockerbie incident. See further Jose E Alvarez, 'Judging the Security Council' (1996) 90

the capacity of a rational, cosmopolitan international law to tame nationalist passions and local grabs for power. The Gulf War was for some international lawyers the realisation of the dream of a world in which aggression would be punished and a new world order would reign, while the early days of Security Council involvement in Somalia, Haiti and the former Yugoslavia were represented as signalling 'a newly activist, humanitarian relationship between the First and Third Worlds'.<sup>4</sup>

The resulting debates about the legality, legitimacy, ethics and morality of the actions authorised by a reinvigorated Security Council are a fascinating testament to the challenges facing international law and international lawyers in the changed conditions of the post-Soviet era. The texts written by international lawyers seeking both to justify and to question the uses of intervention in the post-Soviet era reveal a great deal about the powerful myths that shape the identity and the identifications of internationalists. By reading these arguments and narratives about the limits and ethics of the uses of power and violence at a time when very few institutional constraints on such uses of power and violence appear to exist, it is possible to gain a strong sense of the capacity of modernist conceptions of law, rights or democracy to constrain the operation of power in the globalised, liberalised world of the next century.

The thesis has two principal aims. The first is to analyse and question the theories of collective security upon which international legal doctrines are based. In order to do so, I explore the underlying assumptions about the causes of security crises and the effects of military intervention that inform arguments about the legitimacy of Security Council actions. I conclude that the dominant legal approach to collective security and collective humanitarian intervention is based upon a series of flawed assumptions about the causes of

---

*American Journal of International Law* 1; W Michael Reisman, 'The Constitutional Crisis in the United Nations' (1993) 87 *The American Journal of International Law* 83.

<sup>4</sup> Nathaniel Berman, 'Beyond Colonialism and Nationalism? Ethiopia, Czechoslovakia, and "Peaceful Change"' (1996) 65 *Nordic Journal of International Law* 421, 422.



insecurity and the effects of intervention. International lawyers working in the area of collective security are thus unable to succeed in identifying, analysing or resolving international problems, or in developing a legal framework to explain and constrain state action. The way in which international lawyers portray security crises limits their capacity to contribute to the task of understanding and engaging with the process of globalisation dominating international relations in the post-Soviet era, or to achieve broader systemic goals of peace and security.

The second aim of the thesis is to explore the ways in which international legal texts about collective security operate at the ideological or representational level. I argue that while international lawyers are not successful on their own terms in offering a descriptive or normative account of the operation of law and politics in the collective security field, legal texts do have a function or effect as cultural products. Texts about collective security operate to legitimise and naturalise a new set of power relations emerging in the post-Soviet era. I draw on literary, cultural and film theory to explore the fascination, appeal and effects of intervention narratives. Throughout the thesis, I develop strategies for responding to an international relations now increasingly conducted or situated 'in the domain of communication, signs and culture'.<sup>5</sup>

The thesis is also animated by a broader set of ethical or political concerns. My analysis of representations of 'the international' and of the legality of intervention aims to contribute to a broader theoretical debate about whether international law and multilateralism can operate as a constraint on power in the interests of humanity. The nature of the ethical questions facing international lawyers crystallised for me during the Yugoslav conflict. When talking to a colleague about my concern and surprise at how quickly Serbian

---

<sup>5</sup> Anders Stephanson, 'Rethinking International Relations' (1996) 220 *New Left Review* 137, 142. See also Cynthia Weber, *Simulating Sovereignty: Intervention, the State and Symbolic Exchange*, 1995.

academics became involved in justifying and contributing to destructive nationalism, I asked: why didn't they have the intellectual tools available to them to enable them to think critically about the knowledge they produced, and its power effects. My colleague's response was: do we? International legal scholarship, particularly that dealing with intervention, is largely devoid of such critical reflection.

This thesis is thus concerned with how international lawyers might develop the practices that make it possible to think critically about the knowledge they produce and its power effects. I argue that such issues can only be addressed by complicating the way in which power is understood to be operating in and through international law. International law, however, remains concerned primarily with analyses of, and attempts to develop constraints on, the exercise of one form of power: power that operates publicly, through repressive or coercive means, largely at the level of the state or of international organisations. It ignores forms of power that operate not only or perhaps even principally through coercive mechanisms, but in other more productive, private and personal ways.

This thesis argues that international lawyers must move from a political sense of power as something located in powerful institutions or entities, to an ethical sense of power as something human beings exercise in social relations.<sup>6</sup> A new critical sense is required if international law and international relations are to act to develop constraints on abuses of power in the interests of human beings in the new conditions of the post-Soviet era. Those who participate in

---

<sup>6</sup> By ethics, I refer here to the attempt to develop knowledge practices 'which are answerable for the power relations they produce': Andrea Rhodes-Little, Julia Gillard and Sylvi Cerepinko, 'In Search of the Ethics of Company Law' (1994) 2 *Australian Feminist Law Journal* 180. For other analyses that develop this sense of ethics, see Moira Gatens, 'Corporeal Representations in/and the body politic' in Rosalyn Diprose and Robyn Ferrell (eds), *Cartographies: Poststructuralism and the mapping of bodies and spaces*, 1991, 79; Rosalyn Diprose, 'A "genethics" that makes sense' in Rosalyn Diprose and Robyn Ferrell (eds), *above*, 65. A less reflexive meaning of ethics is usually adopted in international relations and international legal literature, where ethics is discussed at all. For an example of the meaning given to ethics in international relations, see the collection of essays in Terry Nardin and David R Mapel, *Traditions of International Ethics*, 1992.

shaping the sense of the legality and morality of the practice of major powers and of multilateral institutions must develop a self-reflexive intellectual practice, one that recognises that the way we understand and represent ourselves and the world is both an effect of, and a contribution to, power relations.

In addition, the thesis argues that international lawyers must take responsibility for the power effects of their representations of international intervention. International law is a discourse that involves the constitution of subjects whose authority and identity is made possible by their relation to those in turn constituted as 'other'. The way in which that process might be resisted, through moving from an understanding of power as something exercised only by states or international organisations and their officials to an understanding (and thus possibly a transgression of) the role of lawyers in ensuring the privilege, status and authority of elites, is a central concern of my argument.

The thesis is not an attempt to make international law, imagined as a self-contained discipline, more inclusive, nor is it an attempt to improve the operation of international law by proposing doctrinal or policy changes. Instead, it investigates useful ways of approaching the tasks of reading and writing about international law ethically. I suggest that we need to shift our understanding of what is at stake in those processes, and in particular to recognise that reading and writing about international law involve the telling of stories and the formation of identities, by which certain ways of being are made to seem natural, desirable and privileged. In other words, reading and writing about international law involve the reproduction of power relations. The thesis attempts to make law's stories appear strange, in order to help those who read and write law's stories to remember the constructed nature of law's vision of the world.<sup>7</sup>

---

<sup>7</sup> See Andrea Rhodes-Little, *Sovereign/Body: Towards a Theory of Deviant Writing as a Domain of Constraint on the Performativity of Civil Subjects*, 1996, Phd Thesis, La Trobe

The following parts of this chapter provide an overview of the structure and methodology of the thesis. Part II provides an outline of the chapters of the thesis, while Part III explores some of the key critical questions confronting international law with which the thesis engages.

## II. OUTLINE OF CHAPTERS

Collective security discourse since the end of the Cold War has drawn on two different justifications for intervention. The first, more traditional, security-based doctrine is concerned with values of order, security and the punishment of aggression, and is based on a logic of protecting the state-based status quo. The revitalisation of the Security Council, and the ability of that body to respond to threats to international peace and security, has been seen by many international lawyers as progress towards the goal of global security.<sup>8</sup> Although the easing of US-Soviet tensions might have heralded a less conflict-ridden international sphere, in fact the end of the Cold War is represented as prefiguring greater insecurity, with ethnic tensions, religious fundamentalism, tribalism and secessionism posited as new and greater threats to security. Much of the scholarship written following the Gulf War celebrates the revitalisation of the Security Council, and presents the revived ability of that body to respond to threats of international peace and security as progress towards the goal of securing global harmony and world order.

In the immediate aftermath of the Cold War, intervention literature focused on those traditional 'collective security' arguments to justify Security Council actions. Chapter 2 engages with the literature of that period, questioning

---

University (on making the process of creating meanings about the world visible in order to make those meanings appear 'strange'); Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences*, 1994, xv (on creating a sense of wonderment about 'the stark impossibility of thinking that' and on how to make strange our 'order of things, to shatter all the familiar landmarks of ... our thought, the thought that bears the stamp of our age, our geography').

<sup>8</sup> See the discussion in Chapter 2 below.

whether actions such as those carried out in the Gulf War in fact guaranteed security to the peoples of target states in any meaningful sense. That chapter uses feminist and critical theoretical approaches to unpack some of the assumptions upon which the models of collective security operating at that time were based. It argues that most people have been rendered less secure by actions authorised by the Security Council in the name of collective security. The chapter suggests that the assumptions that lie behind theories of collective security limit the capacity of those theories to represent the security interests of many groups, including most women. Far from enabling a more secure global environment, the knowledge about disorder and chaos produced by international lawyers contributes to creating the context in which oppressive military and economic actions conducted in the name of the Security Council are rendered possible.

The second justification for Security Council action based on the novel doctrine of 'collective humanitarian intervention' involves a rather more radical interpretation of the UN Charter.<sup>9</sup> Although the jurisdiction of the Security Council under Chapter VII is only triggered by the existence of a threat to the peace, a breach of the peace or an act of aggression, the Security Council has since 1989 proved itself increasingly willing to interpret the phrase 'threats to the peace' broadly.<sup>10</sup> The range and nature of resolutions passed by the Security Council since the Gulf War suggest that the Council has adopted an expanded interpretation of its mandate in the changed conditions of the post-Cold War era. In particular, the Council now appears willing to treat the failure to guarantee democracy or human rights, or to

---

<sup>9</sup> For an analysis of the emergence of the doctrine of 'collective humanitarian intervention', see Fernando R Tesón, 'Collective Humanitarian Intervention' (1996) 17 *Michigan Journal of International Law* 323.

<sup>10</sup> Under Article 39 of the UN Charter, where the Security Council determines that there is a threat to the peace, a breach of the peace or an act of aggression, it may decide what measures shall be taken to maintain or restore international peace and security, including the use of force or of economic sanctions.

protect against humanitarian abuses, as either a symptom, or a cause, of threats to peace and security.<sup>11</sup>

Chapter 3 unsettles the terms of the debate about the legitimacy and utility of collective humanitarian intervention in situations such as those arising in Bosnia, Rwanda and Somalia. That chapter focuses on the representation of the collective security system as a means for the liberal alliance of democratic states to bring human rights, democracy and humanitarian principles to those in undemocratic or failed states. It questions the dominant liberal international consensus that collective humanitarian intervention has become necessary to address the problems of local dictators, tribalism, ethnic tension and religious fundamentalism. In particular, Chapter 3 challenges the broader assumption made in pro-interventionist literature that local institutions, actors or cultures pose the major threats to democracy and human rights, while international institutions and laws act primarily in the interests of human rights, democracy and the people. It argues that the current project of economic globalisation and restructuring, pursued with particular vigour and efficiency by international institutions in the post-Soviet era, actively contributes to the conditions that lead to security and humanitarian crises. Surprisingly little attention has been paid in legal texts to the ways in which processes of economic restructuring and globalisation contribute to development, currency or security crises. The chapter argues that the false opposition between collective humanitarian intervention and inactivity serves to hide the ways in which the post-Cold War engagement and activity of the international community has effects that are far from humanitarian.

Chapters 2 and 3 thus question legal arguments about the causes and effects of crises and interventions. In addition, those chapters begin to explore the effects of representations of the benevolence, humanitarianism and leadership of the international community, and of the chaotic, disordered, anarchic nature

---

<sup>11</sup> For an analysis of relevant Security Council resolutions and statements, see Chapter 3 below.

of target states. The broader argument that those chapters make is that the capacity to ignore the responsibility of the international community for such crises and for the destructive effects of subsequent interventions is an effect of power relations. Those chapters show that arguments in favour of collective humanitarian intervention are a part of a culture of imperialism, in which it makes sense to talk of other people beseeching domination and requiring charity dispensed through violent intervention. Those chapters point to the history of representing the world in such terms.

Chapter 4 takes up questions about the effects of intervention narratives more systematically. That chapter explores the nature of the investment in intervention stories by drawing on theories of subjectivity, identification and narrative. It argues that legal texts about intervention create a powerful sense of self for those who identify with the hero of the story, be that the international community, the Security Council, the United Nations or the United States. That chapter suggests that intervention stories have effects at the private and subjective level. Any attempt to develop alternative policy or doctrinal innovations as a response to security or humanitarian crises without reckoning with such investments will simply result in a reproduction of existing power relations.

Chapter 5 is also concerned with the political nature of the process of reading and writing about intervention. That chapter argues that a study of the narratives underlying intervention texts has particular relevance for international lawyers. Like other professionals, successful international lawyers come to embody and internalise the foundational narratives of their discipline. That chapter reflects upon the ways in which the subjectivity or self-image of international lawyers is shaped by engagement with intervention narratives. The chapter suggests that legal education, disciplinary training and broader cultures of imperialism all operate to shape the sense of self of international lawyers, and to limit the capacity of lawyers to take

responsibility for the power they exercise in their professional and everyday lives.

Chapter 6 concludes the thesis by exploring some of the implications of the recognition that intervention narratives operate not only or even principally in the realm of public life, rationality and facts, but also in the private, subjective and emotional realms of identification and imagination. My exploration of the stakes that a range of readers and writers have in the heroic narratives of intervention show that merely critiquing the causes or effects of intervention will do little to shift the power relations reproduced by such narratives. Chapter 6 argues that any attempt to engage critically with such powerful myths and narratives will fail if it focuses only on producing better, more accurate knowledge about intervention and its effects. Instead, critical approaches to international law must come to terms with the appeal of such narratives, explore the ways in which legal narratives shape our understanding of our selves and the world, and contribute to the communal project of making it possible to imagine and create other ways of being.

### **III. CRITICAL QUESTIONS ABOUT INTERNATIONAL LAW**

A number of themes and theoretical questions recur throughout the thesis. This section outlines those theories, explains their significance in shaping the direction my argument takes, and shows their relationship to a number of key challenges that face international law as a discipline in the late twentieth century.

#### ***A. Beyond sovereignty: law, power and knowledge***

The thesis develops an analysis of international law that is not premised upon a sovereign model of power. The dominant model of power in use in international legal scholarship about intervention is the juridical or sovereign model of power. International law is premised upon a notion of power as a



thing that can be held by particular entities or individuals, whether those entities be sovereign states, international organisations or in some cases terrorist groups or other entities threatening state power. International law is primarily understood as either in service to, or as an attempt to constrain, such entities that hold power.<sup>12</sup> International lawyers do not generally question that power is a commodity, held by particular entities, groups or individuals, and that it operates in a top-down fashion, often involving some form of coercion. The principal professional question relating to power is how to orient international law to power, or how best to deal with the realities of the operation of power in the international sphere. As a result, collective security theorists, for example, focus most of their attention on analysing the ways in which international law can assist in constraining, disabling or negotiating with those who are imagined as holding power, such as those men at the top of state and organisational hierarchies, or those with control over weapons and military force.

International lawyers do not on the whole question that this is the way in which power operates, even if international law itself does not have access to that kind of power. International lawyers, it should be stressed, do not usually conceive of *international law* as embodying or enacting such sovereign power. Indeed, the question 'is international law really law', a question that haunts international legal theory, is a manifestation of the sense that international law lacks this sovereign force.<sup>13</sup> Yet while international lawyers recognise that international law is not an exercise of sovereign power, they do not question that such power exists somewhere. Instead, they simply worry that it is not exercisable by a sovereign body from which international law gains its authority. The question as to whether international law is really law

---

<sup>12</sup> The structure of international argument has swung between apologetic or pragmatic approaches to the fact that international lawyers have to be realistic about where power lies, and idealistic approaches that make great claims for the possibility that international law can constrain such power. See Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, 1989.

<sup>13</sup> See, for example, Anthony D'Amato, 'Is International Law Really "Law"?' (1985) 79 *Northwestern University Law Review* 1293.

is not meant as a question about the utility of the model of law and the sovereign as a means of understanding the uses of power, but rather a question about whether international law conforms to an otherwise self-evidently realistic model of power.<sup>14</sup> The existence of power is never questioned; instead, it is asked whether international law can be said to conform to this model. International lawyers do not, in other words, ask whether law is really law.

This thesis adopts a non-sovereign model of power for a number of reasons. First, the sovereign model of power does not make it possible to ask questions about the nature and extent of the emotional investment that readers and writers have in intervention stories. My sense that there is a strong emotional engagement with security stories has strengthened as I have become aware of the great frustration that is expressed if the usual narrative of intervention cannot be told in the usual way. The sense of frustration felt by some commentators when military intervention as an avenue for action is closed off is well illustrated in collective security literature. Thomas Weiss, for example, in a striking metaphor, describes the United Nations Protection Force for the former Yugoslavia (UNPROFOR) as 'eunuchs at the orgy', due to the constraints imposed on the capacity of UNPROFOR to use force in that conflict.<sup>15</sup>

The more I reflected on the nature and extent of the emotions expressed in debates about intervention, the more I began to wonder about the complicated process of engagement with stories about Security Council actions. Few of the

---

<sup>14</sup> The image of international law as a manifestation of power or force appears in some representations of law in other disciplines. As David Kennedy has commented, law appears in the analyses of some literary theorists as 'reason, authority, clarity, force ... narratives that move from fiction to action': David Kennedy, 'Law's Literature' in Majorie Garber, Rebecca L. Walkowitz and Paul B. Franklin (eds), *Field Work: Sites in Literary and Cultural Studies*, 1996, 207, at 211. While images of international law as a manifestation of authority, action or force are difficult to sustain from within the discipline, international law offers other disciplines the promise of a kind of sovereign power in the international field.

<sup>15</sup> Thomas G. Weiss, 'On the Brink of a New Era? Humanitarian Interventions, 1991-94' in Donald C. F. Daniel and Bradd C. Hayes (eds), *Beyond Traditional Peacekeeping*, 1995, 3, at 8.

people with whom I have debated the legitimacy of such actions during periods of media saturation with stories about particular interventions have remained interested in Yugoslavia, Iraq, Haiti or Somalia after the media reporting is over. Edward Said has argued that a similar lack of ongoing interest in the effects of intervention has been a peculiar feature of American foreign policy.

Few Americans have agonized over places like Haiti and Iraq once the crisis of their country's actual intervention was over .... American attention works in spurts; great masses of rhetoric and huge resources are lavished somewhere ... followed by virtual silence.<sup>16</sup>

At some stage during my study of the appeal of the arguments in favour of increased militarism and economic restructuring, I began to realise that I was also attempting to understand my own investment in the promises of security, progress and humanitarianism. Carol Cohn reports a similar realisation that occurred to her during a year she spent as a participant observer of defense intellectuals working for the RAND Corporation in the United States.

I listened to men engage in dispassionate discussion of nuclear war. I found myself aghast, but morbidly fascinated ... by the extraordinary abstraction and removal from what I knew as reality that characterized the professional discourse. I became obsessed by the question, How can they think this way? ... But as I learned their language, as I became more and more engaged with their information and their arguments, I found that my own thinking was changing. Soon, I could no longer cling to the comfort of studying an external and objectified "them". I had to confront a new question: How can *I* think this way? How can any of us?<sup>17</sup>

---

<sup>16</sup> Edward W Said, *Culture and Imperialism*, 1993, 349-50.

<sup>17</sup> Carol Cohn, 'Sex and Death in the Rational World of Defense Intellectuals' (1987) 12 *Signs* 687.

A reconceptualisation of power makes it possible to explore the ways in which stories about intervention invite identification with some of those doing the invading, killing, bombing, starving, mining, bulldozing, raping and profit-making. The thesis makes use of different approaches to power in an attempt to understand how it is possible to desire the kind of massive destruction caused by military and monetary intervention, whether or not that intervention is carried out in the name of the international community. I abandon international law's focus on sovereignty in order to find a way to describe the power effects of intervention discourse at the personal and subjective level.

The second reason for developing a different model of power to think about the effects of international law is that the image of a monolithic sovereign power is disempowering. Feminist scholars have begun to reflect upon the ways in which writing about processes like globalisation or actors like international institutions can be implicated in producing a world in which those processes or actors appear powerful, irresistible and inevitable.<sup>18</sup> By reproducing the image of a 'massive or monolithic' state, or international organisation, or global capitalism, critical academics risk creating a feeling of hopelessness and passivity.<sup>19</sup> The image of power as operating from the top down not only creates a feeling of passivity in those outside such sites of power, but also reproduces the sense of self that, for example, business leaders, parliamentarians, international lawyers, World Bank economists and others who have a stake in the image of powerful institutions attempt to

---

<sup>18</sup> See J K Gibson-Graham, *The End of Capitalism (As We Knew It): A Feminist Critique of Political Economy*, 1996.

<sup>19</sup> *Ibid*, x. In contrast, the New Right has profited from creating a subject position from which people can feel power and agency. See Stuart Hall, *The Hard Road to Renewal*, 1988, 262 (arguing that one of the reasons that the Labour Party in Britain lost the 1987 election was that, while Labour politicians were addressing voters' needs in the areas of health, unemployment and education, Margaret Thatcher offered such voters a fantasy in which all could 'identify with the enterprise culture as the way of the future', and could 'see themselves in their political imaginations as likely to be lucky in the next round'. According to Hall, Thatcher's symbolic majority formed 'an "imaginary community" around Thatcherism's political project'). See also Renata Salecl, *The Spoils of Freedom: Psychoanalysis and Feminism after the Fall of Socialism*, 1994, 33-36.

create. Reflecting a sense of omnipotence back to those whose sense of self is based precisely on that idea of their power over others simply strengthens their self-image and position. As Doug Henwood notes in the case of economic globalisation:

It's a cliché of the daily press that the markets are now more powerful than governments .... The cliché contains a partial truth: these markets are tremendously powerful. But they are social institutions, instruments of power, that derive their power in part from the sense of powerless awe they inspire among non-initiates. Say "the markets won't like" a minimum wage increase or a public jobs program, and critical scrutiny often evaporates, like wishes crushed by the unfriendly voice of God.<sup>20</sup>

Scholars in many fields have begun to argue that it will not be possible to imagine the alternatives to dominant forms of social organisation and processes, like capitalism or globalisation, if critical scholars are complicit in representing the image of those forms as all-powerful.<sup>21</sup> The challenge is to find ways to write about processes like globalisation or international intervention that do not reproduce the image of some all-powerful, irresistible force, thus limiting strategies for resistance. Indeed, the model of an all-sovereign power in fact hinders attempts to develop such strategies. Jane Gallop points to the inhibiting effect that old models of power have on feminist strategies:

[F]eminism ... often falls for a familial interpretation of power relations. For instance, when it complains about men in power, it endows them with the sort of unified, phallic sovereignty that characterizes an absolute monarch, and which little resembles actual

---

<sup>20</sup> Doug Henwood, *Wall Street: How it Works and for Whom*, 1997, 11.

<sup>21</sup> J K Gibson-Graham, above n18, 263.

power in our social, economic structures. This monarchical model of power reproduces the daughter's view of the father.<sup>22</sup>

Gallop suggests that feminists need to move away from thinking about power in such patriarchal terms, in order to 'have greater effect upon the much more complex power relations that structure our world'.<sup>23</sup>

Thirdly, I move away from a sovereign model of power in order to begin to think about the ways in which the work of international lawyers is itself political. The understanding that many international lawyers have of their professional role is shaped by the centrality of the sovereign model of power in international law. International lawyers, like many other professionals in industrialised countries, see themselves as essentially performing a neutral, technical function, and have not traditionally conceptualised power as something that they themselves exercise. Since the publication of Edward Said's *Orientalism*, such an understanding of the role of knowledge producers in fields that engage with 'other' countries and cultures has been difficult to sustain.<sup>24</sup> Yet security discourse illustrates the ways in which international lawyers have continued to reproduce and refine an image of themselves and their role as apolitical and outside of power relations.

International lawyers writing about intervention acknowledge that they write about power, but not that they are implicated in reproducing or making relations of power.<sup>25</sup> Such a failure to think critically about the exercise of power is a feature of legal scholarship more broadly. The disciplinary authority of law is created through forgetting that the production of knowledge involves power relationships and human imagination. Lawyers

---

<sup>22</sup> Jane Gallop, *The Daughter's Seduction: Feminism and Psychoanalysis*, 1982, xv.

<sup>23</sup> *Ibid.*

<sup>24</sup> Edward W Said, *Orientalism*, 1978.

<sup>25</sup> International lawyers, for example, if they write in the realist tradition, see the power of states as a given, which must be taken into account in determining legal strategies. Idealistic international lawyers also see their task as acting to help states realise that the national interest can be served by humanitarian behaviour. See the discussion in Chapter 2 below.

have traditionally represented law as essentially different to other practices of story-telling or the making of meaning.<sup>26</sup>

Masculinist thinkers in the disciplines of law, philosophy and politics, amongst other fields, have refused to acknowledge the essentially imaginative nature of their knowledge fields and of the subjects (themselves and their friends) who assert the capacity to know and act.<sup>27</sup>

The understanding of knowledge production as a value-free exercise involving the process of observing and describing a real world that exists externally to the observer has been subjected to criticism from many quarters. In particular, it has been criticised by those scholars who analyse the ways in which many disciplines perpetuate race, gender and class as organising categories for understanding the world.<sup>28</sup> A different approach to power can enable critical theorists to explore the ways in which lawyers participate in the deeply political process of making particular narrow ways of being appear normal and natural, thus delegitimising other ways of imagining what it is to be in the world.<sup>29</sup> Assuming that all power rests with sovereign states or international organisations allows for little reflection upon the power relations international lawyers reproduce and make possible through their intellectual and legal

---

<sup>26</sup> Andrea Rhodes-Little, 'Review Essay: Who Do We Think "We" Are?' (1997) 8 *Australian Feminist Law Journal* 149.

<sup>27</sup> *Ibid.*, 152.

<sup>28</sup> See, for example, Edward W Said, above n24; Margaret Davies, *Asking the Law Question*, 1994; Ian Duncanson, 'Broadening the Discipline of Law' (1994) 19 *Melbourne University Law Review* 1075; Gayatri Chakravorty Spivak, *Outside in the Teaching Machine*, 1993; bell hooks, *Teaching to Transgress*, 1994; Jim George, 'Quo Vadis Australia? Framing the Defence and Security Debate Beyond the Cold War' in Graeme Cheeseman & Robert Bruce (eds), *Discourses of Danger & Dread Frontiers: Australian Defence and Security Thinking after the Cold War*, 1996, 10; Donna Haraway, *Primate Visions: Gender, Race and Nature in the World of Modern Science*, 1989; Henry A Giroux, 'Pedagogy and Radical Democracy in the Age of "Political Correctness"' in David Trend (ed), *Radical Democracy: Identity, Citizenship, and the State*, 1996, 179.

<sup>29</sup> Andrea Rhodes-Little, above n26; Patricia J Williams, *The Rooster's Egg: On the Persistence of Prejudice*, 1995, 11, 70. Williams notes, for example, that in order to dispossess aboriginal people from their land in the United States, law's authority 'was hitched to a myth of compelling mission and a sacred vision, an endowment emanating from God but ultimately speaking through the naturalized logic of positivism'.

practice. This thesis by contrast studies legal scholarship as an exercise of power, an act of regulation and discipline.

My understanding of power and the stakes of writing about collective security owes a great deal to the work of feminist scholars, postcolonial scholars and queer theorists. The model of power that emerges from these areas departs from a conception of power as a commodity or thing held by particular powerful entities like states. Scholars in those fields have been arguing for decades that apparently organisational and public issues, such as militarism, imperialism and monetarism, are deeply personal, while the personal issues of subjectivity and experience are deeply political. These analyses offer insights about the personal and private nature of the forms of power that operate in liberal democracies.

One theorist who has contributed a great deal to the articulation of this shift in understanding of the operation of power is Michel Foucault. In his influential text, *The History of Sexuality, Volume 1*, Foucault challenges assumptions about the operation of power in liberal states.<sup>30</sup> In that introductory volume, Foucault argues that power operates in liberal states in ways that differ from what he terms the juridical model of power that is accepted in much political and legal theory. That juridical model presents power as a commodity, as centralised, as operating in a top-down fashion, and as essentially repressive rather than productive.<sup>31</sup> Most international lawyers working in the field of collective security still conceptualise power in ways that resemble Foucault's

---

<sup>30</sup> Michel Foucault, *The History of Sexuality, Volume 1: An Introduction* (trans Robert Hurley), 1981.

<sup>31</sup> Foucault's juridical model does not in fact represent what an Anglo-Australian lawyer would understand as a domestic legal model of state sovereignty, although he comes close to describing the model of power understood to operate in international law. The model of juridical power or law that Foucault uses resembles the Austinian conception of the commands of a sovereign backed up by force. See the critique in Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance*, 1994. Yet Foucault's failure to posit a sophisticated conception of sovereignty does not take away from the utility of his reconceptualisation of power. As many commentators have shown, his alternative model of power has a great deal to offer legal studies. See, for example, Ian Duncanson, above n28; Andrea Rhodes-Little, above n26; Adrian Howe, *Punish and Critique: Towards a Feminist Analysis of Penalty*, 1994, 82-122.



'juridical' model. While collective security theorists may not conceive of international law as conforming to the model of juridical power, they locate that power elsewhere: in superpowers exercising power over the new world order, in sovereign states exercising power over their peoples, in international organisations at times managing to exercise such power over 'failed' or disordered states during successful interventions, or in the disciplining power of the market over states that have failed to organise their economic 'fundamentals'.

Foucault suggests that under liberalism, coercive juridical power is no longer the dominant form of power. As a result, an analysis of power 'must not assume that the sovereignty of the state, the form of the law, or the over-all unity of a domination are given at the outset; rather, these are only the terminal forms power takes'.<sup>32</sup> Power does not operate from the top down, as something seized by an all powerful sovereign and then used to oppress those with less power. The source of power is not some distant all-powerful being. Particular agents of the state or of other powerful bodies do not have monopolies on power. Rather, power exists in relations between people rather than as a commodity that can be held by an entity. In that sense, we are all agents of power.<sup>33</sup>

That reconceptualisation of power allows a shift away from the image of particular structures, institutions or entities as all-powerful. The vision of power as something held by all-powerful entities like sovereign states is only the end point of the exercise of power at many levels. Foucault argues that we should not mistake these 'terminal forms power takes' for the whole field of operations of power generally.<sup>34</sup> The effect of focussing only on the terminal,

---

<sup>32</sup> Michel Foucault, above n30, 92.

<sup>33</sup> Such an understanding of power has been advocated by many feminists, gay and lesbian scholars and postcolonial theorists. Both men and women, for example, are potentially the agents or officials of masculinism, just as both colonisers and colonised are potentially the agents or officials of colonial power. For an application of that approach to security theories, see the discussion in Chapter 2.

<sup>34</sup> Michel Foucault, above n30, 92.

juridical form of power is to mask the operation of power in its 'liberal' form, and thus to make that form of power all the more effective. While power may appear to be omnipresent, this is 'not because it has the privilege of consolidating everything under its invincible unity'.<sup>35</sup> Rather, in a famous line, Foucault suggests that '[p]ower is everywhere; not because it embraces everything, but because it comes from everywhere'.<sup>36</sup>

Foucault's model of power is useful in attempting to understand the 'private life of war' or economic restructuring.<sup>37</sup> By abandoning sovereign power as the central premise of analysis, it becomes possible to analyse the ways in which local effects of power and local tactics combine to make militarism and economic restructuring possible. Using the language of statehood, rather than sovereignty, we can question, as Kelsen did, the notion of the state as 'in contrast to the law, "behind" the law, as the "bearer" of the law', and call as he did for a 'politics without a state, just as today there is already a psychology without a "soul" ... [and] a physics without forces'.<sup>38</sup> By decentring sovereign power as the norm, we can analyse power by looking for 'local centers of power-knowledge' or the local effects of the exercise of power, rather than by looking for some all-powerful entity and measuring its activities.<sup>39</sup> In other words, in order to analyse power's operations in any given situation, we can look to its local effects, rather than looking for, and reproducing in our analyses, some powerful sovereign figure from whom such power is supposedly emanating.

Such an analysis does not require critics to forget the kinds of power exercised by states. Instead, it understands state power differently. A

---

<sup>35</sup> *Ibid*, 93.

<sup>36</sup> *Ibid*.

<sup>37</sup> Susan Griffin, *A Chorus of Stones: The Private Life of War*, 1992.

<sup>38</sup> Hans Kelsen, 'The Conception of the State and Social Psychology with Special Reference to Freud's Group Theory' (1924) 5 *International Journal of Psycho-analysis* 1, 36. See the discussion of Kelsen in Nathaniel Berman, 'Book Reviews' (1991) 32 *Harvard International Law Journal* 583, 591. Berman sees Kelsen's critique of positivism 'as akin to other, contemporaneous critiques of the practice of turning functions into substances'.

<sup>39</sup> Michel Foucault, above n30, 98.

reconceptualisation of power along the lines proposed by Foucault suggests that while sovereign states, international organisations, superpowers, the global market and at times international law are certainly effects of power, they are not the sources of power. The sense that these entities are omnipotent is itself an effect of power relations.<sup>40</sup> This thesis therefore does not assume that more coercive top-down models of power are useless in understanding international legal phenomena such as wars, violent military interventions, economic restructuring and the violence imposed in these ways. On the contrary, classical models of power and coercion are useful in understanding these phenomena. I do not, however, think that attention to that model of power reveals the whole story.

Let me give an example. Commentators outside law have argued convincingly that the Gulf War was fought over access to oil and oil company profits.<sup>41</sup> Yet something is missing if critics suggest that the reason many people in countries like Australia or the US supported the Gulf War was that they knew that they would have greater wealth and a better standard of living if Third World states were controlled by the US and if access to oil was guaranteed. Critical and feminist analyses show that the use by states or international organisations of military and economic force to increase power, territory or influence depends upon complex appeals to, amongst other things, patriotism,

---

<sup>40</sup> Eve Kosofsky Sedgwick, *Tendencies*, 1993, 5-6. Eve Sedgwick describes that sense of power with reference to the Christmas effect. At Christmas time, all kinds of institutions and relations line up behind the notion of Christmas.

The depressing thing about the Christmas season - isn't it? - is that it's the time when all the institutions are speaking with one voice. The Church says what the Church says. But the State says the same thing: maybe not (in some ways it hardly matters) in the language of theology, but in the language the State talks: legal holidays, long school hiatus, special postage stamps, and all. And the language of commerce more than chimes in, as consumer purchasing is organized ever more narrowly around the final weeks of the calendar year, the Dow Jones aquiver over Americans "holiday mood" ... They all - religion, state, capital, ideology, domesticity, the discourses of power and legitimacy - line up with each other so neatly once a year, and the monolith so created is a thing one can come to view with unhappy eyes.(5-6)

While it seems as if all these institutions speak in the same voice, the effect is not due to the power of some central body, but rather because of the sense of unitary power produced by all these disparate bodies and entities lining up in that way.

<sup>41</sup> See, for example, Ted Wheelwright, *Oil & World Politics: From Rockefeller to the Gulf War*, 1991.

economic interests and conceptions of masculinity and femininity. At least in democratic states, only if such appeals are successful in controlling individual subjects can states 'naturally' exercise their military and economic power in aggressive external shows of force. By ignoring these aspects of the operation of power that are less juridical and more dispersed in form, international lawyers generally fail to consider why acts of intervention by international organisations or acts of violence by particular warlords may have the support of populations.

Similarly, I argue in Chapter 3 that the nature of the crisis in the former Yugoslavia was caused by a particular form of economic restructuring imposed in an undemocratic and coercive fashion by international financial institutions, that those institutions have been asked to bear no responsibility for that crisis, that the forms of constitutional arrangement that have been put in place since that crisis have further enabled this kind of restructuring and disempowered the people of the former Yugoslavia, and that this is colonialism by another name. Yet, as with colonialism, those people who justify the forms of intervention in the former Yugoslavia do not do so on the basis that they will be much better off, wealthier, and will be guaranteed a higher standard of living as a result of such repeated interventions. Rather, politicians, the media and international legal scholars justify that intervention on the basis of humanitarianism and the need to restore order in the case of a state racked by 'ethnic' or 'religious' conflict. My interest is in the effect of security stories on those who theoretically have the democratic power to stop the people who are acting in their name (governments, their militaries, the representatives of those governments in international organisations) from exercising power over other people in such an exploitative, violent and oppressive fashion. In this, I am following a line of questioning that has been developed by scholars seeking to understand the cultures that make imperialism possible.<sup>42</sup>

---

<sup>42</sup> See, for example, Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, 1993; Edward W Said, above n16; Kristin Ross, *Fast Cars, Clean Bodies: Decolonization and the Reordering of French Culture*, 1996.

## ***B. Images of international law***

One of the effects of power explored in this thesis is the way in which images of the international and the local operate in international legal texts. Throughout the thesis, I analyse the ways in which international lawyers imagine and represent the 'international' as well as the 'local', and consider the effect of such representations.

The debate about collective security is a particularly useful place to begin engaging with the roles imagined for international law, international lawyers and international organisations in the changed conditions of the post-Soviet era. It is in debates about collective security that a number of themes of post-Soviet legal scholarship merge - growing enthusiasm amongst some international lawyers for the emergence of a powerful body that can bring security, order, human rights and democracy to the world, the new tendency to treat international organisations and international law as agents for democracy, and dreams of a new world order characterised by 'free' institutions, free markets and liberal democratic governments. Images of the international as a site of progressive values appear throughout collective security texts. Those arguing in favour of expanding the role of the Security Council in the post-Soviet era present an image of international institutions and international law as agents of democracy and human rights. The political culture encouraged by international law and intervention is presented as inevitably more humane, rational and democratic than that inspired by national laws and institutions.

The thesis explores the ways in which such images engage readers and writers, ensuring that what would otherwise be technical accounts of intervention become part of 'the stories that we are all inside, that we live daily'.<sup>43</sup> For

---

<sup>43</sup> Terry Threadgold, 'Introduction' in Terry Threadgold and Anne Cranny-Francis (eds), *Feminine, Masculine and Representation*, 1990, 1, at 27.

example, I suggest in Chapter 3 that the effect of presenting international institutions and major powers, particularly the US, as bearers of progressive values is to announce the legitimacy of interventions conducted in the name of the international community, while obscuring questions about the uses of intervention in protecting stable investment regimes or overpowering resistance to economic restructuring. Such images of the international lead to a focus on levels of governance, at the expense of questioning the nature of the political developments that are enabled by actions at the international, national and local levels.<sup>44</sup>

The thesis also explores the ways in which the images of internationalism that appear in collective security texts are opposed to forms of nationalism variously represented as premodern, ethnic, tribal, chaotic, disordered and xenophobic. Such an opposition is made possible only by a selective focus on some areas of international activity as representative of the humane intentions and effects of international intervention, while other areas of activity are ignored. Chapter 3, for example, shows that international lawyers consider only the role of international actors as defenders of humanitarianism and security in the former Yugoslavia, rather than assessing the role of international actors in contributing to that security crisis.

The broader argument I make is that international lawyers need to reflect upon their representations of the role of internationalism and of international organisations in the changed conditions of the post-Soviet era. The ways in

---

<sup>44</sup> David W Kennedy, 'A New World Order: Yesterday, Today and Tomorrow' (1994) 4 *Transnational Law and Contemporary Problems* 329. While David Kennedy points to the need to look beyond an analysis based on levels of governance, and discusses the need to move beyond an opposition between national and international, I develop that argument further in Chapters 3, 4 and 5 below to analyse a particular historicised, contemporary rendering of that division, and the effects of that opposition for the identities of international lawyers and more generally for those who identify with the international community. I argue that different images of internationalism can be used as a Trojan horse to allow in far less humanitarian models of political and social life. In other words, the association of progressive values with the international realm means that non-progressive aspects of internationalism are rendered invisible. Positive images of internationalism mask oppressive aspects of internationalism.

which that role is represented shape arguments about the legitimacy of processes such as military intervention and economic globalisation, and produce for international lawyers a sense that they play an important and humanitarian role in the new world order. In turn, such images produce a sense of identity for those who identify with the international community.

A focus on those images of the international and the local is important in part because of the links that such a focus suggests with cultures of imperialism. Postcolonial theorists have argued that imperialism was made possible in part through narrative.<sup>45</sup> Stories about civilising missions were used to announce, argue and promote the cultural superiority of colonising states, to justify democratising and civilising invasions by colonial powers and to consolidate the power of European and later American states. In much the same way, legal narratives about intervention contribute to making neocolonialism appear natural, inevitable and desirable. Intervention stories are premised upon an assumption about the capacity of the 'West' to bring democracy and human rights to the rest of the world. Such stories ignore a history in which imperial powers announced and celebrated their superiority in similar language, with tragic consequences.

The thesis also explores the role played by representations of legality in texts about collective security. Notions of legality, authority and public interest implied by the involvement of an international institution like the Security Council play a role in producing the apparent consensus that such actions are legitimate, indeed humane. As Chris af Jochnick and Roger Normand have commented with respect to the legitimating role of international humanitarian law, '[a]cts sanctioned by law enjoy a humanitarian cover that helps shield

---

<sup>45</sup> Edward W Said, above n16, xiii (arguing that '[t]he power to narrate, or to block other narratives from forming and emerging, is very important to culture and imperialism, and constitutes one of the main connections between them'). See further the discussion in Chapter 4 below.

them from criticism'.<sup>46</sup> Law functions to legitimate conduct both because people 'view compliance with "the law" as an independent good', and because law functions ideologically to influence the perception of the legitimacy of an act 'by imbuing it with the psychic trappings of lawfulness'.<sup>47</sup> International legal discourse about the role of international institutions and about collective security shapes broader representations of, for example, the legitimacy of actions such as those undertaken in the Gulf, Haiti or the former Yugoslavia.

Although this research is influenced by the work of critical theorists studying national security discourse, the motivations that underlie the appeal of that discourse are different from those underlying the more legalistic appeal of collective security discourse.<sup>48</sup> The work done by international relations theorists on national security issues has analysed what national security discourse offers in terms of emotional promises about security and stories about ways of being. While collective security discourse also makes emotional promises and tells stories about the world, these stories are of a rather different nature. Collective security discourse focuses on the legal means of maintaining a global peace and protecting the victims of aggression, rather than on promoting the national interest. Collective security discourse is in theory about law and right, while national security discourse is about might. Comparing the two makes us more alert to the specificity of claims to legality, as opposed to other sorts of claims to authenticity and legitimacy.

---

<sup>46</sup> Chris af Jochnick and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49, 56.

<sup>47</sup> *Ibid*, 57.

<sup>48</sup> See, for example, J Ann Tickner, 'Inadequate Providers? A Gendered Analysis of States and Security' in Joseph E Camilleri, Anthony P Jarvis and Albert J Paolini (eds), *The State in Transition: Reimagining Political Space*, 1995, 125; V Spike Peterson, 'Security and Sovereign States: What Is At Stake in Taking Feminism Seriously?' in V Spike Peterson (ed), *Gendered States: Feminist (Re)Visions of International Relations Theory*, 1992, 31; R B J Walker, 'Security, Sovereignty and the Challenge of World Politics' (1990) 15 *Alternatives* 3; David Campbell, *Writing security: United States foreign policy and the politics of identity*, 1992; Cynthia Weber, above n5; Graeme Cheeseman and Robert Bruce (eds), above n28; Carol Cohn, above n17.



### *C. Economic globalisation after the Cold War*

This thesis introduces economic globalisation as a factor in thinking about collective security, and develops a theory about why globalisation is relevant to collective security. Throughout the thesis, I make connections between the area of military intervention and that of monetary intervention conducted by international economic institutions. I argue that international lawyers need to take account of the challenges facing the discipline of international law as a result of the changed economic conditions of the post-Soviet era. The changes to the international system that have taken place since the break up of the Soviet Union have had a significant impact upon international law, international institutions and state sovereignty.

In particular, the ending of the Cold War has enabled the process of economic globalisation to be facilitated by the increasingly effective and rapidly shifting operations of international economic institutions such as the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO).<sup>49</sup> The consequences of economic restructuring, and the fact that international institutions play such a central role in furthering that project, requires international lawyers to begin to rethink what internationalism means in the late twentieth century. Most observers of international affairs outside the discipline of international law, whether optimistic or pessimistic about the impact of changes such as increased capital mobility, trade liberalisation, privatisation of government services and the emerging international division of labour, recognise that there have been enormous changes to the global economy over the past 25 years, and particularly in the post-Soviet era. A 1995 World Bank report talks of 'revolutionary times in the global economy',

---

<sup>49</sup> There are many other actors involved in formulating and implementing the process of economic globalisation. The activities of international economic institutions are of particular interest, however, because it is through those institutions that much of the agenda of economic restructuring is pursued in the aftermath of the Cold War. Economic and investment liberalisation is largely carried out multilaterally, with unilateral or bilateral initiatives threatened or resorted to in order to strengthen multilateral negotiations and regulations.

with 'the embrace of market-based development by many developing and former centrally planned economies, the opening of international markets, and great advances in the ease with which goods, capital and ideas flow around the world, bringing new opportunities, as well as risks, to billions of people'.<sup>50</sup> In a 1994 survey of the global economy, *The Economist* promises that, '(o)ver the next 25 years, the world will see the biggest shift in economic strength for more than a century'.<sup>51</sup> Gayatri Spivak also points to the enormity of changes in 'the financialising of the globe' which have become much more possible in the post-Soviet world.

Economic restructuring means that the barriers between fragile national economies and international capital are falling one by one, economic constraints are all orthodox and possibilities for social redistribution are disappearing.<sup>52</sup>

Yet while ancient hatreds, ethnic tensions, postmodern tribalism or emerging nationalisms are regularly treated as the causes of humanitarian and security crises, most international legal analyses do not ask whether such crises could better be understood as a consequence of ever more ruthlessly efficient divisions of labour and resources in the post-Soviet era. Collective security discourse ignores almost completely the current historical context of rapid and massive global economic change within which security and humanitarian crises emerge and security actions take place. International law has been criticised more broadly for this curious, ahistorical representation of 'the international'.<sup>53</sup> In particular, international lawyers have not taken into account the role played by the activities of international economic institutions in contributing to security crises. This thesis argues that it is necessary to take such

---

<sup>50</sup> The World Bank, *World Development Report 1995: Workers in an Integrating World*, 1995, 1.

<sup>51</sup> 'Survey: The Global Economy', *The Economist*, 1 October 1994, 3.

<sup>52</sup> Julie Stephens, above n1, 20.

<sup>53</sup> David W Kennedy, above n44; Philip Alston, 'The Myopia of the Handmaidens: International Lawyers and Globalization' (1997) 8 *European Journal of International Law* 435.

activities into account in order to assess, for example, the meaning of collective humanitarian intervention or of collective security in the new world order.

The failure of international lawyers to address the role played by economic restructuring in contributing to security and humanitarian crises has effects at the doctrinal level and at the cultural level. At the doctrinal level, I show that much energy is focused on rethinking norms of military intervention as a solution to security and humanitarian crises, while little attention is paid to reassessing the project of economic liberalisation, an enormous and influential area of engagement and activism. Much of the doctrinal energy that has been devoted to the law of military intervention could more usefully be focused on restraining monetary intervention.

At the cultural level, I show that the tendency to focus only on 'humanitarian' forms of military intervention contributes to the image of internationalism as the site of progressive values. Much international intervention is justified by presenting an image of the international community as acting in the interests of humanity and democracy, while ignoring the violence and injustice effected in the name of internationalism through military and monetary intervention. Such images shape the sense of economic liberalisation as natural and inevitable, and construct the identity of the international community as active, humane saviours intervening to help people in trouble spots, obscuring other sets of relations between those who identify as the international community and those targeted for intervention. Reading international legal texts in the context of economic restructuring makes it possible to consider how texts about collective security and intervention operate to manufacture the consent of citizens of militarily powerful states for the use of force against peoples in Africa, Eastern Europe, Asia, Latin America and the Carribean.<sup>54</sup>

---

<sup>54</sup> The concept of 'manufacturing consent' is taken from Edward S Herman & Noam Chomsky, *Manufacturing Consent*, 1988. I differ from Herman and Chomsky in my understanding of the differentiated nature of the audience for the stories told by governments and the media. My analyses in Chapters 4, 5 and 6 make different assumptions about our investments in these stories, and the way such stories can be resisted and renegotiated.

#### ***D. The gender of intervention***

A further theme of the thesis is a focus on the gender of intervention. In Chapter 2, that focus takes the form of investigating the ways in which actions authorised by the Security Council impact upon women, and the extent to which the assumptions made by security theorists serve to make women less secure. In Chapters 4 and 5, my approach to law's stories pays close attention to the ways in which the objects and subjects of international law are created, and to the categories of gender and race.

The broad question of what attention should be given to gender in the analysis of processes like international intervention or globalisation is not an easy one. I am reminded of Rey Chow's counsel to feminists 'watching China' in the aftermath of the Tiananmen Square massacre and arrest of pro-democracy demonstrators.

I heard a feminist ask: "How should we read what is going on in China in terms of gender?" My immediate response to that question was, and is: "We do not, because at the moment of shock Chinese people are degendered and become simply 'Chinese'". To ask how we can use gender to "read" a political crisis such as the present one is to insist on the universal and timeless sufficiency of an analytical category, and to forget the historicity that accompanies all categorical explanatory power .... The problem is not how we should read what is going on in China in terms of gender, but rather: what do the events in China tell us about gender as a category, especially as it relates to the so-called

---

Nevertheless, I continue to find their analysis of the role of the media in developing popular support for foreign policy in capitalist democracies useful.

Third World? What are gender's limits, where does it work, and where does it not work?<sup>55</sup>

Accordingly, my research draws on the scholarship of Chow and others to consider the ways in which gender works and does not work as a category in analysing the potential impact and consequences of the internationalism of the post-Cold War era.

A feminist analysis of collective security that focuses on gender alone would operate to reinforce the privileged position of white women. Versions of feminism have been able to enter disciplinary debates without destabilising metaphors of race and class that operate within disciplines like science and law to establish knowledge hierarchies.<sup>56</sup> Attempting to broaden the questions asked in her field of sociobiology, Donna Haraway comments:

I am ... interested in sociobiology as a postmodern discourse in late capitalism, where versions of feminism readily enter the contest for meanings, at least in retrospect and over the tired bodies of gutsy sociobiological feminists. How have sociobiological feminist arguments, like other western feminisms, enabled deconstruction of masculinist systems of representation, while simultaneously both deepening and problematizing unmarked enabling tropes of western ethnocentrism and neo-imperialism?<sup>57</sup>

To some extent, the field of international law differs from the sociobiology that Haraway describes, in that international legal feminists have not been able to ensure that their versions of feminism would enter the contest for meanings in the security and economic areas in which I am interested here. Not even western feminisms have been able to contest the meanings of

---

<sup>55</sup> Rey Chow, 'Violence in the Other Country: China as Crisis, Spectacle, and Woman' in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres (eds), *Third World Women and the Politics of Feminism*, 1991, 81, at 82.

<sup>56</sup> Donna Haraway, above n28.

international economic law, international trade law and collective security. There is clearly a need, then, to continue the attempt to criticise the masculinist foundations of these discourses. As Jane Gallop argues:

Thinking through the body may seem most appropriate for reflecting on gender, but it is essential that we not restrict our embodied intellection to sexual difference lest we reinforce the split between women's issues (love, family, sexuality) and "serious" subjects (military history, cultural imperialism, political economy), trapping feminist thinkers out in the suburbs of intellectual life.<sup>58</sup>

Yet the point that feminists are capable of reinscribing race and class difference is an important one in this area. The methodological terms of engagement with the discourse of internationalism bring us to the question of ethics and embodiment. How is it possible to engage with the internationalist discourses that form the object of my study without deepening the 'enabling tropes of western ethnocentrism and neo-imperialism'? In the fields of war and economic development, for example, the bodies of 'womenandchildren' already appear playing the roles of objects: victims of war, objects of population control, victims of the sex trade, victims of droughts and famines. Can feminist analyses avoid reproducing these staples of masculinist texts, avoid dreaming of saving other women in ways that enable us to feel a power that we are unable to feel in our own lives?

The issue of the dangers of feminists from industrialised countries writing about how to save 'other' women has been raised in the debate over the 'women and development' field.<sup>59</sup> Chandra Mohanty has pointed to the politics of writing about and developing expertise about women with less power, and the tendency of feminists writing about 'third world women' to reproduce narratives about the

---

<sup>57</sup> *Ibid*, 353.

<sup>58</sup> Jane Gallop, *Thinking Through the Body*, 1988, 8.

<sup>59</sup> See particularly the collection of essays in Chandra Talpade, Ann Russo and Lourdes Torres (eds), above n55.

third world as a place of underdevelopment, in which 'Western feminists' are the subjects of history and 'third world women' the objects.<sup>60</sup> As Andrea Rhodes-Little, Julia Gillard and Sylvi Cerepinko point out, the 'challenge thrown down by "other" women is that of how to resist those social practices which produce inequality and divide women against each other within a global context as well as in local contexts'.<sup>61</sup> In the context of international law, that challenge includes attempting to write without reproducing categories such as 'Western' and 'Third World' or 'saviour' and 'victim' as if they were natural and self-evident, to address the power relations involved in producing texts about 'others', and to think about the ways in which such categories and power relations operate in writing about subjects as seemingly removed from identity politics as intervention and international law. Feminist writing about international law also has to attempt to address the processes that continue to produce inequality between women on a global scale.<sup>62</sup>

Gender may be relevant here in the sense that the subjects and objects in law's stories about intervention are gendered. These stories address their audience in ways that are concerned with the gender of the spectator or audience for the story. Teresa de Lauretis suggests that feminist film theory provides ways of addressing these issues: 'not only how the representation of gender is constructed by the given technology, but also how it becomes absorbed subjectively by each individual whom that technology addresses'.<sup>63</sup> The question of absorption is addressed, according to de Lauretis, by 'the concept of spectatorship, which feminist film theory has established as a gendered concept; that is to say, the ways in which each individual spectator is addressed by the film, the ways in which his/her identification is solicited and

---

<sup>60</sup> Chandra Talpade Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' in Chandra Talpade, Ann Russo and Lourdes Torres, above n55, 51.

<sup>61</sup> Andrea Rhodes-Little, Julia Gillard and Sylvi Cerepinko, above n6.

<sup>62</sup> For examples of feminist international legal writing that address those issues, see Christine Chinkin, 'Feminist Interventions into International Law' (1997) 19 *Adelaide Law Review* 13; Krysti Justine Guest, 'Exploitation under Erasure: Economic, Social and Cultural Rights Engage Economic Globalisation' (1997) 19 *Adelaide Law Review* 73.

<sup>63</sup> Teresa de Lauretis, *Technologies of Gender: Essays on Theory, Film and Fiction*, 1987, 13.

structured in the single film, are intimately and intentionally, if not usually explicitly, connected to the spectator's gender'.<sup>64</sup>

The thesis explores how, if at all, the identification that is solicited and structured by security discourse is connected to the gender and race of the person addressed by the discourse. The narratives of collective security theory hail readers as white, powerful, active and masculine, and this has historically been a way of producing white, middle-class, imperial men and women. Women are asked to identify with the male role assigned to the active, muscular, professional interveners for democracy or security constituted in these narratives of salvation. Women reading and writing such texts imagine themselves in the role of the professional, managerial hero, and are able to identify with those heroic characters if they are willing to sacrifice others to the feminine role. That has perhaps to some extent always been true of colonialism, so that imperialist women have been able to experience increased agency just as imperial men have done. What then are women who are international lawyers doing to 'other' women and to feminised men in order to participate in 'the spoils of freedom'?<sup>65</sup>

A related issue that arises for me in writing about this topic is how to take responsibility for my own power. The temptation in writing about international law as a feminist woman in the academy is to present my position as largely powerless, as a marginal or oppositional critic voicing my protests about the actions of all-powerful institutions and processes, including patriarchy, capitalism, globalisation and militarism. When I started work on this project, that was precisely the position I imagined myself occupying. Indeed, the first paper I presented on this topic was a difficult experience, precisely because I imagined myself as a David speaking on behalf of truth and justice to a room full of Goliaths.

---

<sup>64</sup> *Ibid*, 13.

<sup>65</sup> Renata Salecl, above n19.



Gradually, I have come to realise that there are a number of problems that arise if such a position is assumed. The first is that, by presenting myself as powerless and those I am criticising as omnipotent, I run the risk of creating in myself and my readers a sense of hopelessness. If the patriarchy, the UN, the World Bank, the US or the faceless process of globalisation are indeed all-powerful and extremely destructive, it is hard to see exactly what use writing about their actions will be. What can a reader who has learnt about the destructive consequences of military or monetary intervention conceptualise as a useful form of response or resistance if my image of those carrying out such interventions is one of totalising power? The realistic or pragmatic response for such a reader would be either to give up hope and focus instead on local and manageable problems and issues, or at worst to join forces with these institutions and actions, on the basis that it is better to be on a winning than a losing team.

The second problem that arises if I imagine myself as lacking in power is that I risk failing to take responsibility for the power that I do in fact exercise, and falling into the trap of a paranoid mode of understanding politics which assumes that there are all-powerful enemies who do exercise power over me and who must if possible be destroyed. The more I read and studied about the way in which people identify with leaders who act in brutal and evil ways, the more I realised that such people understand themselves first as victims, and thus are able to feel a legitimate desire to destroy their enemies.<sup>66</sup> Clearly that raises difficult questions for a feminist: if to understand oneself as a victim is the prerequisite for being an oppressor, how could I be certain that such results were not the effects of my work?

---

<sup>66</sup> See Jacqueline Rose, *The Haunting of Sylvia Plath*, 1992, 210 ('perpetrators experience themselves as victims in order both to deny and to legitimate their role (to be a perpetrator you have first to "be" a victim)'); Anita Eckstaedt, 'Two Complementary Cases of Identification Involving "Third Reich" Fathers' (1986) 67 *International Journal of Psycho-Analysis* 317, 326 ('It is only a matter of time before the defence of experiencing oneself as a victim meets up with the repressed experience of harbouring the intentions of the perpetrator'); Anthony M Elliott, 'Symptoms of Globalization: or, Mapping Reflexivity in the Postmodern Age' in Joseph E Camilleri, Anthony P Jarvis and Albert J Paolini (eds), above n48, 157, at 167.

Thus one of the issues that I examine throughout the thesis is how to acknowledge that I am always in some way complicit with, or part of, those I want to criticise most strongly.<sup>67</sup> Rather than see all evil as residing somewhere outside me, in an enemy who must be destroyed, my attempt in this work is to develop a way of talking about the effect of international law's stories without creating an opposition between good and bad, us and them. I have attempted to make an argument about international law without creating heroes and villains, although I do not always succeed. I attempt to keep in the reader's mind a sense of the extent to which my own identity is a collective invention, and at those times when I am moved to blame some 'other', to attempt to acknowledge that as part of my 'self'.

Those concerns shape the approach that I take to the discipline of international law. Having decided that I did not want to create false enemies, it then became necessary to force myself to acknowledge the temptations I faced in writing within or outside international law's imagined disciplinary boundaries. Many idealistic claims have been made about international law throughout this century, and perhaps no more so than in the increasingly celebratory post-Soviet period. The two temptations facing me as someone attempting to write about ways to create or imagine a world order different to that espoused during the Gulf War or the Uruguay Round, for example, are to position myself as a progressive, idealistic international lawyer, or as an engaged and transgressive critic of international law.

Both abandoning and working within international law raise problems. The stronger temptation, to abandon international law and deny that it has had any influence on me, fails to acknowledge both the effects of my training as a lawyer and the fact that many generations of international lawyers have in fact

---

<sup>67</sup> See Patricia J Williams, *The Alchemy of Race and Rights*, 1993, 216-236 (writing about the paradox of doing the necessary work of reclaiming her heritage as the descendant of a white slave-owning lawyer, while at the same time identifying principally as the descendant of his slave, Williams' great-great-grandmother).

taken precisely the same path of disavowing international law in order to argue for their own view of a new world order.<sup>68</sup> I therefore want to attempt to acknowledge that part of my authorial self that is shaped, and given voice and status, by my training as a lawyer, both to ensure that I acknowledge that part of this heritage that is of use, and to enable me to write and think about the effects of that disciplining.

International legal theory written under conditions of postcolonialism needs to involve an analysis of how international lawyers are disciplined and thus authorised to write, speak and know about the objects of international legal discourse. Those of us who have been disciplined by law are well placed to write about how law disciplines its students and officials, and to explore how we have been made through the process of legal education. Our authority is in part dependent upon the starving, warring, abused, passive, victimised, chaotic, disordered, ungoverned bodies of international legal texts. One aim of this thesis is to think through the relationality of these objects and subjects of international law.<sup>69</sup>

On the other hand, I do not want to identify solely as an international lawyer, or to argue that it is necessary for those who want to make a difference or engage with power to use the tools of international law. It can be difficult to give up those claims of international law. The power of international law is partly that it does speak of a commitment to goals such as justice, peace, dignity and protection of the vulnerable. International lawyers describe a powerful history, in which law acts to prevent genocide, human rights abuses and exploitation. An example that I came upon as I was writing this introduction reveals the nature of that appeal. In the epilogue to her book *Eichmann in Jerusalem*, Hannah Arendt writes, 'If genocide is an actual possibility of the future, then no people on earth - least of all, of course, the Jewish people, in Israel or elsewhere - can feel reasonably sure of its

---

<sup>68</sup> See the argument made in David W Kennedy, above n44.

<sup>69</sup> See further Chapter 5 below.

continued existence without the help and the protection of international law'.<sup>70</sup> Arendt's words convey the power of the stories according to which international lawyers are trained. In a period when people in my country and many others are unable to feel 'good' about their place in history, these stories are important and powerful markers of identity. In my case, international law gave me a language and a way of thinking about the exploitation of and brutality towards indigenous people, gay men and lesbians, mentally ill people, women, migrants and other outsiders in the authoritarian state in which I grew up. International law offered a sense of 'outside', a way of transcending the will of what seemed an unceasingly tyrannous majority. For me, learning about international law is so inextricably intertwined with leaving home, discovering left-wing politics, encountering feminism, peace, environmental and Third World activism, learning about other ways of being and becoming a professional, speaking subject, that I can no longer remember whether or which of these insights and identifications came from international law, and which came from elsewhere. The nature of that appeal is something with which I have had to reckon in writing this account of intervention stories, and I suspect that it is also something with which many others have to reckon. The approach I develop in this work is to attempt to use and to acknowledge the tools of modernist international law with which I have been disciplined, while attempting to work with and through the limitations of those tools.

Part of what I attempt in this thesis is thus to interrogate the desire which I share to engage with international law, and to be part of an international legal tradition that is built on imperialism, paternalism, elitism and the construction of others as exotic victims or enemies. Throughout the thesis, I question what happens to people, including feminists, when they identify with a particular discipline or the narratives upon which it is founded. Is it possible to adopt the position often adopted by feminist lawyers, of being somehow at once inside and outside of the discipline of law, critiquing it while making use of its assumptions, tools and power? Such questions are particularly important for

---

<sup>70</sup> Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, 1994, 273.

feminists engaging with a legal tradition which is extremely resistant to self-reflection and analysis of the power relations involved in constructing and protecting legal authority.

## ***E. Critical engagement: strategy and ethics***

### **1. Reading and writing security**

Thinking about the power effects of representation raises further questions about the role of power in my own attempt to produce knowledge about collective security. Writing about the appeal of intervention, and the role of legality in contributing to that appeal, raises a series of questions about reason and rationality. In particular, to what extent is reasoned argument alone sufficient as a means of responding to the appeal of arguments in favour of intervention?

The temptation in writing about military intervention or the monetary interventions involved in globalisation is to argue that those who write about these interventions without reference to many of the 'facts' about the outcomes of such interventions misrepresent their true nature. Those who read such mainstream accounts are misled, and thus remain ignorant about what is really happening at an international level. My role according to such an understanding of knowledge is to find out what really happened, to record that, and then to explain to people who are duped by these stories what has really been going on. People can be persuaded that they have been misled simply by telling them of some additional facts about which they have to date been ignorant.

A different approach would argue that both knowledge and ignorance are effects of power. Responding to a story about intervention which presents the West, or the US and its allies, or the international community, as heroes intervening to solve the problems of the Third World, requires more than

simply adding additional facts that correct misrepresentations. What is known about the world is not simply a result of reason and questioning. Rather, what is known, and what is ignored, is an effect of complicated relations and emotions. Throughout this work, I act on the basis of these two different approaches to knowledge. In the end, however, my experience working in this area has taught me that what we know about the world is a function of the second approach to knowledge, rather than the first. In writing the thesis, I try to show how I came to that understanding of the complicated relationship between power, knowledge and ignorance.<sup>71</sup>

My approach to intervention narratives is concerned less with looking for a truth innocent of ideology or a representation that can correct existing misrepresentations, than with attempting to understand the force of current intervention stories. Rather than attempting to criticise those texts for their failure to take into account a different 'reality', my interest is in coming to terms with the 'truth' that is made by security discourse. As Alison Young argues, we can better understand our investments in a particular discourse if we 'flow with the current of meaning, accept its construction of truth and discover its elements and strength. Then we can know what it is we are dealing with, what fears and desires are embodied in discourse.'<sup>72</sup>

In addition, I write about security in ways that make visible the process by which law's stories are constructed and made to seem real, in the belief that such work is needed because of the hold that such languages have on everyday interpretations of the world.<sup>73</sup> As Terry Threadgold points out:

What were once technical "jargons", metalanguages, have made the transition from theory into the transparent world of the ordinary, the

---

<sup>71</sup> See particularly the discussion in Chapter 6 below.

<sup>72</sup> Alison Young, *Femininity in Dissent*, 1990, 43.

<sup>73</sup> On that process more generally, and the place of feminist and critical legal theory in resisting it, see Andrea Rhodes-Little, above n26; Alison Young, above n72.

everyday. We forget that these too are constructions, of the world and of ourselves: and this forgetfulness has "real" effects ....<sup>74</sup>

I argue that it is important to keep in mind the nature of that constructedness, in order to retain a sense of the responsibility of international lawyers for all that is made possible through these constructions. The focus on law as an imagined product allows for an analysis of the way in which naturalised assumptions about race and gender add to the appeal of international law.

## **2. Speed and strategy**

The final point to make in this introduction is that I have written this work at a time when the speed of change and the power of new technologies operate to make attempts to analyse or reflect on internationalism seem difficult and sometimes useless. Issues, arguments, belief systems, public opinion and general knowledge have moved far more quickly than I have been able to in writing a sustained piece of academic work. The thesis has been written during the period 1994-8, during which time I have also been teaching, researching and engaged in community work in the areas of international trade law, international human rights law, international environmental law and feminism. That period has been shaped by a certain post-Cold War euphoria. It has been marked by the end of history debates, increasingly strident triumphalism, the completion of the Uruguay Round, the revitalisation of the Security Council, and the increasing sense that groups engaged in 'hardcore economic resistance' are either invisible, irrelevant, or anachronistic.<sup>75</sup>

When I began work on this project in 1994, most media commentators and many colleagues and students were convinced of the need to intervene militarily in Yugoslavia. As I finish, there seems to be a middle-class consensus that the IMF must intervene in the Asia-Pacific region - the media

---

<sup>74</sup> Terry Threadgold, above n43, 19.

<sup>75</sup> Julie Stephens, above n1, 20.

tells us with certainty that the Asian tigers were corrupt and bankrupt all along, just as we suspected. The speed with which such stories enter and then leave the public sphere, and the ease with which such curious and complex arguments become an accepted part of the stories that shape the everyday lives of many middle-class inhabitants of states like Australia, makes writing at all seem anachronistic. This is particularly the case for those seeking to shift the way in which such interventions are understood. Often, one set of stories conflicts with the previous set of stories, yet that does not seem to affect the acceptability of the later representation of events in any way.

The problem raised by these issues is something that I can only acknowledge and refer to as part of the experience of writing this thesis. It is that aspect of the process of thinking and writing about intervention that has shaped my sense that it is useful to move to an analysis of law as part of a broader field of representation or indeed ideology.<sup>76</sup> My conclusion is that the work of those writing about the role of fantasy in politics,<sup>77</sup> and about the ways in which speed and technology are reshaping politics,<sup>78</sup> will become increasingly useful tools for developing critical approaches to international law.

Partly for this reason, as my work has progressed I have spent more time reflecting on ways to approach representations of the international, and less time reflecting on particular interventions. The way in which military or monetary intervention is reported makes it difficult to think about engaging with representations of particular interventions in a sustained way. In the end, it has seemed to me more useful to try to explore a methodology or strategy

---

<sup>76</sup> See Chapters 4, 5 and 6 below.

<sup>77</sup> For analyses that have influenced my understanding of the role of fantasy in law and politics, see Jacqueline Rose, above n66; Eric L Santner, *My Own Private Germany: Daniel Paul Schreber's Secret History of Modernity*, 1996; Jane Flax, *Disputed Subjects: Essays on Psychoanalysis, Politics and Philosophy*, 1993; Meaghan Morris, *Ecstasy and Economics: American Essays for John Forbes*, 1992.

<sup>78</sup> For analyses of the ways in which speed and technology are reshaping politics, see Paul Virilio, *Open Sky*, (trans Julie Rose), 1997; Jean Baudrillard, *The Gulf War did not take place*, (trans Paul Patton), 1995; James Der Derian, *Antidiplomacy: Spies, Terror, Speed, and War*, 1992; Donna J Haraway, *Simians, Cyborgs, and Women: The Reinvention of Nature*, 1991.



for engaging with the way in which stories about international intervention are presented to us, whether as professionals or as an audience for the television news. I use particular examples that have arisen while writing the thesis to illustrate my argument, and to some extent writing about these examples has some impact on the way particular issues are understood. Yet my experience has been that it is not possible to spend a five year period writing about particular interventions, precisely because those who advocate such interventions no longer need to build a consensus around such interventions over that period of time. The speed with which such interventions can be carried out seems to mean that those in power need a correspondingly shorter period in which to persuade people of the righteousness of such intervention.

For example, military intervention in the Gulf was carried out extremely quickly. It is remarkable that so much destruction, death, suffering and brutalisation could be carried out in such a short period. That meant that the support that people had for the intervention had to be mobilised swiftly but only in a brief surge. Similarly, the nature of monetary intervention is now unlike intervention in any other period in history. Everything from the nature of the derivatives designed by Wall Street firms to the speed with which capital can move is a result of information technology, and that has meant a radical shift in the extent to which people in one state can significantly alter the nature of economic, political, social and cultural arrangements in another state. Monetary intervention carried out by the IMF or the World Bank requires little sustained build up in the press to justify, in part because it requires so little apparent investment in terms of time and money on behalf of those intervening.<sup>79</sup> The nature of communication and information technology has shifted the way in which power operates. This thesis is an attempt to think about the different issues that such a shift raises for those seeking to understand the complexity of the operation of power in the era of

---

<sup>79</sup> Edward Said notes that this has to some extent always been the case with American foreign policy. Unlike England or France, the US did not control those states over whom it exercised power by means of colonies, and so domestic popular support for intervention did not have to be built and sustained over a long period. Edward W Said, above n16.

globalisation. In the concluding chapter, I return to reflect upon the most useful strategies for engaging with the new politics of intervention.



## Chapter 2

# THE POLITICS OF COLLECTIVE SECURITY

### I. INTRODUCTION

In the immediate aftermath of the Cold War, international lawyers became involved in a major debate about the role of the Security Council, and the UN generally, in maintaining global peace and security. A series of proposals for reforming the Security Council and the collective security system under the UN Charter appeared following the UN response to the Gulf crisis, inspired in large part by the publication of *An Agenda For Peace* by then UN Secretary-General Boutros Boutros-Ghali in June 1992.<sup>1</sup> Much of that scholarship celebrated the revitalisation of the Security Council, and presented the revived ability of that body to respond to threats of international peace and security as progress towards the goal of securing global harmony and world order.<sup>2</sup> The literature of

---

<sup>1</sup> Boutros Boutros-Ghali, *An Agenda For Peace*, 1992. The Secretary-General's 50 page report was prepared in response to the invitation made at the conclusion of the first meeting held by the Security Council at the level of Heads of State and Government in January 1992. Contributions to the legal literature concerning the reform of the Security Council include Boutros Boutros-Ghali, 'Beyond Peacekeeping' (1992) 25 *New York University Journal of International Law and Politics* 113; David Caron, 'The Legitimacy of the Collective Authority of the Security Council' (1993) 87 *American Journal of International Law* 552; Gareth Evans, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, 1993; Peter Wilenski, 'Reforming the United Nations for the Post-Cold War Era' in Mara R Bustelo and Philip Alston (eds), *Whose New World Order? What Role for the United Nations?*, 1991, 122; Michael Renner, *Critical Juncture: The Future of Peacekeeping*, 1993.

<sup>2</sup> See, for example, W Michael Reisman, 'The Constitutional Crisis in the United Nations' (1993) 87 *American Journal of International Law* 83; Brian Urquhart, 'Learning from the Gulf' in Mara R Bustelo and Philip Alston (eds), above n1, 11; Abram Chayes, 'The Use of Force in the Persian Gulf' in Lori F Damrosch and David J Scheffer, (eds), *Law and Force in the New International Order*, 1991, 3; Richard Lee Gaines, 'On the Road to a Pax UN: Using the Peace Tools at our Disposal in a Post-Cold War World' (1993) 25 *New York University Journal of International Law and Politics* 543; David J Scheffer, 'Use of Force after the Cold War: Panama, Iraq, and the New World Order' in Louis Henkin et al, *Right v. Might: International Law and the Use of Force*, 1991, 109; Matthew Neuhaus, 'International Law at the United Nations', *Proceedings of the Second Annual Meeting of the Australian and New Zealand Society of International Law*, 1994, 253; Gareth Evans, 'The New World Order and The United Nations' in Mara R Bustelo and Philip Alston (eds), above n1, 1; Gareth Evans, above n1. For legal analyses that are more critical of recent Security Council actions, see

that period focused particularly on traditional security-based arguments to justify Security Council actions.

A second theme to emerge in international legal scholarship of the post-Cold War period has been the complicated relationship between gender and international law. In the early 1990s, feminist scholars began the daunting task of placing issues concerning women on the international legal agenda.<sup>3</sup> To date, feminist international lawyers have not played a significant role in debates about the role of the Security Council, nor has the feminist challenge to international law influenced the international lawyers working on security issues.<sup>4</sup> This chapter engages with the collective security literature of that

---

Martti Koskeniemi, 'The Police in the Temple. Order, Justice and the United Nations: A Dialectical View' (1995) 6 *European Journal of International Law* 325; Ruth Gordon, 'United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond' (1994) 5 *Michigan Journal of International Law* 519; Roger Normand and Chris af Jochnick, 'The Legitimation of Violence: A Critical Analysis of the Gulf War' (1994) 35 *Harvard International Law Journal* 387; Philip Alston, 'The Security Council and Human Rights: Lessons to be Learned from the Iraq-Kuwait Crisis and its Aftermath' (1992) 13 *Australian Year Book of International Law* 107; David D Caron, 'Iraq and the Force of Law: Why Give a Shield of Immunity?' (1991) 85 *American Journal of International Law* 89; Judith Gail Gardam, 'Proportionality and Force in International Law' (1993) 87 *American Journal of International Law* 391; Middle East Watch, *Needless Deaths in the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War*, 1991; René Provost, 'Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait' (1992) 30 *Columbia Journal of Transnational Law* 577; Henry J Richardson III, 'The Gulf Crisis and African-American Interests under International Law' (1993) 87 *American Journal of International Law* 42; Oscar Schachter, 'United Nations Law in the Gulf Conflict' (1991) 85 *American Journal of International Law* 452.

<sup>3</sup> It should be noted that feminism came somewhat late to international law, an indication perhaps of the resistance of the discipline to critical analyses. For one of the earliest and most influential indictments of international legal scholarship from a Western feminist perspective, see Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613. For feminist analyses of international humanitarian law and international law concerning the use of force, see Hilary Charlesworth, 'The Silences of the Blue Book' in Stephanie Lawson (ed), *The New Agenda for Global Security: Cooperating for Peace and Beyond*, 1995, 133; Christine Chinkin, 'A Gendered Perspective to the International Use of Force' (1992) 12 *Australian Year Book of International Law* 279; Judith Gardam, 'A Feminist Analysis of Certain Aspects of International Humanitarian Law' (1992) 12 *Australian Year Book of International Law* 265; Judith Gardam, 'Women and International Humanitarian Law' in William Maley (ed), *Shelters from the Storm: Developments in International Humanitarian Law*, 1995, 205.

<sup>4</sup> Australia's former Foreign Minister Senator Gareth Evans, for example, states that his study of cooperative security for the 1990s and beyond has the following aims:

One of the things we have tried hardest to do in this study ... is to map, at the outset, the *whole* terrain. There have been innumerable published studies of particular international peace and security problems, or sets of

immediate post-Cold War period, and points to the ways in which feminist and critical analyses complicate the assumptions upon which that celebratory literature is based.

Part II argues that conventional international legal analyses about Security Council actions do not consider the gender-differentiated effects of those actions. The universality of male interests is taken for granted by international lawyers. The first level of analysis thus involves adding women in; that is, considering the consequences that Security Council actions have had for women in Kuwait, Iraq, Cambodia, Somalia, Mozambique, Bosnia and the US. I argue that many women are in fact rendered less secure by actions authorised by the Security Council in the name of collective security. As a result, I suggest that women must have a voice in the decisions about security that are supposedly made in part in their interests.

Part III argues that the assumptions which lie behind theories of collective security limit the capacity of those theories to represent the security interests of many groups, including most women. Far from enabling a more secure global environment, the knowledge about disorder and chaos produced by international lawyers contributes to creating the context in which oppressive military and economic actions in the name of the Security Council are rendered both plausible and possible.

---

problems, and of particular kinds of responses to them by the international community. The literature, of which we give a sample in our Bibliography, is already enormous and growing monthly more so. But there have been very few attempts to bring all the different problem and response elements together into a single, coherent picture: on a map-scale, as it were, that does not obliterate the necessary detail, but at the same time is large enough to be readily grasped.

Unfortunately, Senator Evans does not refer to the arguments of feminist theorists of security at any point in his study, nor does he refer at any time to the security interests of women: Gareth Evans, above n1, 184. The sample of literature given in the Bibliography is striking in its failure to refer to any of the literature produced by the feminist community on the issue of world peace and security, a literature which I would suggest is also 'already enormous and growing monthly more so'. For a useful corrective to the inadequacies of that Bibliography, see the 'Select Bibliography' in Cynthia Enloe, *The Morning After: Sexual Politics At The End Of The Cold War*, 1993, 301-317.

At both levels of analysis, I suggest that the power relations involved in producing knowledge about collective security operate to marginalise the security interests of many groups, including most women. The interests of men remain the unquestioned norm of collective security scholarship. My argument is not that such interests should be displaced or ignored altogether. Instead, I conclude by suggesting that the interests of elite men should be returned to their particularity. When those interests are seen as one set of interests which should be considered in thinking about security, rather than as a false universal, new visions about the necessary conditions for creating global security might be possible. The aim of this chapter is thus to ask a different set of questions about collective security and the reform of the UN security system. I argue that such a shift in focus is necessary in order to work towards achieving 'survivable' communities, that is, 'communities which are committed to making the world livable on a daily basis for all its inhabitants'.<sup>5</sup>

## II. THE SILENCES OF INTERNATIONAL LAW

International legal analysis of Security Council actions is largely silent about the consequences of such actions for women. As a result, the lessons learned from the history of 'successful' actions in the Gulf and Cambodia, or the 'failures' in Somalia or Bosnia, take no account of the capacity of Security Council actions to render women less secure. In this Part, I contest the lessons learned by Western international lawyers about the nature of the conditions of collective security. First, I compare the accounts of women's experience of Security Council actions with the silence of international lawyers about the consequences of Security Council actions for women. Secondly, I argue that, as a result of the failure of international law to consider the full consequences

---

<sup>5</sup> Anne Sisson Runyan, 'The "State" of Nature: A Garden Unfit for Women and Other Living Things' in V Spike Peterson (ed), *Gendered States: Feminist (Re)Visions Of International Relations Theory*, 1992, 123, at 138.

of previous Council actions, proposals for reforming the Security Council are inadequate.

### ***A. The impact of Security Council actions on women***

The consequences for women of actions authorised by the Security Council can be documented fairly readily. Security Council actions, both in the form of military operations and economic sanctions, have influenced women's struggle to acquire basic socio-political rights, women's health and survival, women's freedom from rape and sexual harassment, and women's economic security. Perhaps the clearest examples of gender-differentiated consequences of such actions concern the growing number of complaints of rape by peacekeepers, the harsh effects of economic sanctions on women, and women's status in militarised cultures. As will be seen, none of these issues are referred to in mainstream analyses of the success or failure of the revitalised Security Council.

#### **1. Rape, militarised masculinity and UN peacekeeping**

The persistence of complaints made by women alleging that they have been raped or assaulted by their 'protectors' in Bosnia, Cambodia and the Gulf suggests that peacekeepers and peace enforcement forces are no less likely than members of other military forces to rape and assault civilian women and women soldiers.<sup>6</sup> Reports have continued to surface about rape, sexual harassment and abuse of girls and women by peacekeeping troops.<sup>7</sup> The stories and silences of women involved directly in the Gulf War, for example, suggest flaws in the

---

<sup>6</sup> I use the phrase 'peace enforcement forces' to refer to those situations where the Security Council has authorised states to use force to restore international peace and security. The exact legal basis of the resort to force in the Gulf conflict remains a matter of some dispute. See Thomas M Franck & Faiza Patel, 'UN Police Action in Lieu of War: "The Old Order Changeth"' (1991) 85 *American Journal of International Law* 63, 64; Eugene V Rostow, 'Until What? Enforcement Action, or Collective Self-Defence?' (1991) 85 *American Journal of International Law* 506, 510; Oscar Schachter, above n2, 452; Burns H Weston, 'Security Council Resolution 678 and Persian Gulf Decision Making' (1991) 85 *American Journal of International Law* 516, 518.



dominant Western representation of the Gulf War as clean, quick, competent, effective and successful.<sup>8</sup> The US Army's Criminal Investigation Command has released findings that at least 24 US Army servicewomen were raped or sexually assaulted in the Persian Gulf region during Operations Desert Shield and Desert Storm.<sup>9</sup>

The Gulf crisis does not provide the only example of exploitation and abuse of women by peacekeepers. In December 1993, the commander of the UN mission in Mozambique, Aldo Ajello, received a letter from the International Save the Children Alliance, which complained that UN military personnel had bought sex from hundreds of girls, many of whom were orphaned or abandoned during the war. In February 1994, the UN issued a report which concluded that the increase in prostitution generated by the UN contingent 'has negatively affected the quality of urban public life and apparently generated some ill feeling toward troops in some areas.'<sup>10</sup>

Accounts of sexual assault by peacekeepers and of a dramatic increase in prostitution have also emerged from Cambodia. In September 1992, the chief of the United Nations Transitional Authority in Cambodia (UNTAC), Yasushi

---

<sup>7</sup> Judith Gardam, above n3, 206.

<sup>8</sup> For examples of representations of the Gulf War in these terms, see Gareth Evans, above n1, xi ('the effective collective response to the Gulf crisis'); Address By Secretary-General Javier Perez De Cuellar, 22 April 1991 at the University of Bordeaux, UN Press Release, SG/SM/4560 (24 April 1991) ('the swift and systematic response of the Security Council to the invasion of Kuwait by Iraq'); W Michael Reisman, above n2, 85 ('the Council ... seems remarkably effective, as was most recently demonstrated by the expulsion of an aggressor and the liberation of Kuwait. That was a campaign all could applaud'); Gareth Evans, above n2, 2-4 ('we have had with the Gulf War a resounding affirmation and demonstration of the effectiveness of the principles of collective security'; 'there is a particular significance in the successful international effort to reverse Iraq's aggression: the outcome of the Gulf War was a triumphant reaffirmation of the UN's collective security role'); David J Scheffer above n2, 126 ('international law was a winner during the Gulf conflict ... a powerful precedent has been established that should deter at least some of the aggressive stratagems of lawless rulers').

<sup>9</sup> Discussed in Cynthia Enloe, above n4, 188.

<sup>10</sup> Gayle Kirshenbaum, 'Who's Watching the Peacekeepers?' (May/June 1994) 4 *Ms.* 10. There has been little action taken as a result of the findings - at the time, a number of UN soldiers were sent home and a 6 pm curfew was imposed on the rest of the troops. The author of the report,

Akashi, dismissed complaints about peacekeepers conduct at a meeting with aid groups, stating he was not a puritan, and that '18-year-old, hot-blooded soldiers' have a right to drink, enjoy themselves, and chase 'young, beautiful beings of the opposite sex'.<sup>11</sup> In response to his remarks, 165 Cambodian and Western women and men signed a letter expressing the group's outrage at the actions of male UN personnel. The authors alleged that sexual harassment had become a 'regular occurrence for women in restaurants, hotels, banks, markets, and other public places', and that there had been a dramatic increase in prostitution since March 1992, when UNTAC soldiers arrived to enforce the 1991 Paris Peace Accord.<sup>12</sup> They stated that while there were 6000 women working as prostitutes in 1991, by 1992 the number had risen to 20 000, and there had also been a sharp rise in prostitution involving children. As one report noted:

One of the biggest UN peacekeeping operations in history - involving 16 000 troops - helped to put Cambodia 'on the map' in regard to trafficking in women ... just as US soldiers had done for Saigon, the Philippines and Bangkok during the Vietnam war.<sup>13</sup>

There have also been allegations that UN personnel in Bosnia sexually abused women who were being held captive by Serbs.<sup>14</sup> Although the UN held an inquiry to investigate the complaints of rape, Yasushi Akashi, now head of the UN's peacekeeping operation in the former Yugoslavia, announced in March 1994 that there was no basis for the charges and the inquiry was closed. Akashi has since appointed a force inspector general to follow up on other charges that troops in the area are involved with prostitutes and trafficking in illicit goods.<sup>15</sup>

---

Behrooz Sadry, stated that the goal of the investigation was never to initiate criminal proceedings.

<sup>11</sup> *Ibid.*, 13.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> 'U.N. Treachery' (January/February 1994) 4 *Ms.* 16.

<sup>15</sup> *Ibid.*

## 2. The gendered effects of economic sanctions

Research conducted by Harvard and UN research teams into conditions in post-war Iraq has shown that the imposition of economic sanctions, combined with the destruction of Iraq's civilian infrastructure, has had harsh effects on Iraqi women. In particular, sociologists and lawyers with the International Study Team compiled a report on the state of women under the sanctions regime, based on interviews conducted with 80 women throughout Iraq.<sup>16</sup> According to the study, the collapsed Iraqi economy had a severe impact on women. 80 percent of women interviewed said their domestic responsibilities had increased significantly, and that they felt overwhelmed by their daily struggle to provide their children with even basic needs like food and water. Nearly 50% of women interviewed had depleted all of their savings, due to the fact that rationing and widespread illegal markets controlled the availability of humanitarian supplies. The situation was worst for women who did not have assets to sell to pay for food and other daily needs.<sup>17</sup> In 1992, UN agencies reported that the destruction

---

<sup>16</sup> Reported in Sarah Zaidi, 'War, Sanctions, and Humanitarian Assistance: The Case of Iraq 1990-1993' (1994) 1 *Medicine And Global Survival* 147. Zaidi notes that the findings of the International Study Team were based on fieldwork conducted in Iraq in August and September 1991. The study, conducted by an international team of 87 researchers, was organised by graduate students at the Harvard Law School and the Harvard School of Public Health, with members of the Gulf Peace Team, and funded by UNICEF, the MacArthur Foundation, the John Merck Fund and Oxfam-UK.

<sup>17</sup> *Ibid*, 153. The effects of sanctions have been greatly exacerbated by the consequences of allied bombing of electrical systems and other infrastructure. A report by Middle East Watch in November 1991 described the results of the virtual destruction of Iraq's electrical system by allied bombing:

(T)he cost to the civilian population of these attacks on the electrical system was severe. Iraq was quickly transformed from a modern, energy-dependent society into, in the now-famous words of the Ahtissari report, a "pre-industrial age". Shortages of food due to the UN embargo were exacerbated by the lack of refrigeration and the impairment of Iraq's highly mechanized, irrigation-based agriculture. The nation's electricity-dependent water-purification and sewage-treatment facilities were crippled, creating a serious health hazard. Hospitals and clinics were forced to meet this growing health emergency, and to treat the war wounded, with, at most, erratic electricity supplied by back-up generators. Vaccines and medicines requiring refrigeration deteriorated and were difficult to replace. A UNICEF representative in Iraq noted in late May the "vicious circle" of "poor hygiene, contaminated water and poor diet",

of urban sanitation capabilities led to the death of 170,000 Iraqi infants.<sup>18</sup> A visit by the Food and Agricultural Organization of the United Nations (FAO) in November 1993 confirmed that the impact of sanctions had spread throughout the country, affecting civilians and the government.<sup>19</sup> The FAO reported a deterioration in household food security, a shortage of medical supplies and deterioration in the overall health situation.<sup>20</sup>

Cynthia Enloe has noted that 'any configuration of international relationships can be fashioned by government leaders only if they can devise ways to harness women's compliance'.<sup>21</sup> Saddam Hussein relies on the Iraqi Women's Federation to mobilise women to 'put in place the consumer rationing programmes which will be the key to the Hussein regime's ability to withstand the UN embargo',<sup>22</sup> while the Security Council wagers that such support will eventually waver. Given the evidence that women continue to bear the burden of responding to sanctions, and of coping with the results of UN imposed restrictions on food and medicine, international lawyers must be clear about why women are targeted and disciplined by the imposition of sanctions. To treat the decision to impose sanctions as a decision involving only the UN and recalcitrant governments involves ignoring the role women are forced to play in order to survive the consequences of these decisions.

### 3. The remilitarisation of US culture

Women and members of minority groups in the US have argued that the Gulf War has had major implications for their political status and security. The most

---

which he said left about 100,000 Iraqi children under one year of age vulnerable to diarrhoea and dehydration.

Middle East Watch, above n2, 9, 10.

<sup>18</sup> Cited in Lynda Boose, 'Techno-Muscularity and the "Boy Eternal": From the Quagmire to the Gulf' in Amy Kaplan and Donald E Pease (eds), *Cultures Of United States Imperialism*, 1993, 581, at 593.

<sup>19</sup> Sarah Zaidi, above n16, 150, 154.

<sup>20</sup> *Ibid.*

<sup>21</sup> Cynthia Enloe, above n4, 163.

fundamental concern is that the popular perception of the Gulf War as clean, quick and surgical has entrenched militarism further in that culture. The pattern of media 'self-censorship, combined with government manipulation' meant that, perhaps for most Americans, the war sanitised the state's armed forces, 'showing it as a place where honorable men can handle hardship and deadly technology with competence and aplomb and where women can take a more active role in defending the country.'<sup>23</sup> The war provided further legitimation for US militarism, through the construction of the US military as global saviours, or a global police force defending the 'new world order'.<sup>24</sup> As a result, the US military may have 'come out of the Gulf War more thoroughly integrated into the social structure than it has been in the last two centuries. If so, the end of the Cold War will not mean the end of militarization of women's lives.'<sup>25</sup> Indeed, the Gulf War also saw the successful feminisation of the homefront, signified by the yellow ribbons which were worn and tied around trees, antennas and buildings throughout the US once the bombing started. Both Cynthia Enloe and Lynda Boose have interpreted the civilian support for 'our boys' as a response to the imagined figure of the resentful male Vietnam vet who emerged as a symbol of besieged masculinity in 1980s America.<sup>26</sup>

The increasing militarisation of US culture and the US economy is a matter of particular concern for women, due to the gender-differentiated effects of war and of militarism. Women suffer disproportionately when there are cutbacks in civilian spending in order to fund increased spending on the defence budget.

---

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, 191-2. For discussions of media self-censorship, see Noam Chomsky, *Deterring Democracy*, 1992, 407-440; Hamid Mowlana, George Gerbner and Herbert Schiller (eds), *Triumph Of The Image: The Media's War In The Persian Gulf*, 1992.

<sup>24</sup> In President Bush's speech to Congress on 11 September 1990, he spoke of:

a new world ... struggling to be born, a world quite different from the one we have known, a world where the rule of law supplants the rule of the jungle, a world in which nations recognise the shared responsibility for freedom and justice, a world where the strong respect the rights of the weak.

Quoted in Gareth Evans, above n2, 1. From a feminist perspective, Bush's references to the birth of a new world, and his construction of 'the rule of the jungle' as representing the 'state of nature', deserve far more analysis than I can give them here.

<sup>25</sup> Cynthia Enloe, above n4, 184.

The continued ban on women in 'combat', itself an unstable category continually being redefined to ensure that the military can be adequately staffed without lowering masculine morale, means that women do not benefit from increased spending on the military in the ways that male career militarists do.<sup>27</sup> There is evidence that increases in violence against women occurs in militarised cultures generally, and in military families in particular.<sup>28</sup>

Finally, the remilitarisation of US culture, and increasingly of other industrialised democracies, is also of concern outside those societies. Any evidence of increased willingness on the part of US citizens to support militaristic solutions to international conflicts is a matter of grave concern for those in the areas which have suffered at the hands of the US military during recent decades.<sup>29</sup> The closing of the space for alternative forms of self-representation in US culture impacts not only upon women in the US, but on the security of people all over the globe. It suggests that the choice of high-violence options which continue to threaten the security of many are now once again marketable to citizens of the US and of other Western democracies.<sup>30</sup>

---

<sup>26</sup> *Ibid.*; Lynda Boose, above n18.

<sup>27</sup> Cynthia Enloe has argued that feminists need to find a way to argue two things simultaneously; first, 'that the military is too important a social institution to be allowed to perpetuate sexism for the sake of protecting fragile masculine identities' and secondly, 'that the military is too important'. See Cynthia Enloe, 'The Right to Fight: A Feminist Catch-22' (1993) 4 *Ms.* 84, 87.

<sup>28</sup> Georgina Ashworth, *Of Violence and Violation: Women and Human Rights*, 1985, 1; Andrée Michel, 'Militarisation of Contemporary Societies and Feminism in the North' in Georgina Ashworth (ed), *A Diplomacy of the Oppressed: New Directions in International Feminism*, 1995, 33; Carolyn Nordstrom, 'Rape: Politics and Theory in War and Peace' (1996) 11 *Australian Feminist Studies* 147; J Ann Tickner, 'Inadequate Providers? A Gendered Analysis of States and Security' in Joseph E Camilleri, Anthony P Jarvis and Albert J Paolini (eds), *The State in Transition: Reimagining Political Space*, 1995, 125, at 130.

<sup>29</sup> See the critical analysis of US military intervention in Central America, Latin America, the Caribbean, Asia and Africa in Noam Chomsky, above n23.

<sup>30</sup> For further development of this argument, see Michael Rogin, "'Make my Day!': Spectacle as Amnesia in Imperial Politics [and] The Sequel' in Amy Kaplan and Donald E Pease (eds), above n18, 499; Susan Jeffords, 'The Patriot System, or Managerial Heroism' in Amy Kaplan and Donald E Pease (eds), above n18, 535; Donald E Pease, 'Hiroshima, the Vietnam Veterans War Memorial, and the Gulf War: Post-National Spectacles' in Amy Kaplan and Donald E Pease (eds), above n18, 557; Lynda Boose, above n18; Edward W Said, *Culture And Imperialism*, 1993, 341-408; Cynthia Enloe, above n4, 161-200.

#### 4. Mainstream analyses of international law

It is clear from the above accounts that Security Council actions have had, and continue to have, profound implications for the status and security of women. It is revealing to compare these accounts, largely available only through feminist press, alternative media sources, and in the work of feminist theorists, with mainstream analyses of the success of operations in the Gulf, Bosnia, Mozambique and Cambodia. The gender-differentiated effects of Security Council actions have gone unremarked in mainstream international legal analyses of the success, effectiveness and desirability of past and future actions.<sup>31</sup>

The Gulf War, for example, is treated by international lawyers writing in the area of collective security as an important historical event. Many agree that it represented the revitalisation of the Security Council, with the collective security system established under the UN Charter finally achieving its potential after years of effective paralysis through the reciprocal use of the veto.<sup>32</sup> The military operation in the Gulf is represented as an example of an effective, successful, quick and clean response by the collective security system to state aggression.<sup>33</sup> Amongst the many contributions by international lawyers to the analysis of the operation in the Gulf, however, very few have considered the

---

<sup>31</sup> The failure of official reports to refer to women's interests is both remarkable and extremely troubling. The Secretary-General's reports to the Security Council on Mozambique, for example, make no reference to the reports of abuse of power by peacekeepers: see *Report of the Secretary-General on the United Nations Operation in Mozambique* UN Doc S/1994/511; *Report of the Secretary-General on the United Nations Operation in Mozambique* UN Doc S/1994/803; *Further Report of the Secretary-General on the United Nations Operation in Mozambique* UN Doc S/1994/1002. The failure of official reports to refer to these allegations suggests a disregard for the concerns and interests of the women involved. That failure also suggests that the wisdom of sending soldiers to maintain peace will not be questioned in the short term. Similarly, the Secretary-General's reports on the situation in Somalia indicate a lack of concern for women's post-conflict role: see *Report of the Secretary-General to the Security Council on Somalia*, UN Doc S/1994/977; *Report by the Secretary-General Concerning the Situation in Somalia*, UN Doc S/1994/1068

<sup>32</sup> See, for example, W Michael Reisman, above n2; Abram Chayes, above n2; Richard Lee Gaines, above n2; David J. Scheffer, above n2; Matthew Neuhaus, above n2; Gareth Evans, above n2; Gareth Evans, above n1.

<sup>33</sup> See, for example, references listed above n8.

effect of that action on women.<sup>34</sup> The silence of international lawyers about these issues seems to indicate that the interests of women are simply seen as irrelevant. It may be that rape and sexual abuse of women are seen as a 'private issue', even though the decision to send peacekeepers to particular countries is a public issue.<sup>35</sup>

The official responses by military leaders and UN officials to complaints of increased prostitution, rape and sexual assault by peacekeepers suggest that abuse and exploitation of women is inevitable. Fred Eckhard, the associate spokesperson for Secretary-General Boutros-Ghali, has argued:

I don't think it's a UN problem. It's a universal problem .... We (UN personnel) are pretty much the same as the average human being .... There will always be problems when you put large numbers of men together, send them away from home, keep them in barracks, put them in military manoeuvres for a period of time. You give them a couple of nights off, they tend to look for company, drink, make a lot of noise, and sometimes get into trouble.<sup>36</sup>

Eckhard's response illustrates that UN officials continue to view the brutalisation of women as something which is not the responsibility of the UN, but a 'universal problem' caused by the fact that UN peacekeepers are, after all, 'average human beings'. Feminist analyses, on the other hand, suggest that militarised men are not simply average human beings, but are men produced in particular ways through military training, appeals to masculinity and cultural license towards military brutality against women and feminised Others.<sup>37</sup> The

---

<sup>34</sup> For an analysis that does examine the impact on women, see Judith Gardam, 'Gender and Non-Combatant Immunity' (1993) 3 *Transnational Law and Contemporary Problems* 345.

<sup>35</sup> Charlesworth, Chinkin and Wright have criticized the characterisation of violence against women as a private, domestic issue, and thus outside the province of international law. See Hilary Charlesworth, Christine Chinkin and Shelley Wright, above n3, 627-9.

<sup>36</sup> Quoted in Gayle Kirshenbaum, above n10, 10.

<sup>37</sup> See, for example, Cynthia Enloe, above n27; Cynthia Enloe, above n4; Susan Faludi, 'The Citadel', *The New Yorker*, 5 September 1994, 62.



implications of that training are revealed in reports of women who suffer rape in war, who work as prostitutes during wars or near military bases, and in the reports of women in the military who have suffered rape and sexual harassment.<sup>38</sup> Ignoring the complaints made by women means that officials and experts fail to acknowledge that sending militarised men to maintain peace may have destructive implications for local men, women and children.<sup>39</sup> Both Eckhard and Akashi dismiss violence against women as normal, universal and, indeed, understandable. Through their failure to take action against those peacekeepers who are abusing their positions of power and responsibility, UN officials such as Akashi and Eckhard act implicitly to authorise such behaviour. If it is true that militarised men inevitably behave in such a way, surely that would suggest that peacekeeping does not operate to protect the interests of local people.

The current efficient, effective security system lauded by many international lawyers is built on the abuse of those women and marginalised groups whose accounts of the consequences of Security Council actions are currently not being attended to in the realm of security decision-making. There is a need to acknowledge that decisions to impose sanctions or initiate military peacekeeping or peace enforcement operations can have gender-differentiated

---

<sup>38</sup> The Tailhook scandal in the United States revealed a misogynistic culture amongst 'tailhookers': see Cynthia Enloe, above n4, 192. Similarly, the Australian Senate has conducted an investigation into a navy sexual harassment scandal, following the report of a naval investigation into the issue. The investigation found a culture that 'encouraged misogyny and behaviour well beyond any standard of common decency': 'Naval Maneuvers' (January/February 1994) 4 *Ms.* 17. Revelations about the experience of Filipinas at the hands of both Japanese troops during WW2 and the United States military at Subic Bay and Clark Air Force bases, gives some insight into the construction of militarised masculinity: see Sheila Coronel and Ninotchka Rosca, 'Philippines: For the Boys' (November/December 1993) 4 *Ms.* 10. Women's experience of rape in wartime has become an issue on the international legal agenda as a result of the reports of the systematic rape of women as a tool of ethnic cleansing in the former Yugoslavia: see Christine Chinkin, 'Rape and Sexual Abuse of Women in International Law' (1994) 5 *European Journal International Law* 326; Theodor Meron, 'War Crimes in Yugoslavia and the Development of International Law' (1994) 88 *American Journal Of International Law* 78; Theodor Meron, 'Rape as a Crime under International Humanitarian Law' (1993) 87 *American Journal Of International Law* 424.

<sup>39</sup> For a critique of the practice of sending military troops to enforce peace from a peace activist perspective, see Yeshua Moser, 'UN Peacekeeping in Cambodia' (1993) 26 *Arena Magazine* 26.

consequences. At the very least, consideration of the different effects that the decision to impose economic sanctions or authorise the use of force may have on women should be built in as part of the decision-making process. The consequences of those decisions for women should, in turn, inform the analysis of whether or not the operations or sanctions have been effective.

### ***B. Proposals for reforming the collective security system***

The failure of the current collective security system to recognise, yet alone protect, women's security interests, suggests the need for women's involvement in the process of decision-making about collective security. Currently, very few people are able to participate in the process of making decisions about security issues,<sup>40</sup> and there are no mechanisms available which enable individuals to hold those making such decisions to account.<sup>41</sup> Peacekeepers are rarely held accountable for oppressive or criminal acts carried out during the course of actions authorised by the Security Council. Issues of democratic participation in decision-making, and of the accountability of the Security Council and of

---

<sup>40</sup> Michael Reisman notes that 'as the Council has become more effective and powerful, it has become more secretive. Like a parliamentary matryoshka (doll), it now contains ever smaller "mini-Councils", each meeting behind closed doors without keeping records, and each taking decisions secretly.' Before the Council meets, the P-5 (the five permanent members) have met in a special room outside the Security Council, and the P-3 (the US, the UK and France) have met in consultation. All these meetings are closed and no minutes are kept. As Reisman suggests, '(d)ecisions that appear to go further than at any time in the history of the United Nations are now ultimately being taken, it seems, by a small group of states separately meeting in secret'. W Michael Reisman, above n2, 86.

<sup>41</sup> The issue of whether even the International Court of Justice has competence to review Council actions taken under Chapter VII of the UN Charter was left unresolved in the *Lockerbie* decision. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. UK; Libya v. US), Provisional Measures, 1992 ICJ REP. 3, 114 (Orders of Apr. 4). For analyses of whether the Security Council is outside the control of the rule of law in the wake of the *Lockerbie* decision, see W Michael Reisman, above n2; Bernhard Graefrath, 'Leave to the Court What Belongs to the Court: The Libyan Case' (1993) 4 *European Journal of International Law* 184; Thomas M Franck, 'The "Powers of Appreciation": Who Is the Ultimate Guardian of UN Legality?' (1992) 86 *American Journal of International Law* 519.

peacekeepers, should be on the agenda for reforming the collective security system.<sup>42</sup>

Yet, to date, proposals for reform in that area have focussed on a narrow range of issues, all of which are directed at increasing the power and efficiency of the Council.<sup>43</sup> In particular, international lawyers have argued that there is a need to develop better methods of financing peacekeeping forces,<sup>44</sup> for member states to provide standby troops,<sup>45</sup> to provide for a UN rapid response force,<sup>46</sup> to strengthen logistical support for peacekeepers,<sup>47</sup> to expand UN training of the military forces of member states in peacekeeping roles,<sup>48</sup> to develop better systems of preventive diplomacy,<sup>49</sup> to increase the presence of

---

<sup>42</sup> For a legal analysis that does address the need for the democratisation of international institutions in the area of collective security, see Ruth Gordon, above n2.

<sup>43</sup> See, for example, Richard Lee Gaines above n2, 587. Gaines argues that the UN must be able to 'act quickly and proactively to prevent potential conflicts, to intervene, and in emergencies, to suspend sovereignty'. He imagines an executive arm of the UN, formed by joining the often-used peacekeeping operations with the rarely-used Chapter VII enforcement provisions, which could 'collectively guide a genuine world order'.

It would be an executive enforcer of international law and a stabilizer of the new global marketplace. It would be a peacemaker, peacekeeper, and peace enforcer in one centralized body. Combining this executive arm with stronger legislative and judicial branches, the United Nations could finally become the institution of which the post-World War II founders dreamed.

<sup>44</sup> See, for example, Brian Urquhart, above n2, 19 (on the need for '(d)ifferent methods of financing peace-keeping forces - including subventions by large multinational corporations and other interests that benefit from peace-keeping'); Boutros Boutros-Ghali, above n1, 41-44; Boutros Boutros-Ghali, above n1, 120; Peter Wilenski, above n1, 129; Richard Lee Gaines, above n2, 580; Michael Renner, above n1, 49 - 53; Gareth Evans, above n1, 174-177.

<sup>45</sup> See, for example, Boutros Boutros-Ghali, above n1, 115; Gareth Evans, above n1, 163-5; Robert Johansen, 'The Future of United Nations Peacekeeping and Enforcement: A Framework for Policymaking' (1996) 2 *Global Governance* 299, 316-320; Michael Renner, above n1, 38; Brian Urquhart, above n2, 19.

<sup>46</sup> See, for example, Kofi Annan, *Thirty-Fifth Annual Ditchley Foundation Lecture*, 26 June 1998, Press Release SG/SM/6613 (arguing that there is a need for the Security Council to have 'at its disposal a small rapid reaction force, ready to move at a few days' notice'); Boutros Boutros-Ghali, above n1, 120; Brian Urquhart, above n2, 20 (arguing that there is a need for a 'UN rapid-response force on the lines of the SAS or Delta force' to give the Security Council more 'practical' means to deal with 'terrorism, hostage-taking, and various forms of international blackmail'); Michael Renner, above n1, 48.

<sup>47</sup> See, for example, Peter Wilenski, above n1, 130; Brian Urquhart, above n2, 19.

<sup>48</sup> See, for example, Peter Wilenski, above n1, 130; W Michael Reisman, 'Preparing to Wage Peace: Toward the Creation of an International Peacemaking Command and Staff College' (1994) 88 *American Journal of International Law* 76; Brian Urquhart, above n2, 19.

<sup>49</sup> See, for example, Boutros Boutros-Ghali, above n1, 13-19; Peter Wilenski, above n1, 130; Boutros Boutros-Ghali, above n1, 119; Michael Renner, above n1, 38, 39 (discussing the need for 'boundary and ethnic contingency maps - identifying potential "hot spots" where

UN forces in potential trouble spots,<sup>50</sup> to expand the role of peacekeeping,<sup>51</sup> to improve the availability of necessary equipment for peacekeepers and peacemakers,<sup>52</sup> and to develop mechanisms to ensure the safety of peacekeepers, peacemakers and UN personnel.<sup>53</sup>

## 1. Democratic participation

While decisions to take action in the name of 'security' have rarely been negotiated with those whose security interests will be most immediately and seriously affected by those actions, the failure to consult or negotiate is particularly marked with respect to women. The failure to acknowledge the impact of Security Council decision-making on women allows international lawyers to naturalise women's exclusion from participation in such decision-making.

There is, however, a commitment to principles of democratic participation within international legal scholarship and decision-making about collective

---

borders may be contested or contending groups may clash. Early warning alerts would then kick into gear the UN machinery for conflict mediation and arbitration'); Gareth Evans, above n1, 61-80.

<sup>50</sup> Brian Urquhart, above n2, 21, argues that:

In places where the danger of conflict is imminent, such as parts of the Middle East today, the Council should deploy peace-keeping missions to report on the situation and try to contain it while diplomatic and pacific solutions are being sought. If these peace-keeping efforts fail, they should have the function of a trip-wire which would set in motion, after suitable warning, pre-planned enforcement action under Chapter VII of the Charter.

See also Boutros Boutros-Ghali, above n1, 16-18; Michael Renner, above n1, 40 (discussing the need for 'individuals in the field', airborne monitoring equipment and a 'satellite capability'); Gareth Evans, above n1, 81-85.

<sup>51</sup> See, for example, Boutros Boutros-Ghali, above n1, 119; Gareth Evans, above n1.

<sup>52</sup> See Peter Wilenski, above n1, 129; Boutros Boutros-Ghali, above n1, 120 (on the need for 'more firepower'); W Michael Reisman, above n48, 77 (on the introduction and use of 'some of the most modern and destructive weapons' in peacemaking); Brian Urquhart, above n2, 20 (arguing that the Military Staff Committee 'should now be instructed to embark on an extensive study of how to convert modern military technology, including the various means of deterrence, to the needs of an international system of common security in this highly unstable world').

<sup>53</sup> Boutros Boutros-Ghali, above n1, 39-40; Gareth Evans, above n1, 128-9.

security.<sup>54</sup> Perhaps the most authoritative statement of the need for respect for the principles of democratic participation in the area of peace and security is that made by former Secretary-General Boutros Boutros-Ghali in *An Agenda for Peace*. Boutros-Ghali points to the need for '(r)espect for democratic principles at all levels of social existence ... in communities, within states and within the community of States'. He argues that '(t)here is an obvious connection between democratic practices - such as the rule of law and transparency in decision-making - and the achievements of true peace and security and any new and stable political order'.<sup>55</sup> Within nations, Boutros-Ghali suggests, democracy requires 'strong domestic institutions of participation' and the empowerment of those who are 'unorganized' or 'marginalized'.<sup>56</sup> Between nations, democracy 'requires the fullest consultation, participation and engagement of all states, large and small, in the work of the Organization .... Democracy at all levels is essential to attain peace for a new era of prosperity and justice.'<sup>57</sup>

Despite that official commitment to democratic participation, women continue to be largely excluded from the process of making decisions about collective security within the UN system, and are largely unrepresented in parliaments and other political bodies, both at the national and the international level.<sup>58</sup> The Security Council is a particularly male-dominated body. The permanent representatives of the members of the Security Council act as state

---

<sup>54</sup> See in particular Boutros Boutros-Ghali, above n1; Thomas M Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46; Louis Henkin, 'Use of Force: Law and US Policy' in Louis Henkin et al, above n2, at 38-9; Gareth Evans, above n1.

<sup>55</sup> Boutros Boutros-Ghali, above n1, 10, 34.

<sup>56</sup> *Ibid*, 46-7.

<sup>57</sup> *Ibid*, 47.

<sup>58</sup> For a discussion of the absence of women in the UN system and an analysis of the implications of the male domination of UN processes, see Hilary Charlesworth, 'Transforming the United Men's Club' (1994) 4 *Transnational Law & Contemporary Problems* 421.

representatives on the Council, and very few permanent representatives to the UN are women.<sup>59</sup>

Women have also been excluded from participation in peace-building and peace making processes, and as a result their political status is far from guaranteed in post-conflict societies. Women's exclusion from participation in this area is of particular concern, given the emphasis in UN policy-making on the notion of 'post-conflict peace-building'. In *An Agenda for Peace*, Boutros-Ghali states that the concept of peace-building in fact amounts to 'the construction of a new environment'.<sup>60</sup> Once peacemaking and peace-keeping have achieved their goals, he argues, 'only sustained cooperative work to deal with underlying economic, social, cultural and humanitarian problems can achieve peace on a durable foundation'.<sup>61</sup> The status and security of women, however, do not appear to be pressing 'economic, social, cultural or humanitarian problem(s)' that are considered to be worth addressing in the 'construction of a new environment'. Indeed, the new political environment constructed by the UN in countries such as Bosnia and Herzegovina, Somalia and Kuwait may prove worse for the political status of women than the pre-conflict or conflict position.

According to Somali human rights activist Hibaaq I Osman, for example, women were the most active community workers during the two years of civil war in Somalia.<sup>62</sup> Somali women found that their roles were revolutionised by the absence of men or men's failure to attend to the daily survival of their families. Women organised the sale of vegetables, grains, and water, ran relief agencies and feeding centres, dominated the informal market, and were the most powerful landowners in Mogadishu.<sup>63</sup> As order began to be restored, however,

---

<sup>59</sup> In 1998, 9 member states had women as their permanent representatives at the UN. No state representative on the Security Council was a woman.

<sup>60</sup> Boutros Boutros-Ghali, above n1, 32-3.

<sup>61</sup> *Ibid.*

<sup>62</sup> Hibaaq I Osman, 'Somalia: Will Reconstruction Threaten Women's Progress?' (March/April 1993) 3 *Ms.* 12.

<sup>63</sup> *Ibid.*

the views of women, despite their leadership positions, were not solicited in the reconstruction process.<sup>64</sup> Osman notes that women were shut out of negotiations toward peace and reconstruction, and were excluded from nearly every formal meeting where Somalia's future was being determined. Accordingly, the issues of concern to Somali women, and their visions for the future, were not addressed through that process conducted under the auspices of the UN.<sup>65</sup>

Similarly, for women struggling for political rights in postwar Saudi Arabia and Kuwait, the Gulf War means that they may now 'be faced with patriarchal barriers ... blessed militarily'.<sup>66</sup> Despite the strong Kuwaiti women's suffrage movement, women were not eligible to vote in the post-Gulf War elections on October 5, 1992 - indeed, only 14 percent of the country's 600 000 citizens were eligible to vote.<sup>67</sup> The systematic exclusion of women *as women* from the Kuwaiti political process has not been the subject of comment in analyses of the success of UN action in the Gulf, despite the UN's rhetorical commitment to the restoration of democracy, self-government and human rights to the people of Kuwait.<sup>68</sup>

Feminists have also pointed to the failure of post-conflict peace-building programs to address the effects of rape on survivors. That issue is of particular importance given the prevalence in the post-Cold War era of internal conflicts in which civilians are targeted. As Carolyn Nordstrom argues, 'dirty war tactics –

---

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> Cynthia Enloe, above n4, 176.

<sup>67</sup> Those eligible were Kuwaiti men, over the age of 21, who could trace their origins in the emirate to before 1920: Dale Gavlak, 'Still Suffering Nonsuffrage in "Liberated" Kuwait' (January/February 1993) 3 *Ms.* 14. Gavlak reports that women activists conducted protests outside polling stations, election rallies for women's political rights and lobbied parliamentary committees about the need for women's political participation. Kuwaiti women are also demanding the right to run for political office, the right to be judges and prosecutors, for equal rights in housing and education, and for full citizenship for the children of Kuwaiti women married to naturalized Kuwaitis.

<sup>68</sup> Philip Alston argues that while human rights rhetoric played an important role in securing for the allies the support they needed both from their own citizens and from other UN member states during the Gulf War, the allies did not pay much more than lip service to human rights having established their military objectives. See Philip Alston, above n2.

those that use terror against both civilian and military populations to try to control political acquiescence through fear – are a major form of warfare today. Sexual violence is a mainstay of dirty war practice'.<sup>69</sup> Yet the UN has not adequately addressed the need to provide support to the victims of rape as an aspect of post-conflict peace-building, even as it pays lip service both to the changed nature of conflict and the recognition of rape as a war crime. As Ustinia Dolgopol notes, for example, the Dayton Peace Accords have not provided a framework for supporting the survivors of rape in the former Yugoslavia.<sup>70</sup> The governments of the Republic of Bosnia and Herzegovina have not been required to take responsibility for responding to those who suffered human rights violations during the conflict, and no funding has been allocated for assisting those who have been raped to reintegrate into the community.<sup>71</sup> No attention has been paid to the need to provide some form of compensation to the women who were raped and sexually assaulted, and inadequate commitment has been shown to ensuring that the police and militaries are vetted to remove those who were guilty of rape and sexual assault.<sup>72</sup> Those failures have led to a situation where women are unable to feel secure in the homes and communities to which they are returning after the cessation of hostilities. As Nordstrom argues:

Rape, like all terror-warfare assaults, is a time-bomb left ticking in society – one that will last well beyond the signing of the peace accords and the firing of the last bullet. Much more is attacked than a person's body. Their sense of home and security; of self and self-worth; of power

---

<sup>69</sup> Carolyn Nordstrom, above n28, 151. Indeed, even multilateral interventions appear now to be premised upon the logic that sacrificing large numbers of civilians is justifiable if it saves the lives of combatants. The allied resort to massive aerial bombardment rather than opting for a ground assault during the Gulf War resulted in fewer combatant casualties but more civilian casualties. See Judith Gardam, above n3, 206.

<sup>70</sup> Ustinia Dolgopol, 'A Feminist Appraisal of the Dayton Peace Accords' (1997) 19 *Adelaide Law Review* 59. The Dayton Peace Accords consist of the General Framework Agreement for Peace in Bosnia and Herzegovina [the GFA] and its twelve annexes (1-A, 1-B and 2-11). See The General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, 1995, reprinted at (1996) 35 *International Legal Materials* 75.

<sup>71</sup> *Ibid*, 69.

<sup>72</sup> *Ibid*, 69-70.



and interpersonal relationships; even of the potentialities of the future, are assailed.<sup>73</sup>

The lack of recognition of women's experiences of conflict and their post-conflict security needs may result in turn from the fact that, as in Somalia, women did not participate in the talks that led to the drafting of the Dayton Peace Accords.<sup>74</sup> Christine Chinkin argues that, as a result, there has been a broad failure to protect the human rights of women as part of the peace-building process in Bosnia and Herzegovina.<sup>75</sup>

As these examples indicate, it is imperative that local participation, including the full participation of women, be given the highest priority throughout peacemaking processes if lasting solutions are to be found.<sup>76</sup> At present, however, full local participation seems to refer only to the participation of men. In this respect, international legal discourse about security bears a disturbing resemblance to colonial politics. The task of ensuring the right to participatory self-government through international law appears to be still a largely 'homosocial affair', based upon the 'tutelary bonding between white fathers and their (local) male ... apprentices'.<sup>77</sup>

The apparent tendency of UN officials to focus on local men as natural 'apprentices' is exacerbated by the militarisation of post-conflict peace-building. In *An Agenda for Peace*, Boutros-Ghali suggests that peace-building should involve comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among

---

<sup>73</sup> Carolyn Nordstrom, above n28, 152.

<sup>74</sup> Christine Chinkin, 'Strategies to Combat Discrimination Against Women' in M O'Flaherty and G Gisvold (eds), *Post-War Protection of Human Rights in Bosnia and Herzegovina*, 1998, 173, at 176.

<sup>75</sup> *Ibid.*

<sup>76</sup> See further Hibaaq I Osman, above n62.

<sup>77</sup> Vicente L Rafael, 'White Love: Surveillance and Nationalist Resistance in the US Colonization of the Philippines' in Amy Kaplan and Donald E Pease (eds), above n18, 211.

people.<sup>78</sup> The activities he lists as necessary, however, focus on the building of a strong state militarily, through the disarming of the previously warring parties, the restoration of order, the custody and possible destruction of weapons, advisory and training support for security personnel, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation.<sup>79</sup>

Boutros-Ghali sees post-conflict peace-building as a way to encourage the parties to a conflict to peacefully restore their societies. While he recognises that post-conflict peace-building involves 'sustained efforts to identify and support structures to consolidate peace and create greater trust and well-being among people',<sup>80</sup> it appears that his agenda is in practice aimed at ensuring the 'trust and well-being' of combatants. Boutros-Ghali states that peace-building measures 'require commercial, cultural, and educational projects which build bridges between the parties to a conflict. The goal is to forestall a re-emergence of cultural and national tensions which could spark renewed hostilities.'<sup>81</sup> To the extent that women are prohibited from participating in combat in many cultures, the focus is more likely to be on commercial, cultural and educational projects designed for the men who participated in fighting, rather than for those who maintained the commercial, cultural and educational life of the community during a conflict.

Accordingly, greater attention needs to be paid to ensuring women's participation in the process of making decisions about security issues. It does not seem necessary here to enter into the debate about whether it is *possible* for elite men to represent everyone's interests. I have argued that, to date, international lawyers have failed in practice to take into account the interests of women. It is perhaps a legacy of imperialism and masculinism that leads

---

<sup>78</sup> Boutros Boutros-Ghali, above n1, 32.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*, 120.

those lawyers to believe that they are entitled to 'think the world without any preparation'.<sup>82</sup> While it may be possible in theory for those making decisions about security to begin to take account of the security interests of people whose situation is different to theirs, that would require the satisfaction of at least two conditions. First, elite decision-makers on the Security Council and elsewhere would have to recognise that their experiences and interests are not the norm, and that other experiences and interests are equally valid. Secondly, those decision-makers would have to be willing to learn from those who are situated differently about the nature of their security interests. In the short term, it seems likely that the interests of different groups would be better represented by allowing the members of those groups to articulate, theorise and politicise their own interests.

At the very least, international lawyers should begin to consider what kinds of structures and processes might better ensure that the interests of all groups within a state are taken into account when the decision to send troops, conduct aerial bombardments, impose sanctions or sign peace agreements is made. Ideally, women should be represented on decision-making bodies such as the Security Council. Women who are likely to be affected by a particular decision should be consulted concerning their security needs in the process of deciding about necessary measures to be taken to maintain peace and security. Women must be involved in peacemaking and post-conflict peace-building processes.

## **2. Accountability**

The lack of accountability for the consequences of actions authorised by the Security Council is a striking feature of the current collective security situation. That lack of accountability extends beyond the absence of institutional checks on the power of the Security Council,<sup>83</sup> to a failure by many international legal

---

<sup>82</sup> Gayatri Chakravorty Spivak, *Outside In The Teaching Machine*, 1994, 19.

<sup>83</sup> See the discussion in W Michael Reisman, above n2.

scholars to call the Security Council to account for the oppressive and violent actions it authorises.<sup>84</sup> Perhaps most importantly, there are no mechanisms through which local peoples can be empowered to challenge actions which have adverse consequences for their security or status. It seems almost unnecessary to add that this is not a situation which would be considered to confer legitimacy on those holding the power to govern were it to exist within a state. Yet the need to provide means of ensuring the accountability of peacekeepers and the Security Council to the populations they are protecting is not mentioned in the recent literature on reforming the Council.

There are a number of ways in which the current system could be improved. First, a new code of conduct for peacekeepers could be developed that includes clear guidelines on the conduct of UN personnel towards local people, particularly with respect to violence and sexual abuse.<sup>85</sup> Second, donor countries could be required to give up disciplinary authority over their troops where allegations of serious breaches of such a code of conduct are made. Third, individuals should have access to a body which monitors complaints of sexual abuse and assault by peacekeepers. Finally, and at the very least, such complaints should be included in reports to the Security Council.

It seems clear that there must be attention given to addressing the lack of accountability that I have outlined. The consequences of Security Council

---

<sup>84</sup> For exceptions, see Philip Alston, above n2; Judith Gardam, above n2; Chris af Jochnik and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49; Rene Provost, above n2; Henry J Richardson III, above n2; Middle East Watch, above n2; Ruth Gordon, above n2.

<sup>85</sup> A new code of conduct is being drafted. In 1995, the Special Committee for peace-keeping operations requested the Secretary-General to 'complete the elaboration of a code of conduct for United Nations peace-keeping personnel, consistent with applicable international humanitarian law': UN Doc A/50/230, para 73. The International Committee of the Red Cross (ICRC) drew up a draft code of conduct, which was subsequently reviewed jointly by the ICRC and the UN Secretariat, in particular the Department of Peace-keeping Operations and the Office of Legal Affairs. A final text was drawn up in May 1996, entitled *Guidelines for UN Forces Regarding Respect for International Humanitarian Law* (the word 'Guidelines' being replaced later by 'Directives'). The transmission of that text through internal UN processes has since been delayed, perhaps as a result of apparent reservations by some states to the text.

actions documented by aid groups, activists, women's organisations, human rights NGOs, medical research teams and UN study teams, such as rape, starvation, torture, increased prostitution and sexual exploitation of children, point unequivocally to the need for the UN to take responsibility for the adverse effects of its actions. It is troubling that those states providing troops and the UN should have failed to investigate fully the widespread reports of the brutalisation of local peoples, and that there has been no attempt to provide a systematic process by which such complaints can be heard.

### III. UNACCOUNTABLE KNOWLEDGE PRACTICES

Perhaps the most subversive feminist intrusions into the field of international security are found in the contributions of those scholars who are developing new theories of security which challenge the dominant masculinist international law-and-order discourses. Feminists in many academic disciplines have begun to rebel against playing the role of 'dutiful daughters of reformist goodwill'.<sup>86</sup> Rather than simply conducting empirical research that attempts to document and 'add on' women's experiences to the theoretical frameworks constructed by earlier (male) scholars, feminists have begun to interrogate the constructions of the theoretical frameworks themselves.

These feminists have been sceptical of 'apparent generalisations regarding subjectivity which in fact tend to take men's experiences as human ones'.<sup>87</sup> They have read 'neutral' texts in ways which return to them their particularity, that is, by reading such texts as texts about men. Read in this way, texts concerned with the Security Council can provide useful accounts of the ways in which security for particular groups is guaranteed. Elizabeth Grosz develops that methodology in these terms:

---

<sup>86</sup> Rosi Braidotti, *Patterns Of Dissonance*, 1991, 209.

<sup>87</sup> Elizabeth Grosz, *Volatile Bodies*, 1994, 103.

I have been concerned with the ways in which a corporal 'universal' has in fact functioned as a veiled representation and projection of a masculine which takes itself as the unquestioned norm, the ideal representative without any idea of the violence that this representational positioning does to its others - women, the 'disabled', cultural and racial minorities, different classes, homosexuals - who are reduced to the role of modifications or variations of the (implicitly white, male, youthful, heterosexual, middle-class) human body. I have attempted to read the male discourses dealt with here as discourses for and about men, discourses which have ignored or misunderstood the radical implications of insisting on sexual specificity, discourses which have presented their claims - radical as these might be - without any understanding of their relevance to or usefulness for women.<sup>88</sup>

It is very important for feminist international lawyers to take this next step, and to read the discourse of security as a discourse 'for and about men'. It is important to comment on the ways in which the interests of elite men are treated in these texts as 'the unquestioned norm'. Without doing so, it could still be suggested that while the status or security of some women may be sacrificed as outlined in Part I in the short term, the interests of all people will be guaranteed by the collective security system in the long term. The argument for protecting the security of states in the name of peace is, after all, a powerful one; in the words of Louis Henkin, peace is the 'paramount value' under the UN Charter, more important than progress and justice.<sup>89</sup> Change must 'be achieved peacefully by international agreement'.<sup>90</sup> The Charter reflects the commitment of member states to the goal of maintaining world order so that international

---

<sup>88</sup> *Ibid*, 188.

<sup>89</sup> Louis Henkin, above n51, 38.

<sup>90</sup> *Ibid*.

society can concentrate on meeting better the needs of justice and human welfare.<sup>91</sup>

The revitalisation of the Security Council, and the ability of that body to respond to threats to international peace and security, has been seen by many international lawyers as progress towards the goal of global security.<sup>92</sup> In this Part, however, I show that the current system of global security is based upon assumptions that do not address the insecurity of many people, including most women, and in fact contribute to it. The accounts of collective security discussed below propose actions which, while taken in the name of global security and in the interests of a universal humanity, in fact operate to secure the interests and well-being of particular limited groups. It is not simply that the particular interests of special groups, such as women, are left out, but that what currently is presented as a theory of collective security continues merely to be a theory about securing the interests of collected elites.

#### ***A. Protecting the security of states***

Many theories of collective security are based on the assumption that global security can best be guaranteed by protecting the status quo. As Rob Walker notes, while we need global security, we 'have learnt to think and act only in terms of the security of states.'<sup>93</sup> While the concepts of sovereignty and statehood are problematised in international relations, international law is still premised largely uncritically on the sovereign state system.<sup>94</sup> The representatives of states are the principal decision-makers in the international arena, and questions of security revolve around the inviolability of state borders

---

<sup>91</sup> *Ibid*, 38-9.

<sup>92</sup> See, for example, the references listed above n2.

<sup>93</sup> RBJ Walker, 'Sovereignty, Security and the Challenge of World Politics' (1990) 15 *Alternatives* 1.

<sup>94</sup> As Spike Peterson notes, 'given its definitive role in constituting the field of IR, the state was never so much out ... as simply taken for granted by IR theorists.' The sovereign state continues to be taken for granted by international lawyers. See V Spike Peterson, 'Introduction' in V Spike Peterson (ed), above n5, 2.

and decisions about national security interests. The centrality of sovereignty to any legal analysis of global security is seen as appropriate or, at least, inevitable.<sup>95</sup>

The focus on state security is, however, problematic on a number of levels. To begin with, feminists and political theorists have questioned the assumption that states represent a unified community, arguing instead that people are positioned according to categories of race, class, sexuality, gender and ethnicity in ways which must be taken into account when considering questions of participation, representation and identity. These analyses question the extent to which even democratic states in fact provide for meaningful representation of women and other marginalised groups.<sup>96</sup>

Feminist theorists also question the defence of the status quo as a useful starting point for ensuring women's security. As Peterson notes, 'feminists are by definition and determination critical of status quo relations and committed to political transformation'.<sup>97</sup> From a feminist perspective, national security is profoundly contradictory for women. Indeed, the processes for creating a strong state militarily or economically - such as militarism, capital accumulation,

---

<sup>95</sup> See, for example, Richard Woolcott, 'The Perils of Freedom', *The Weekend Australian* 22-23 April 1995, 24:

(N)ational interest and the defence of the sovereign State remain the touchstones of relations between countries. States still give priority to their perceived economic, trade and security interests. Some States participate in what are called 'good international citizen' activities but only to the extent that their national interests are served and not undermined by such activities.

<sup>96</sup> There is now a substantial body of critical feminist theory, concerned with the problematic nature of the concepts of rights, democracy, citizenship and representation. See particularly Margaret Thornton, *The Liberal Promise*, 1990; Patricia J Williams, *The Alchemy Of Race And Rights*, 1993; Carole Pateman, *The Sexual Contract*, 1988; Iris Marion Young, *Justice And The Politics Of Difference*, 1990; Anne Orford, 'Liberty, Equality, Pornography: The Bodies of Women and Human Rights Discourse' (1994) 3 *Australian Feminist Law Journal* 72; Chantal Mouffe, 'Feminism, Citizenship, and Radical Democratic Politics' in Judith Butler and Joan W Scott, (eds), *Feminists Theorize The Political*, 1992, 369.

<sup>97</sup> V Spike Peterson, above n94, 20.



patriotism or nationalism - contribute to the material and ideological conditions which cause women's insecurity.<sup>98</sup>

Many women within many states around the world live in insecure conditions, whether women's physical safety, economic security or health are considered as indicators. The assumption that protecting state security will result in more secure conditions for citizens fails to account adequately for the fact that many people live in conditions of insecurity within sovereign state borders, in ways which are contributed to by official discourses of security.

Traditionally, these issues have been kept out of international legal analysis, because they are treated as domestic legal, political and constitutional issues. That split serves to reinforce the illusion that negotiations between elites from different territorial regions is a legitimate way to make decisions about security and other international issues. While the question of legitimacy has emerged recently as an issue in international law, there is no acknowledgment at present of the critiques of Western democratic states, which are still treated in international legal texts as the pinnacle of democratic self-governance.<sup>99</sup>

### ***B. Representations of internal security and external threats***

A related assumption is that state borders exist to protect citizens from the disordered and chaotic world which exists outside those borders. Ann Tickner suggests that:

The politics of national security ... has been sustained through a discourse that creates boundaries denoting community on the inside and 'anarchy' or danger on the outside. Given this assumption that danger is in the external realm, a sound national security policy

---

<sup>98</sup> V. Spike Peterson, 'Security and Sovereign States: What Is at Stake in Taking Feminism Seriously?' in V Spike Peterson (ed), above n5, 31.

demands that states try to increase their capabilities and enhance their power, the most important component of which is military power.<sup>100</sup>

The image of strong impermeable borders is presented in a nostalgic way in mainstream international relations and international law texts, where commentators talk of the new and frightening interdependence of global communities, and the fact that we are all less secure because borders are now perceived as incapable of protecting us from unregulated flows of refugees, environmental degradation or nuclear devastation.<sup>101</sup> Yet for many individuals, the model of safety and unity inside strong state borders, and anarchy and difference outside, has never represented our reality. The dominant model distracts attention from the conditions of insecurity which define existence for many groups within states - women, indigenous peoples, the mentally ill, gay men, lesbians, and ethnic, racial or religious minorities. For the members of those groups, the existence of strong state borders simply does not come close to guaranteeing security, or even survival. In that sense, it could be said that many people have *always* been 'beyond the sovereign state'.<sup>102</sup>

More importantly for my analysis, the model itself is implicated in the creation of conditions of insecurity for women and other marginalised groups, both concretely and ideologically. The focus on creating a strong state with increased military and economic power contributes to the conditions which create women's insecurity, and masks the material and ideological conditions which should be addressed to guarantee women's security.<sup>103</sup>

---

<sup>99</sup> See Thomas Franck, above n51.

<sup>100</sup> J Ann Tickner, above n26, 10.

<sup>101</sup> See, for example, Boutros Boutros-Ghali, above n1, 5-7 (describing the changing context of collective security); Gareth Evans, above n1, at 3-8 (describing international security problems after the Cold War); Brian Urquhart, above n2, 17; Michael Renner, above n1, 7, 8.

<sup>102</sup> Neil MacCormick has written that 'beyond the sovereign state is where we are now', whereas I would suggest that for many people, beyond the sovereign state is where we already were. See Neil MacCormick, 'Beyond the Sovereign State' (1993) 56 *Modern Law Review* 1, 18. For further discussion of that point, see Anne Orford, 'The Uses of Sovereignty in the New Imperial Order' (1996) 6 *Australian Feminist Law Journal* 63.

<sup>103</sup> See V Spike Peterson, above n98, 31.

### *C. Representations of the naturalness and inevitability of state power*

The appeal to 'nature' or 'the natural' is commonly used as a justification for the existence or exercise of authority. The appeal to nature is, of course, a very powerful one, as it serves to make the status quo seem inevitable and the responsibility only of a disembodied, unaccountable 'nature'.<sup>104</sup> The appeal to the natural is played out in various ways in collective security discourse. The principal construction which underlies collective security theories is that the 'natural' behaviour of states is aggressive, self-interested and competitive. Pragmatic international lawyers represent states as 'naturally' ready to use military and economic force to increase power, territory or influence unless they are constrained in some way.<sup>105</sup>

That construction serves to make state aggression seem inevitable. As a result, the current system of collective security, although unrepresentative and dominated by elite powers, is legitimised. Attempts to develop more radical theories of security come up against these conservative, commonsense accounts of the operation of economic and military power in international relations. The need to take aggressive state power into account serves to limit proposals for reforming the Security Council, whether those proposals are concerned with making the Security Council more representative, increasing its effectiveness or making the Council more accountable for its decisions. The commonsense view is that the use of military and economic force by states in their own self-interest is both self evident and inevitable.

---

<sup>104</sup> See the discussion of the history of uses of 'nature' as a symbol for the justification of political authority in Anne Sisson Runyan, above n5. For a wide-ranging analysis of 'what may count as nature for late twentieth century people', see Donna Haraway, *Primate Visions: Gender, Race and Nature in the World of Modern Science*, 1989.

<sup>105</sup> One international law text on the subject opens with the words: 'Man's readiness to settle differences by force of arms has been a feature of society since prehistory. Man's attempt to place rational bounds on the use of force, emerging from his revulsion against the scourge of war, is almost as old'. John Temple Swing, 'Foreword' in Louis Henkin et al, above n1, vii.

The link between security and power is also made in most proposals for reform of the Security Council. Michael Reisman, for example, argues that:

Security, in the final analysis, is not a verbal exercise but the exercise of power in defense of public order. Without power, security is a word. The design of a realistic international security system cannot ignore how power is actually distributed.<sup>106</sup>

Feminist analyses, on the other hand, question the naturalness of state power, both internal and external, by making visible the historical processes involved in the construction of that power, and the conditions necessary for reproducing that power. A focus on gender makes clear that existing power relations are not inevitable. In particular, from a feminist perspective, state power is not monolithic, but must constantly be produced and reproduced through complex appeals to patriotism, economic interests and conceptions of masculinity and femininity. Only if such appeals are successful in controlling individual subjects can states 'naturally' exercise their military and economic power in aggressive external shows of force.

#### ***D. Images of crisis***

While images of the 'anarchic society' have long haunted the imagination of international lawyers and political scientists, the picture of a disordered,<sup>107</sup> insecure,<sup>108</sup> unstable,<sup>109</sup> anarchic<sup>110</sup> and fragmented<sup>111</sup> world repeatedly appears

---

<sup>106</sup> W Michael Reisman, above n1, 97.

<sup>107</sup> See, for example, Richard Lee Gaines, above n2, 544, 552 (discussing the 'competing forces of order and disorder', and the need to 'implement more fully the order-making tools at the disposal of the United Nations'); Gareth Evans, above n1, 3 ('it seems the disappearance of the bipolar strategic balance was only a prelude to new kinds of turbulence and disorder'); Matthew Neuhaus, above n2, 253 (describing the 'forces of disorder' in ascendance again since 1991); Richard Woolcott, above n83 ('the indiscriminate application of the principle of self-determination to any disenchanting ethnic or tribal minority is a recipe for further disorder').

<sup>108</sup> See, for example, Boutros Boutros-Ghali, above n1, 5, 6 ('we have entered a time of global transition', marked by a 'new dimension of insecurity').

in recent collective security texts as a symbol for the need to increase surveillance of 'Third World' peoples and to justify intervention in 'Third World' states. According to this story, the old order of stable, sovereign states, UN authority and predictable patterns of Cold War brinkmanship is in crisis. Security Council actions are presented as a necessary and desirable means by which to manage and contain the crisis of disorder and fragmentation facing the world.<sup>112</sup>

Those international lawyers who represent the current period in world history as one of order threatened by chaos again represent only one perspective; the perspective of those who had a stake in the old order. The story of ordered stability threatened by chaotic pre- or post-modern anarchy does not describe the experience of many groups. All those who have been excluded from full citizenship in Western democracies, for example, such as women, indigenous peoples, the mentally ill or refugees, are not in the process of moving beyond the sovereign state, but were *already* beyond it, both materially and symbolically. The rational, ruthlessly ordered world of sovereign states had no

---

<sup>109</sup> See, for example, Richard Urquhart, above n1, 17:

The world is entering a period of great instability, characterised by long-standing international rivalries and resentments, intense ethnic and religious turmoil, a vast flow of arms and military technology, domestic disintegration, poverty and deep economic inequalities, instantaneous communication throughout the world, population pressures, natural and ecological disasters, the scarcity of vital resources, and huge movements of population.

<sup>110</sup> See, for example, Matthew Neuhaus, above n2, 256 ('It is our commitment, and that of other likeminded countries, of resources as well as rhetoric, which will decide whether international courts, international police, and international law bring international peace to the anarchic society).

<sup>111</sup> See, for example, Michael Renner, above n1, 7, 14 ('the world is being torn by contradictory trends towards globalization and fragmentation', 'the post-Cold War era is coming to be haunted by the specter of violent disintegration of states'); Richard Woolcott, above n83 ('the fragmentation of countries is potentially destructive. It threatens the more orderly, just and stable world Australia and the international community at large is seeking').

<sup>112</sup> Each of the texts referred to in footnotes 95 to 99 propose an increase in the power of the Security Council as the way to contain the current global crisis of disorder.

place for those portrayed as unruly, disordered, subversive, primitive or irrational.<sup>113</sup>

The experience of moving 'beyond' sovereignty and world order also fails to take account of the inhabitants of the South, who are yet to benefit from the security, well-being and self-determination promised by Enlightenment doctrines. If anything, the crisis of sovereign authority has meant that, perhaps for the first time in history, middle-class white heterosexual men are beginning to experience the world in the way that other, less privileged groups experienced modernity all along - as violent, chaotic, fragmented and dangerous.<sup>114</sup>

International lawyers also present a limited perspective by choosing to see the changes of the current era as threatening rather than as productive. The fact that old systems or mechanisms - such as the old world order - are in disarray is 'a catastrophe *only to the old system*' [my emphasis].<sup>115</sup> For those of us who are not interested in, or able to, occupy the place of the sovereign authority of modernity, the new politics emerging from the chaos of the postmodern era offers the potential for emancipation and for the finding of voice.<sup>116</sup> That which those in power perceive as 'chaos' may thus offer the potential for emancipation. For many, chaos or catastrophe in fact enable 'growth, opportunity, breaking the boundaries of a false closure'.<sup>117</sup>

---

<sup>113</sup> For a further development of this argument in the context of Western liberal democracies, see Anne Orford, above n96; Anne Sisson Runyan, above n5.

<sup>114</sup> bell hooks has suggested that the overall impact of postmodernism has been that 'many other groups now share with black folks a deep alienation, despair, uncertainty, loss of a sense of grounding even if it is not informed by shared circumstances'. see bell hooks, *Yearning: Race, Gender And Cultural Politics*, 1990, 27.

<sup>115</sup> Fiona Mackie, 'Chaos' (1994) 13 *Arena Magazine* 41, 42.

<sup>116</sup> *Ibid*, 41-2. Mackie argues that 'chaos theory' suggests that the potential for growth and change is inherent in the state of chaos. '[O]rder, equilibrium are the rarity and chaos, catastrophe the generalizable state ... the very stuff of living and inert systems; their becoming, growth, evolution towards increasing complexity'. See also Anna Yeatman, *Postmodern Revisionings Of The Political*, 1994, 17.

<sup>117</sup> Fiona Mackie, above n115, 41-2.

It is important to challenge the assumption that we are witnessing a global transition from order to chaos for two reasons. First, to represent changes in our understanding of community, identity and authority as necessarily threatening and chaotic is to prefigure the use of high violence options to manage that chaos. In the post-Soviet era, international lawyers use images of chaos and catastrophe to signify only threats, such as ecological destruction,<sup>118</sup> ethnic violence,<sup>119</sup> religious 'turmoil'<sup>120</sup> or refugee flows.<sup>121</sup> That discourse of fear 'legitimises increased "security" and control, reselling closure as safety against disaster'.<sup>122</sup> Images of chaos are used to legitimise coercive military action and economic sanctions in the name of efficient, humanitarian world order. In that way, simplistic military or economic solutions to complex problems, are made possible.<sup>123</sup> The current focus on surveillance, early warning systems, mediation and peace-building responses and strategies represents a failure to take account of the causes of violence and dissent.<sup>124</sup> International security experts individualise and pathologise security problems in the 'Third World', and fail to acknowledge that those problems may represent the exhaustion of consent of dispossessed peoples to economic policies which ensure a ready supply of cheap labour and resources for corporations and consumers in industrialised states. By professing nostalgia for the ordered times of the Cold War, international lawyers help pave the way for new and punitive methods of ordering and disciplining marginalised people.

---

<sup>118</sup> See, for example, Brian Urquhart, above n2, 17, Boutros Boutros-Ghali, above n1, 7.

<sup>119</sup> See the discussion in the following section.

<sup>120</sup> See, for example, Brian Urquhart, above n2, 17 (on 'intense ethnic and religious turmoil'); Boutros Boutros-Ghali, above n1, 6 (on 'religious strife').

<sup>121</sup> See Gareth Evans, above n1, 3-16 (discussing, inter alia, 'unrestrained population growth', 'large-scale refugee flows' and 'unregulated population flows' as threats to security); Boutros Boutros-Ghali, above n1, 7; United Nations High Commissioner For Refugees, *The State Of The World's Refugees*, 1993, 22, 29 (on refugee flows as 'significant threats to peace and security').

<sup>122</sup> Fiona Mackie, above n115, 42.

<sup>123</sup> Rosi Braidotti, Ewa Charkiewicz, Sabine Hausler and Saskia Wieringa, *Women, The Environment And Sustainable Development: Towards A Theoretical Synthesis*, 1994, 25.

<sup>124</sup> See references above nn49 and 50.

Second, the suggestion that every human being experiences postmodernity in the same way, as a period of transition from security and order to danger and chaos, repeats the violence of assuming that the experience of elite white men is universal. Without listening to the stories of other groups, the desire to 'manage' this perceived crisis, and to attempt to recreate a fictitious unity, may prove overwhelming and dangerous to all those who are outside the white man's fantasy. The panic that is inspired by the sense that we are suddenly vulnerable to new threats could be curtailed if international lawyers ceased privileging the 'crisis' of sovereign authority. Instead, international lawyers could move towards a more optimistic reading of postmodern international relations by listening to those who see this historical moment as potentially productive. The strategies of those groups may well be more survivable than the desire to recreate a fictitious unity.<sup>125</sup>

### ***E. Violence and difference***

Collective security discourse relies on a series of assumptions about the relationship between violence and difference. Many international texts concerning security operate to make links between ethnicity, self-proclaimed difference, violence and armed conflict, all presented as in danger of overwhelming modernity with the ending of the Cold War.<sup>126</sup> Violence is

---

<sup>125</sup> See further Anne Orford, above n102.

<sup>126</sup> See, for example, United Nations High Commissioner for Refugees, above n121, 22:

If the Cold-War era was dominated by ideological conflict, the fear is widespread that the 1990s may be the start of a new era of ethnic violence that will uproot additional millions of people from their homes .... Supposedly ancient hatreds, to which many people attribute the savagery of ethnic conflicts, can be reinvented, revived or kept from dying a natural death by opportunists who see in them a vehicle for personal or political profit.

Richard Lee Gaines, above n2, 543 (arguing that with the end of the Cold War, '(o)ld alliances have broken, sovereign countries have split apart, and ethnic tensions have inflamed'); Boutros Boutros-Ghali, above n1, 6 (arguing that while associations of states are finding ways to deepen cooperation, 'fierce new assertions of nationalism and sovereignty spring up, and the cohesion of States is threatened by brutal ethnic, religious, social, cultural or linguistic strife'); Michael Renner, above n1, 6, 9, 13, 14 ('long-suppressed ethnic antagonisms, suddenly unleashed, are threatening the violent disintegration of states'; 'the post-Cold War era is coming to be haunted by the specter of violent disintegration of states');



presented as the inevitable partner of any attempt to assert difference within sovereign state boundaries.<sup>127</sup> The stories of international lawyers play a part in constructing knowledge about the dangerousness of groups who assert their difference within, or against, any unified sovereign state. The repeated representation of difference and identity politics as violent and divisive has implications both domestically and internationally.

First, the linking of difference and violence operates to discipline citizens of industrialised democracies by suggesting that we should fear and repress any attempts to unsettle the unity of our sovereign state.<sup>128</sup> Telling stories about violence and otherness enables us to 'privilege presumed coherences within'.<sup>129</sup> The equation of any self-proclaimed difference with violence operates to constrain liberatory movements operating within states, such as the women's movement or civil rights movements. Internal claims for self-determination, claims that inhabitants of a state may owe loyalty to groups within the state, or even the simple claim that one's political identity may not be first and foremost as 'citizen', are rendered suspect. The linking of self-proclaimed difference with violence and totalitarianism serves to make domestic political

---

Gareth Evans, above n1, 7 (on the 'increasingly strident voicing of competitive ethno-nationalist grievances and aspirations' as a threat to security); Brian Urquhart, above n2, 17; Richard Woolcott, above n95 ('More than a third of the 185 member-States of the United Nations are threatened by rebel movements, dissident ethnic groups, religious fundamentalism, terrorism, cults or governments in exile').

<sup>127</sup> See Richard Woolcott, above n95:

In present circumstances, countries, especially developing ones, will strongly resist fragmentation and the efforts of minorities to break away .... Attempted fragmentation has often led to civil war and occasionally to external intervention which has usually resulted in bloodshed and the diversion of human and financial resources.

<sup>128</sup> See, for example, Richard Woolcott, above n95:

How can the issue of self-determination and possible fragmentation affect Australia? ... If we accept that a particular social or ethnic group with its own traditions has a right to self-determination, then it could also be argued that the Aboriginal and Torres Strait Islander communities, particularly the latter, have this right .... There is also a danger in a multicultural society that the tolerance and cooperation needed to maintain social stability could be disrupted if external ethnic or political feuds are transplanted to these shores by groups who have found new homes here.

<sup>129</sup> R B J Walker, 'From International Relations to World Politics' in Joseph E Camilleri, Anthony P Jarvis and Albert J Paolini (eds), above n28, 21, at 35.

struggles for recognition more difficult, and the desire for self-determination almost unspeakable. Within the context created by such representations, 'multicultural difference becomes synonymous with violence'.<sup>130</sup> As a consequence, the 'fearful spectre of violent fragmentation' haunts any debate about cultural difference.<sup>131</sup>

These representations also operate to manufacture consent to the use of force against the inhabitants of states targeted for intervention.<sup>132</sup> If ethnic violence and postmodern tribalism are understood as major threats to peace and security, it makes sense to use military force to bring democracy, order and human rights to the people of the 'Third World', even if some of them die or suffer harm in the process. Collective security texts create a context of fear of disorder, difference and tribalism, in which increased military and economic intervention in the affairs of developing states is legitimised to create a ruthlessly 'ordered' world.

The focus on self-proclaimed difference and ethnic violence as major threats to security, and the causes of political unrest, operates to depoliticize global networks of exploitation and oppression.<sup>133</sup> There is little reference in most security texts to the interest that investors have in ensuring secure and stable environments,<sup>134</sup> to the relationship between the political crises in the South over the last decade and the new flexibility of 'transnational capital',<sup>135</sup> to

---

<sup>130</sup> Suvendrini Perera and Joseph Pugliese, 'Subject Positions' (1994) 12 *Arena Magazine* 38.

<sup>131</sup> *Ibid.*

<sup>132</sup> For further development of the argument that the media and academics play a role in the manufacturing of the consent of the citizens of Western democracies to oppressive actions taken in the name of their state, see Edward S Herman and Noam Chomsky, *Manufacturing Consent*, 1988; Edward W Said, above n30.

<sup>133</sup> See also the discussion of identity politics as a threat to peace and security in James Thuo Gathii, 'International Law and Eurocentricity: A Review Essay' (1998) 9 *European Journal of International Law* 184, 194.

<sup>134</sup> One exception is Richard Lee Gaines, above n2, 568:

A financially stable, effective UN regime is needed, one that can keep the peace in a global marketplace where stability would lead to increased economic growth .... Capitalism, and the creation of market forces through technology and transportation, have created a situation that is dependent on peace and stability.

<sup>135</sup> For further exploration of the links between economic restructuring and security crises, see Chapter 3. Analyses linking political and security crises with the revolution in capital markets

structural adjustment riots, or to the funding by the US of non-democratic but pro-foreign investment regimes.<sup>136</sup> Instead, international lawyers tell each other that military and economic coercion is in the interests of the inhabitants of target states, and for the greater good of securing world order. The consequences of the idea that military intervention is conducted in the interests of world order resemble the consequences of the belief in a 'civilising mission' in the era of classical colonialism. As Edward Said argues:

The power to conquer territory is only in part a matter of physical force: there is the strong moral and intellectual component making the conquest itself secondary to an idea.<sup>137</sup>

Through the idea that Security Council actions protect the world from the threat of ethnic violence, fragmentation and tribalism, new forms of coercion and exploitation are made palatable to many citizens of states such as the US.

These representations also serve to bolster faith in the unitary, Western democratic state in the face of unprecedented challenges to its claim to 'resolve the relation between unity and diversity'.<sup>138</sup> The West is fascinated with the consequences of the disintegration of the former Yugoslavia, for example, partly because it reinforces the idea that the West is free from such violence and difference, at a time when Western democracy shows increasing signs of decay and corruption.<sup>139</sup> By focussing on 'ethnic nationalism' or 'tribalism' as a cause of conflict, international lawyers are able to produce an

---

and investment liberalisation include Cynthia Enloe, above n4, 102-118, 136-141; Susan George, *The Debt Boomerang: How Third World Debt Harms Us All*, 1992; Chakravarthi Raghavan, *Recolonization: GATT, the Uruguay Round and the Third World*, 1990; Jochen Hippler (ed), *The Democratisation of Disempowerment: The Problem of Democracy in the Third World*, 1995; Ted Wheelwright, 'Futures, Markets' (1994) 9 *Arena Magazine* 24; Susan L Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War*, 1995.

<sup>136</sup> For a critique of the use of US military force in the interests of US capital, see Noam Chomsky, above n23; Edward W Said, above n30.

<sup>137</sup> Edward W Said, *The Question Of Palestine*, 1992, 77.

<sup>138</sup> R B J Walker, above n129.

<sup>139</sup> Slavoj Zizek, *Tarrying With The Negative*, 1993, 200.

outside to the ordered world of modernity. As Anthony Elliott argues, Western institutional agencies have been able to interpret the Bosnian conflict as 'something Other to the democratic principles of the developed capitalist order'.<sup>140</sup>

Feminist theory offers alternatives to the evil twins of democratic unity and separatist violence. Anne Runyan has argued that rather than 'replicating yet again the modern state's repeated attempts to submerge that otherness, that particularity, that dissent, by mastery or assimilation in the name of unity and harmony', a more just politics must be based on tolerance for difference and dissent.<sup>141</sup> Feminist theory is a rich source of alternative visions in the quest to construct and enact difference and multiplicity as positive values, rather than as justifications for oppression and violence. Theorists such as Donna Haraway and Rosi Braidotti are engaged in a risky and generous search for a redefinition of the community bond.<sup>142</sup> International lawyers need to rethink sovereignty, political identity and security in ways that draw on such attempts to value difference while redefining community.

#### ***F. Situating knowledge about collective security***

The stories told by experts about collective security offer citizens of interventionist states 'a self-forgetting delight in the use of power - the power to observe, rule, hold, and profit from distant territories and people.'<sup>143</sup> In particular, international lawyers are offered the roles of managers of global 'development', make policy about security, 'know' about distant people, and are able to enjoy local spectacles about distant territories. Through that process,

---

<sup>140</sup> Anthony M Elliott, 'Symptoms of Globalization: Or, Mapping Reflexivity in the Postmodern Age', in Joseph E Camilleri, Anthony P Jarvis and Albert J Paolini (eds), above n28, 157, at 167.

<sup>141</sup> Anne Sisson Runyan, above n5, 136.

<sup>142</sup> See particularly Rosi Braidotti, above n86, 274-284; Donna Haraway, *Simians, Cyborgs, And Women: The Reinvention Of Nature*, 1991, 161.

<sup>143</sup> Edward W Said, above n30, 158.

those writing about security risk forgetting the power through which they are produced as global experts, bureaucrats and managers.

Despite frequent references to global security, to humanity and to universal values and truths, international lawyers are not yet engaged in cooperation or dialogue with those they claim to be securing or protecting. Many international lawyers writing about collective security continue to tell each other about 'them', without stopping to listen to what 'they' have to say about their security interests. Perhaps much of international law is better understood as gossip, rather than as a conversation or dialogue. Writing about anthropology as a 'nativist discourse', Trinh T Minh-ha has said:

Anthropology is finally better defined as 'gossip' (we speak together about others) than as 'conversation' (we discuss a question). Scientific gossip takes place under relatively intimate conditions and mostly without witnesses; hence the gossipers' need to act in solidarity, leaning on and referring to each other for more credibility .... This is how gossip manages to mingle with science, and, reciprocally, 'when knowledge, when science speaks, I sometimes come to the point of hearing its discourse as the sound of a gossip which describes and disparages lightly, coldly, and objectively what I love: which speaks of what I love *according to truth.*' Gossip's pretensions to truth remain however very peculiar. The kind of truth it claims to disclose is a confidential truth that requires commitment from both the speaker and the listener. He who lends an ear to gossip already accepts either sympathizing with or being an accomplice of the gossiper.<sup>144</sup>

Many security theorists invite us to lend an ear to gossip. Scholarship about collective security provides evidence of a 'broken dialogue' between North and

---

<sup>144</sup> Trinh T Minh-Ha, *Woman, Native, Other: Writing Postcoloniality and Feminism*, 1989, 68.

South.<sup>145</sup> The stories of gossips may be useful, they may even be true, but telling these stories in this way preempts and forecloses the telling of more optimistic and ethical stories. It is important that international lawyers ensure collective security discourse develops as a democratic and participatory dialogue, rather than as gossip.

Feminist theorists provide useful strategies for developing alliances and strengthening networks of solidarity in ways that acknowledge the particularity of ways of knowing. Indeed, 'self-conscious reflection on engagement with the social' is a major feature of feminist theories.<sup>146</sup> Many feminist theorists have refused the notion of one right access to truth, knowledge and progress.<sup>147</sup> Donna Haraway, in particular, usefully contests the notion of objectivity which structures Enlightenment knowledge practices. She critiques the illusion or 'god-trick' of 'infinite vision' involved in the doctrine of objectivity, describing it as a false vision promising transcendence of all limits and all responsibility.<sup>148</sup> Haraway does not, however, seek to reject altogether the doctrine of objectivity, in a slide into relativism. Instead, she seeks to reconceptualise feminist objectivity as a function of situatedness or partiality.

Haraway's reconceptualisation focuses on partial perspectives and situated knowledges as the conditions for objectivity. Her argument is that 'objectivity is not about transcendence, but about accepting the local nature of all standpoints, therefore recognising the priority of partial perspectives over global theorizations'. Haraway argues that we need to take responsibility 'for what we

---

<sup>145</sup> Michel Foucault argues that there is today a broken dialogue between the man of madness and the man of reason. The constitution of madness as a mental illness at the end of the eighteenth century marks for Foucault the end of a common language, affords the 'evidence of a broken dialogue ... and thrusts into oblivion all those stammered, imperfect words without fixed syntax in which the exchange between madness and reason was made': Michel Foucault, *Madness And Civilization*, 1988, x.

<sup>146</sup> Teresa de Lauretis, 'Upping the anti [sic] in feminist theory' in Simon During (ed), *The Cultural Studies Reader*, 1993, 74.

<sup>147</sup> Rosi Braidotti, above n86, 266.

<sup>148</sup> Donna Haraway, above n142, 183.

learn how to see'.<sup>149</sup> All vision and knowledge is situated, and to be situated implies responsibility. Haraway makes it 'impossible for synthetic global theories to reappear in feminism',<sup>150</sup> or in international law. Rather, her approach enables new forms of connection and community.

We do not seek partiality for its own sake, but for the sake of the connections and unexpected openings situated knowledges make possible. The only way to find a larger vision is to be somewhere in particular.<sup>151</sup>

International lawyers writing in the area of collective security must find ways to situate ourselves and to enter into dialogue with those situated differently, if they want to develop more ethical, accountable and, ultimately, survivable knowledge practices.

#### IV. CONCLUSION

This chapter aimed to introduce a different approach to thinking about the necessary conditions for achieving survivable communities. Throughout the chapter, I have argued that current theories of collective security take the interests of elite men as the unquestioned norm, and that the collective security system currently represented by the Security Council takes into account only a narrow range of interests. I have explored some of the ways in which collective security discourse in fact contributes to increased insecurity for most people. In Part I, I suggested that the development of a more representative security system would require international lawyers to pay attention to the impact that Security Council actions have on groups other than elite men, particularly women. Part II of this chapter drew on work that has been done both within and outside the boundaries of international law to unsettle assumptions about sovereignty,

---

<sup>149</sup> *Ibid*, 190.

<sup>150</sup> Rosi Braidotti, above n86, 271.

nature, chaos, difference and power which underlie collective security scholarship. I suggested that all those who read or write about security need to be sceptical of appeals to the fear of particularity and chaos, and interrogate the dominant stories that equate self-proclaimed difference with violence and division. The emphasis which feminist theorists place on difference, far from being anarchical or nihilistic, offers new grounds for negotiating interconnections and alliances among differently situated individuals.

Having analysed the assumptions underlying more traditional approaches to collective security, I turn in Chapter 3 to consider the humanitarian justification for intervention, and explore the extent to which pro-interventionist literature addresses the major causes of security crises in the post-Soviet era. Chapter 3 further develops the argument that it is necessary for international lawyers writing about security to acknowledge the complexity of issues of representation and identity, and to take responsibility for the knowledges they produce and the stories they tell.

---

<sup>151</sup> Donna Haraway, above n142, 196.





## Chapter 3

# LOCATING THE INTERNATIONAL – COLLECTIVE HUMANITARIAN INTERVENTION AFTER THE COLD WAR

### I. INTRODUCTION

While intervention literature of the immediate post-Cold War period focused on traditional 'collective security' arguments to justify Security Council actions, later interventions have increasingly been justified with reference to a rather more radical interpretation of the UN Charter. The collective security system, amongst other things, has come to be represented as a means for the liberal alliance of democratic states to bring human rights, democracy and humanitarian principles to those in undemocratic or failed states. The dominant liberal international consensus is that collective humanitarian intervention has become necessary to address the problems of local dictators, tribalism, ethnic tension and religious fundamentalism thrown up in the post-Cold War era.

The humanitarian justification for intervention draws upon a somewhat different tradition to more traditional security theories, based as it is upon an idealistic image of the role of international law and international institutions as agents of human rights and democracy. Surprisingly little attention has been paid, however, to the extent to which the activities of international institutions, and particularly international economic institutions, have affected political processes, and thus may have contributed to the crises now facing the expanded collective security system. The aim of this chapter is to trace the consequences of such international activities and their effects on human rights, democracy, local political practices and security, in order to suggest

ways of rethinking the meaning and demands of humanitarian action under post-Cold War conditions.

Part II of this chapter analyses two key assumptions underlying the debate about the legitimacy of collective humanitarian intervention: first, that the choice facing the international community is one between action and inaction, and second, that the principal threats to peace and security after the Cold War emanate from the state or local level. That Part traces the ways in which military intervention has come to be largely accepted as the logical, realistic and moral response to humanitarian crises.

Part III questions the assumption that the choice for the international community is between collective humanitarian intervention or inaction. By focussing on the case of one post-Cold War humanitarian crisis, that of the genocidal conflict in the former Yugoslavia, I suggest that an examination of the role played by international institutions and actors in contributing to the conditions leading to the outbreak of violence complicates the dominant representation of an absence of international law and a lack of international engagement as contributing causes of that crisis. I suggest that international as well as local passions and interests were a threat to peace and security in that instance.

Part IV challenges the broader assumption made in pro-interventionist literature that local institutions, actors or cultures pose the major threats to democracy and human rights, while international institutions and laws act primarily in the interests of human rights, democracy and the people. That assumption justifies greater scope for intervention by international institutions, actors and cultures at the state or local level. I argue instead that at least one of the major projects of international institutions in the post-Cold War era - economic liberalisation - itself poses significant threats to democracy and human rights.

Part V argues that it is necessary to rethink the understanding of international laws, international institutions and international culture as necessarily emancipatory.<sup>1</sup> Arguments justifying Security Council actions present an idealised image of international law and of international institutions as bearers of human rights and democratic values.<sup>2</sup> That representation of international law limits the possibilities for achieving peace, democracy, justice and survivable communities. I suggest that the ideals underlying the powerful appeal of collective humanitarian intervention demand a different set of responses in the context of globalisation.

## II. REPRESENTATIONS OF THE INTERNATIONAL

The range and nature of resolutions passed by the Security Council since 1989 leave little doubt that the Council has adopted an expanded interpretation of its mandate in the changed conditions of the post-Cold War era. In particular, the Security Council now appears willing to treat the failure to guarantee democracy or human rights, or to protect against humanitarian abuses, as either a symptom, or cause, of threats to peace and security.<sup>3</sup>

---

<sup>1</sup> On rethinking the nature of 'the international', see David Kennedy, 'A New World Order: Yesterday, Today and Tomorrow' (1994) 4 *Transnational Law and Contemporary Problems* 329; and on rethinking the meaning of 'the global', see Vandana Shiva, 'The Greening of the Global Reach' in Wolfgang Sachs (ed), *Global Ecology: A New Arena of Political Conflict*, 1993, 149.

<sup>2</sup> See further the argument made in Chapter 4 below.

<sup>3</sup> That willingness was first evidenced by the Security Council Summit Statement Concerning the Council's Responsibility in the Maintenance of International Peace and Security, reprinted at (1992) 31 *International Legal Materials* 758. The statement emerged from the first meeting at the level of Heads of State and Government held by the Security Council in January 1992. The Council there stated:

The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.

Recent practice of the Security Council suggests that it will treat 'threat to the peace' as including cases of civil war or internal armed conflict, mass human rights violations and violations of humanitarian law. See, *inter alia*, SC Res 770, United Nations SCOR, 47th sess, 3106th mtg, United Nations Doc S/RES/770 (1992) (calling upon states to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery of humanitarian assistance in Bosnia-Herzegovina), SC Res 794, United Nations SCOR, 47th Sess, 3145th mtg, United Nations Doc S/RES/794

Those supporting the legitimacy of this expanded role for the Security Council have themselves demonstrated a willingness to shift their understanding of the legal bases of Security Council action. While the Gulf War was justified in traditional collective security terms, as a measure that was necessary to restore security to the region and to punish aggression,<sup>4</sup> later

---

(1992) (authorising the use of force to establish a secure environment for humanitarian relief operations in Somalia), SC Res 816, United Nations SCOR, 47th Sess, 3191st mtg, United Nations Doc S/RES/816 (1993) (authorising the use of force to protect a no-fly zone over Bosnia established to prevent Serbian assaults from obstructing the transfer of humanitarian aid supplies), SC Res 827, United Nations SCOR, 48th Sess, 3217th mtg, United Nations Doc S/RES/827 (1993) (establishing the war crimes tribunal for the former Yugoslavia), SC Res 836, United Nations SCOR, 48th sess, 3228 mtg, United Nations Doc S/RES/836 (1993) (authorising the use of force to protect Bosnian safe areas), SC Res 929, United Nations SCOR, 49th Sess, 3392d mtg, United Nations Doc S/RES/929 (1994) (authorising the use of force to protect civilians in the Rwandan civil war), SC Res 940, United Nations SCOR, 49th sess, 3413th mtg, United Nations Doc S/RES/940 (1994) (authorising member states to form a multinational force and to use all necessary measures to facilitate the departure from Haiti of the military leadership, and expressing concern with the significant further deterioration of the humanitarian situation and the regime's systematic violation of civil liberties), SC Res 955, United Nations SCOR, 49th Sess, 3453d mtg, United Nations Doc S/RES/955 (1994) (establishing an international tribunal for the prosecution of serious violations of international humanitarian law in the territory of Rwanda and neighbouring states), SC Res 1199, United Nations SCOR, 53th Sess, 3930th mtg, United Nations Doc S/RES/1199 (1998) (acting under Chapter VII and expressing concern at the rapid deterioration in the humanitarian situation throughout Kosovo and at reports of increasing violations of human rights and international humanitarian law). See also *Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, United Nations GAOR, 50th Sess, United Nations Doc A/50/60 (1995) (discussing the use of United Nations forces to protect humanitarian operations in Bosnia Herzegovina and Somalia as leading to a new kind of United Nations operation). For an analysis of some of these and other relevant Security Council resolutions, see Fernando R Tesón, 'Collective Humanitarian Intervention' (1996) 17 *Michigan Journal of International Law* 323.

<sup>4</sup> See, for example, W Michael Reisman, 'The Constitutional Crisis in the United Nations' (1993) 87 *American Journal of International Law* 83, 85 ('the Council ... seems remarkably effective, as was most recently demonstrated by the expulsion of an aggressor and the liberation of Kuwait. That was a campaign all could applaud'); Gareth Evans, 'The New World Order and The United Nations' in Mara R Bustelo and Philip Alston (eds), *Whose New World Order? What Role for the United Nations?* 1, at 2-4 ('we have had with the Gulf War a resounding affirmation and demonstration of the effectiveness of the principles of collective security'; 'there is a particular significance in the successful international effort to reverse Iraq's aggression: the outcome of the Gulf War was a triumphant reaffirmation of the United Nations' collective security role'); David J Scheffer, 'Use of Force after the Cold War: Panama, Iraq, and the New World Order' in Louis Henkin et al, *Right v. Might: International Law and the Use of Force*, 1991, 109, at 126 ('international law was a winner during the Gulf conflict .... [A] powerful precedent has been established that should deter at least some of the aggressive stratagems of lawless rulers'); Abram Chayes, 'The Use of Force in the Persian Gulf' in Lori F Damrosch and David J Scheffer (eds), *Law and Force in the New International Order*, 1991, 3; Richard Lee Gaines, 'On the Road to a Pax U.N.: Using the Peace Tools at our Disposal in a Post-Cold War World' (1993) 25 *New York University Journal of International Law and Politics* 543.

actions in Bosnia, Rwanda, Somalia and Haiti, *inter alia*, have been supported by a very different interpretation of the legitimate role of the Security Council. There is now a significant and influential literature arguing that Security Council actions taken since 1990 demonstrate the utility and legitimacy of the notion of collective humanitarian intervention.<sup>5</sup> Scholars supporting that position argue that in light of the post-Cold War practice of the Security Council, norms governing intervention should be, or have been, altered to allow collective humanitarian intervention, or intervention by the Security Council to uphold democracy and human rights.

Those critical or anxious about the expanding role of the Security Council have also shifted ground in the years since the Gulf War. Many legal scholars working in the areas of human rights and international humanitarian law were highly critical of the actions undertaken in the Gulf. Criticisms ranged from analyses of the merely rhetorical nature of the Security Council's commitment to human rights, to criticism of the effects of the bombing and sanctions on the Iraqi people, to concern about the apparent domination of the revitalised

---

<sup>5</sup> Those arguing that, in the post-Soviet era and particularly in light of the actions authorised by the Security Council concerning Iraq, Haiti, the former Yugoslavia, Rwanda, Somalia and even Libya, norms governing intervention should be, or have been, altered, and that a liberal construction of Chapter VII of the UN Charter should be employed to authorise collective humanitarian intervention include Fernando R Tesón, above n3 (arguing that the post-Soviet practice of the UN, particularly relating to Iraq, Somalia, Haiti, Rwanda and Bosnia, supports the principle that the international community has a right to intervene to uphold human rights, and that collective humanitarian intervention is both legally justified and a moral imperative); Mark R Hutchinson, 'Restoring Hope: U.N. Security Council Resolutions for Somalia and an Expanded Doctrine of Humanitarian Intervention' (1993) 34 *Harvard International Law Journal* 624; Ruth E Gordon, 'Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti' (1996) 31 *Texas International Law Journal* 43 (arguing that in light of its authorisation to use force in Somalia to render humanitarian assistance under SC Resolution 794, the Security Council appears to be moving cautiously in the direction of expanding the definition of threat to the peace to apply to humanitarian crises that do not cause transboundary friction); Tom J Farer, 'Intervention in Unnatural Humanitarian Emergencies: Lessons of the First Phase' (1996) 18 *Human Rights Quarterly* 1; Ved P Nanda, 'Tragedies in Northern Iraq, Liberia, Yugoslavia, and Haiti - Revisiting the Validity of Humanitarian Intervention Under International law - Part 1' (1992) 20 *Denver Journal of International Law and Policy* 305, 335; David Bills, 'International Human Rights and Humanitarian Intervention: The Ramifications of Reform on the United Nations' Security Council' (1996) 31 *Texas International Law Journal* 107; W Michael Reisman, 'Some Lessons from Iraq: International Law and Democratic Politics' (1991) 16 *Yale Journal of International Law* 203.

Council by the United States.<sup>6</sup> The response to later interventions, however, has been more ambivalent. There are certainly some legal commentators who have continued to express concern about the apparent willingness of a largely unrestrained Security Council to expand its mandate to include authorising the use of force to remedy human rights abuses or 'to make every State a democratic one'.<sup>7</sup> Many legal scholars, however, seem haunted by the fear that opposing intervention in Bosnia or Haiti, for example, means opposing the only realistic possibility of international engagement to end the horrific human suffering witnessed in those conflicts. The need to halt the horrors of genocide or to address the effects of civil war and internal armed conflict on civilians has been accepted as sufficient justification for intervention, even if other motives may be involved.

Two key assumptions underlie the debate as to whether collective humanitarian intervention is justified. First, both those arguing for and those against an expanded doctrine of collective humanitarian intervention accept that the international community is faced with a choice as to whether or not to take action in states where conflicts arise. The pro-interventionist argument is based upon an assumption that post-Cold War crises are in part attributable to an absence of law, including international law, and a lack of sustained

---

<sup>6</sup> Philip Alston, 'The Security Council and Human Rights: Lessons to be Learned from the Iraq-Kuwait Crisis and its Aftermath' (1992) 13 *Australian Year Book of International Law* 107; René Provost, 'Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait' (1992) 30 *Columbia Journal of Transnational Law* 577; Henry J Richardson III, 'The Gulf Crisis and African-American Interests under International Law' (1993) 87 *American Journal of International Law* 42; Oscar Schachter, 'United Nations Law in the Gulf Conflict' (1991) 85 *American Journal of International Law* 452; David D Caron, 'Iraq and the Force of Law: Why Give a Shield of Immunity?' (1991) 85 *American Journal of International Law* 89; Judith Gail Gardam, 'Proportionality and Force in International Law' (1993) 87 *American Journal of International Law* 391; Middle East Watch, *Needless Deaths In the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War*, 1991.

<sup>7</sup> Martti Koskenniemi, 'The Police in the Temple. Order, Justice and the United Nations: A Dialectical View' (1995) 6 *European Journal of International Law* 325, 343. For other legal analyses that express concern about the apparent willingness of the Security Council to expand its mandate to include authorising the use of force to remedy human rights abuses, or that continue to be critical of the conduct of Security Council actions, see Richard Falk, 'The Haiti Intervention: A Dangerous World Order Precedent for the United Nations' (1995) 36 *Harvard International Law Journal* 341; Judith Gardam, 'Legal Restraints on Security Council Military Enforcement Action' (1996) 17 *Michigan Journal of International Law* 285.

engagement by international organisations. Accordingly, a commitment to humanitarian ideals is seen to demand action from the international community, in the form of intervention. Thomas Weiss, for example, argues that, while humanitarian intervention may be counterproductive to the tasks of democratisation and peace-building, ruling out the option of such action will render the UN powerless to act, destroy its credibility and condemn it to the fate of the League of Nations.<sup>8</sup> Weiss presents a stark choice:

Too many pleas for consistency or against inevitable selectivity amount to arguing that the United Nations should not intervene anywhere unless it can intervene everywhere .... But in light of genocide, misery, and massive human rights abuses in war zones around the world, should Pontius Pilate be the model for both the American and the international response? The fatalism and isolationism that flow from most objections to humanitarian intervention are as distressing as the situation in the countries suffering from ethnic conflict where such an action is required .... A purely noninterventionist position amounts to abstention from the foreign policy debate.<sup>9</sup>

Similarly, Fernando Tesón argues that it is better for states to take collective action to intervene in favour of the rights and interests of human beings, even if such action may do some harm, rather than to remain inactive and, as a result, incapable of providing either relief from brutality or assistance in the achievement of democratic government.<sup>10</sup>

It is ... surprising to be told that the very crimes that prompted the massive, cruel and costly struggle from which the United Nations was

---

<sup>8</sup> Thomas G Weiss, 'On the Brink of a New Era? Humanitarian Interventions, 1991-94' in Donald CF Daniel and Bradd C Hayes (eds) *Beyond Traditional Peacekeeping*, 1995, 3, at 8.

<sup>9</sup> *Ibid*, at 8, 15.

<sup>10</sup> Fernando R Tesón, above n3, 342.



born, are now immune from action by the organ entrusted to preserving the fruits of the hard-won peace. The formalism of anti-interventionists thus not only rewards tyrants, but it betrays the purposes of the very international order that they claim to protect.<sup>11</sup>

Even those who reject the legitimacy of collective humanitarian intervention appear haunted by the fear that failure to act under the auspices of the Security Council may represent a betrayal of our duty to be engaged in the world in the interests of humanity. Richard Falk's critical analysis of the precedent set by Security Council resolutions concerning Haiti provides a good illustration of that concern.<sup>12</sup> While Falk mounts a strong case against Security Council action in Haiti, he admits to a fear that advocating non-intervention may equal advocating inaction.

Having mounted this case against intervention, a haunting question must be posed: with all of its deficiencies, isn't it better to have confronted and deposed Cedras, to have provided relief to the Haitian people from the widespread daily brutality and to have given them an opportunity to compose a more democratic government that addresses the poverty of the people?<sup>13</sup>

The characterisation of intervention as active and productive, and non-intervention as inactive and negative, appears to inform the popular response that we should do something to address the suffering and despair in Bosnia, Somalia or Rwanda, rather than do nothing. As one commentator notes:

---

<sup>11</sup> *Ibid.*

<sup>12</sup> Richard Falk, above n7. See Security Council Resolution 940, above n3 (authorising member states to impose economic sanctions and use force to 'facilitate the departure from Haiti of the military leadership' and to return it to democratic rule under President Jean-Bertrand Aristide).

<sup>13</sup> Richard Falk, above n7, 357.

In a world of satellite communications, with television images of suffering broadcast as they occur, few democratic governments are immune to the public clamour to 'do something'.<sup>14</sup>

The sense of frustration felt by some commentators when military intervention as an avenue for action is closed off is well illustrated by Thomas Weiss. Weiss describes the United Nations Protection Force for the former Yugoslavia (UNPROFOR) as 'eunuchs at the orgy', due to the constraints imposed on the capacity of UNPROFOR to use force in that conflict.<sup>15</sup>

The second assumption made by advocates of an expanded humanitarian role for the Security Council is that the principal threats to human rights, democracy and security occur at the state or local level.<sup>16</sup> According to those in favour of collective humanitarian intervention, state or local leaders or governments pose the major challenges to human rights and democracy, and humanitarian crises are largely caused by actions and developments initiated and carried out by local or governmental actors or institutions.<sup>17</sup> Accordingly,

---

<sup>14</sup> Shashi Tharoor, 'The Changing Face of Peace-Keeping and Peace-Enforcement' (1995) 19 *Fordham International Law Journal* 408, 413.

<sup>15</sup> Thomas G Weiss, above n8, at 8. An analysis of violence as an expression of some forms of masculine subjectivity as suggested by that metaphor is beyond the scope of this chapter, but see Diana Taylor, 'Spectacular Bodies: Gender, Terror and Argentina's "Dirty War"' in Miriam Cooke and Angela Woollacott (eds), *Gendering War Talk*, 1993, 20; Susanne Kappeler, *The Pornography of Representation*, 1986.

<sup>16</sup> See Fernando R Tesón, above n3, 342 (treating state or local leaders or governments as the actors likely to threaten democracy or human rights); Leon Gordenker and Thomas G Weiss, 'The Collective Security Idea and Changing World Politics' in Thomas G Weiss (ed), *Collective Security in a Changing World*, 1993, 3, at 14 (treating 'ethnic particularism' as a threat to peace and security); W Michael Reisman, above n5, 213 (arguing that 'tinhorn dictators' and 'contemporary tyrants' threaten post-Cold War peace and security); Michael Stopford, 'Locating the Balance: The United Nations and the New World Disorder' (1994) 34 *Virginia Journal of International Law* 685, 686, 698 (suggesting that the breakdown of internal state structures and ancient ethnic and religious tensions are the major challenges to peace and security); Ambassador Madeleine K Albright, 'International Law Approaches the Twenty-First Century: A United States' Perspective on Enforcement' (1995) 18 *Fordham Journal of International Law* 1595, 1597 (suggesting that we 'live in an unsettled age, beset by squabbles, wars, unsatisfied ambitions').

<sup>17</sup> For arguments that humanitarian crises require collective humanitarian intervention and a reconceptualisation of the principle of noninterference in the internal affairs of sovereign states, see Fernando R Tesón, above n3 (arguing that the domain reserved to the exclusive jurisdiction of the state is quite small, and that matters such as democratic legitimacy are now

pro-interventionist scholars argue that international lawyers should abandon outmoded notions of sovereignty and non-intervention in order to enable states acting collectively to reach those who need their help. Tom Farer, for example, argues in favour of military intervention as a necessary response to ethnic or religious tensions.

Many of the cases that now and might in the future engage international concern involve conflicts among groups that define themselves in ethnic or religious terms .... It follows from the nature of the conflict that once it has begun, the stronger party will tend to act out genocidal urges unless and until it encounters a disabling force. And even in cases where none of the parties can deliver a knockout blow, all of them are likely to go on clawing at each other unless external actors either club them into submission, break the stalemate by helping one or a coalition of factions, and/or guarantee the safety of those willing to assume a defensive posture. The only truly credible guarantee for peoples in a state of ecstatic mutual fear is a strong force in place with the means and mandate to thwart whoever initiates or renews intercommunal war.<sup>18</sup>

Similarly, Fernando Tesón argues that there is a moral imperative for states to act collectively to intervene using force if necessary in such situations.<sup>19</sup> Tesón argues that the international community must not be swayed by the arguments of those who seek to resist the use of force on the basis that it

---

subject to international scrutiny); Mark R Hutchinson, above n5. For examples of those taking a more cautious approach to abandoning the principle of noninterference in the internal affairs of sovereign states in the post-Soviet era, see Philip Alston, above n6; Michael J Glennon, 'Sovereignty and Community after Haiti: Rethinking the Collective Use of Force' (1995) 89 *American Journal of International Law* 70; Anne Orford, 'The Uses of Sovereignty in the New Imperial Order' (1996) 6 *Australian Feminist Law Journal* 63.

<sup>18</sup> Tom J Farer, above n5, 15.

<sup>19</sup> Fernando R Tesón, above n3.

infringes upon traditional norms of sovereign equality or the principle of non-interference in the domestic affairs of states.<sup>20</sup>

(T)here would have been no end to the Cold War without the moral defeat of tyranny, without the resolve of the liberal alliance to resist the internal and external pressures of the various enemies of freedom .... The rise of collective humanitarian intervention and the shrinking of traditional conceptions of sovereignty and domestic jurisdiction are essential for the preservation of peace in the new international order.<sup>21</sup>

These assumptions underlying the debate about collective humanitarian intervention limit the capacity of international law to develop adequate responses to post-Cold War security and humanitarian crises. I want now to suggest a way forward for the debate that may enable international lawyers to transcend the perceived opposition between action and inaction. To do so, the next part of this chapter examines the ways in which international law and international institutions were present and active in the former Yugoslavia prior to, and during, the humanitarian crisis.

### **III. LOCATING THREATS TO THE PEACE - THE CASE OF THE FORMER YUGOSLAVIA**

As shown above, much of the analysis of post-Cold War security and humanitarian crises assumes that local, rather than international, institutions, cultures and actors are largely responsible for the development of such crises, and that a failure to use force or to take measures to respond to such crises equals inactivity on the part of the international community. An evaluation of the relationship between the actions of international institutions and the situation in the former Yugoslavia, however, suggests otherwise.

---

<sup>20</sup> *Ibid*, 371.

<sup>21</sup> *Ibid*.

Whether the cause of the disintegration of Yugoslavia is understood to be ancient hatreds or Serbian aggression, those arguing that the Yugoslav conflict illustrates the necessity for collective humanitarian intervention treat international institutions essentially as interveners for security, democracy and human rights.<sup>22</sup> Yet commentators have begun to suggest that the program of economic liberalisation and restructuring of the state implemented by the international financial institutions of the World Bank and the IMF during the 1970s, 1980s and indeed the 1990s contributed to the conditions in which such hatreds (whether ancient or otherwise) were inflamed.<sup>23</sup> Economic policies designed to refinance and repay Yugoslavia's foreign debt were a driving force behind major constitutional reforms and redefinitions of citizenship and workers' rights during the 1980s.<sup>24</sup> Such policies appear to have played a role in the rise of republican nationalism and the sense that the federal government lacked legitimacy. I want to outline briefly the nature of restructuring in the former Yugoslavia, and then to suggest how that project posed a threat to the peace.

#### ***A. The nature of restructuring in the former Yugoslavia***

The people of the former Yugoslavia were subjected to a stringent austerity program during the 1970s and 1980s, partly as a result of decisions made by IMF officials and by economic liberals in the Yugoslav government.<sup>25</sup> The

---

<sup>22</sup> For an analysis of the tensions caused by the fact that the UK and France regarded the war in Bosnia as a civil war, while the US perceived the war as a case of aggression by Serbia, see Misha Glenny, *The Fall of Yugoslavia*, 1992, 222-3. See also Noel Malcolm, *Bosnia: A Short History*, 1996, xx-xxii, for an analysis of the way in which leaders such as John Major represented ancient hatreds as the cause of the Yugoslav conflict.

<sup>23</sup> See particularly Susan L Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War*, 1995; J Petras and S Vieux, 'Bosnia and the Revival of US Hegemony' (1996) 218 *New Left Review* 3, 9-11; Michel Chossudovsky, 'Dismantling Former Yugoslavia; Recolonising Bosnia', *Economic and Political Weekly*, 2 March 1996, 521.

<sup>24</sup> Susan L Woodward, above n23, 106; J Petras and S Vieux, above n23, 9-11.

<sup>25</sup> For the contrary argument that the austerity program was *not* the result of IMF involvement but rather the 'result of domestic policy choices taken in response to external capital market constraints', see Laura Tyson, Sherman Robinson and Leyla Woods, 'Conditionality and Adjustment in Hungary and Yugoslavia' in Josef C Brada, Ed A Hewett and Thomas A Wolf

process of restructuring began in earnest in 1982, when the Yugoslav government sought a three year standby loan from the IMF.<sup>26</sup> The loan was intended to be used to repay its foreign debt denominated in United States dollars, the interest on which had ballooned during the oil crises of the late 1970s.<sup>27</sup> The conditions attached to that loan by the IMF were aimed at the introduction of domestic policy reforms which economists believed would better enable servicing of foreign debt.<sup>28</sup>

The original 'austerity' program involved cuts in government expenditure, trade and price liberalisation, cutting of imports, and the promotion of exports.<sup>29</sup> Later programs required capping wages, reorienting production towards exports which could compete in OECD markets, recentralising political and economic decision-making, privatisation and currency

---

(eds), *Economic Adjustment and Reform in Eastern Europe and the Soviet Union*, 1988, 72, at 105.

<sup>26</sup> *Keesing's Contemporary Archives: Record of World Events* Vol 30, June 1984, 32932.

<sup>27</sup> *Ibid.* See also William R Cline, *International Debt: Systemic Risk and Policy Response*, 1984, 282, 287. Cline argues that Yugoslavia's debt problem in 1982 was due to the fact that it was shut out of commercial credit markets, largely because the rescheduling of the Polish debt 'radically changed the psychological atmosphere for lending to Eastern Europe'. The 'rescue package' negotiated by the Yugoslav government in 1982 included loans of \$1.2 billion and additional credits from foreign banks, the continued disbursement of funds from the IMF under a standby credit approved in 1981, World Bank loans of \$500 million, a \$500 million bridging loan from the Bank for International Settlements, plus bilateral loans from Western governments.

<sup>28</sup> *Keesing's Contemporary Archives: Record of World Events* Vol 30, June 1984, 32932. It is difficult to obtain precise information about the nature of the conditions attached to any IMF credits, including those extended to Yugoslavia. IMF conditions have not traditionally been published, although they do tend to become public knowledge indirectly through governments, commercial banks and the media. Raymond Mikesell notes that IMF agreements are secret and statements regarding their content are limited to generalities. Nevertheless, he argues that it is possible to judge IMF conditionality packages without seeing them, by evaluating the policies of countries that have been receiving IMF assistance. Raymond F Mikesell, 'Appraising IMF Conditionality: Too Loose, Too Tight, Or Just Right?' in John Williamson (ed), *IMF Conditionality*, 1983, 47, at 53. Laura Tyson, Sherman Robinson and Leyla Woods, above n25, 73, also observe that 'a veil of secrecy traditionally surrounds IMF agreements with individual countries. Without privileged access, it is nearly impossible to ascertain all of the details of such agreements. Some information leaks into the public domain mainly through the commercial banks and through the press, but it is always incomplete and sometimes inaccurate. Not all the conditions of agreements with Yugoslavia ... are known, and even when a particular type of condition is known, quantitative targets ... generally are not'.

<sup>29</sup> Susan L Woodward, above n23, 51; *Keesing's Contemporary Archives: Record of World Events*, Vol 31, August 1985, 33808.

deregulation.<sup>30</sup> While the reasons for such reforms were always presented as purely economic and technical, the changes required by the IMF were 'fraught with political implications'.<sup>31</sup> Both directly and indirectly, the IMF reshaped Yugoslav politics throughout the 1980s and early 1990s.

The direct restructuring of Yugoslav politics occurred through the imposition of conditions requiring constitutional and institutional reforms. During the 1980s, the IMF began to make access to new credits for Yugoslavia conditional on such reform. The first change required by the IMF related to re-centralisation, or the shifting of political and economic authority from republican governments and banks to the federal government and the National Bank.<sup>32</sup> Economists considered that the decentralisation of policy-making amongst Yugoslav republics that had occurred during the early 1980s was 'responsible for Yugoslavia's weak macroeconomic control'.<sup>33</sup> Accordingly, IMF conditions attached to the use of credits after 1982 included requirements for federal reassertion of economic authority over republican governments.<sup>34</sup> Further political changes resulted from the conditions attached to the 1987 and 1988 IMF packages. In particular, the 'May Measures' of 1988 required the

---

<sup>30</sup> See generally William R Cline, above n27, 281-90; Laura Tyson, Sherman Robinson and Leyla Woods, above n25, 91-6; Susan L Woodward, above n23; Marko Milivojevic, *The Debt Rescheduling Process*, 1985, 204-7.

<sup>31</sup> Susan L Woodward, above n23, 50; J Petras and S Vieux, above n23, 11.

<sup>32</sup> *Keesing's Contemporary Archive: Record of World Events*, Vol 30, June 1984, 32932-3; J Petras and S Vieux, above n23, 11.

<sup>33</sup> Laura Tyson, Sherman Robinson and Leyla Woods, above n25, 81. See also Marko Milivojevic, above n30, 205.

<sup>34</sup> In 1982, the IMF required that control over foreign exchange allocation and operations be returned to the National Bank in Belgrade, after such functions had been decentralised and distributed amongst republican governments and banks five years earlier. In 1986/1987, when the IMF 'began to tie conditions for new credits to political reform', it focused on 'restrengthening the governing capacity of the federal administration'. Economic planners wanted a more competent and effective federal government that could 'make and implement tough decisions'. In particular, having been critical of the consensual decision-making process that operated at the federal level and within the central bank as a means of ensuring equality between the republics, the IMF required a change in the voting rules of the National Bank from consensus to majority decision-making. Those changes were proposed by the IMF and supported by the federal cabinet. The significance of those changes can be seen in the packages for constitutional reform presented to the Yugoslav parliament as a result. In February 1987, the League of Communists recommended 130 amendments to the 406 articles of the federal constitution. See Susan L Woodward, above n23, 57-74, 82.

destruction of the socialist system of worker participation in firm decision-making, the removal of procedural protections against large-scale unemployment, and the cutting of public expenditure.<sup>35</sup>

Economic and political restructuring continued to be proposed by the IMF, economic advisers and the federal government during the period 1988-89, when the nationalist climate had become apparent and republican resistance to the proposed changes was clear. The federal government continued to be committed to drawing up and implementing new IMF-conditioned stabilisation restrictions as part of a process of debt rescheduling with private banks during that period, despite an escalation in nationalist rhetoric, nationalist revisions of republican constitutions, mass demonstrations against austerity measures, protests by newly-defined 'minorities', strikes, police harassment of minorities, challenges to the Yugoslav army and racist attacks.<sup>36</sup>

At the end of 1989, after a decade of economic crisis, constitutional conflict and political disintegration,<sup>37</sup> the existing political system was ceasing to function,<sup>38</sup> and legitimacy of the federal government was being challenged by radical Slovene, Serb and Croatian nationalism.<sup>39</sup> Nevertheless, economic advisers to the Yugoslav government determined that 'the effectiveness of the program for global integration depended on speed', and the government announced a 'shock therapy' stabilisation program, to begin in mid-December.<sup>40</sup> The program aimed at completely removing 'political barriers to

---

<sup>35</sup> *Ibid*, 96.

<sup>36</sup> *Ibid*, 93-6.

<sup>37</sup> *Ibid*, 148.

<sup>38</sup> *Ibid*, 116.

<sup>39</sup> *Ibid*, 117.

<sup>40</sup> The principal adviser to the government was Harvard economist Jeffrey Sachs, who developed the 'shock therapy' model for dealing with states in transition from communism to capitalism. Sachs espoused that model in a famous 1990 article: Jeffrey Sachs, 'What is to be done?' *The Economist*, 13 January 1990, 19. He has also advised other Eastern European governments, the G7 and the IMF on the shock therapy model. For a critique of that model and its consequences, see Peter Gowan, 'Neo-Liberal Theory and Practice for Eastern Europe' (1995) 213 *New Left Review* 3.



a market economy'.<sup>41</sup> During 1990, the year in which clear signs of civil war were emerging, the federal government continued to attempt to enact political reforms required by the shock therapy conditions. It did so under intense pressure from the IMF, which was concerned that the commitment to reform was flagging.<sup>42</sup>

IMF programs had further indirect effects on political institutions and norms within Yugoslavia. The implementation of supposedly apolitical IMF conditions in fact required significant changes in Yugoslav politics. The goals of economic policy, for example, required 'fundamental changes in the locus of economic decision-making' and thus required constitutional reform.<sup>43</sup> Changes necessary to enable these reforms included altering the practice of distributing cabinet appointments on a nationality basis,<sup>44</sup> changing the composition of the governing board of the fund for development credits<sup>45</sup> and shifting the balance of economic policy in favour of particular firms, sectors and republics.<sup>46</sup> Successive reformist Prime Ministers and their cabinets took steps to subvert established political processes in order to enable the adoption of unpopular measures supported by the IMF.

---

<sup>41</sup> Susan L Woodward, above n23, 115, 129-30. While the program appeared successful in economic terms over the first six months, particularly given the fall in inflation rates from 2714% in 1989 to 0% in 1990, the economic conditions deteriorated from June 1990, with rising prices, falls in exports, overvaluation of currency, heavy taxation, increased insolvencies and rising unemployment. Despite the aims of the economic architects of the program, it was largely frustrated by republican governments who ignored restrictions on wages and budgets, tax obligations in the federal budget, and monetary restrictions

<sup>42</sup> Michel Chossudovsky, above n 23, 521-2. By 1990, the federal party had collapsed in January, competitive multiparty elections characterised by extreme racism and nationalism had been held from April to December, signs of civil war were emerging, and declarations of sovereignty and the right to secede by the republics of Slovenia and Croatia had been made in July. By the following June, Slovenia and Croatia had announced their independence from the former Yugoslavia, and war had broken out.

<sup>43</sup> Susan L Woodward, above n 23, 58.

<sup>44</sup> *Ibid*, 73.

<sup>45</sup> *Ibid*, 74.

<sup>46</sup> *Ibid*, 101. In particular, producers in the southern republics tended to have fewer ties to Western European markets.

The social impact of IMF economic liberalisation and shock therapy stabilisation programs also had unacknowledged political effects. Those programs arguably fuelled the nationalist dynamic by rapidly restructuring republican and federal levels of government, by implementing policies with divisive social consequences, and by advocating the removal of mechanisms that provided some state support to individuals who would suffer under unrestrained economic liberalism.<sup>47</sup>

### ***B. Threats to the peace***

Commentators on the former Yugoslavia point to a number of conditions that fuelled the republican nationalist dynamic that led to genocide. Those conditions include the destruction of existing federal constitutional arrangements during the 1980s,<sup>48</sup> the destruction of minority rights guarantees,<sup>49</sup> serious unemployment,<sup>50</sup> falling Yugoslav per capita income,<sup>51</sup> the growing role of nationalism in Yugoslav politics,<sup>52</sup> the role of the military as a political force,<sup>53</sup> and the growing gulf between rich and poor republics.<sup>54</sup> There are at least four ways in which IMF structural adjustment, stabilisation and later shock therapy programs can be argued to have contributed to those conditions and thus to the political destabilisation of Yugoslavia.<sup>55</sup>

---

<sup>47</sup> Robin Blackburn, 'The break-up of Yugoslavia' (1993) 45 *Labour Focus on Eastern Europe* 3; J Petras and S Vieux, above n23, 11; Michel Chossudovsky, above n23, 521-2.

<sup>48</sup> Susan L Woodward, above n23, 57-74, 82; J Petras and S Vieux, above n23, 11; Michel Chossudovsky, above n23, 521.

<sup>49</sup> Susan L Woodward, above n23, 381.

<sup>50</sup> Robin Blackburn, above n47, 3; J Petras and S Vieux, above n23, 10; Michel Chossudovsky, above n23, 522.

<sup>51</sup> Valerie Bunce, 'The Elusive Peace in the Former Yugoslavia' (1995) 28 *Cornell International Law Journal* 709, 712.

<sup>52</sup> *Ibid*, 715.

<sup>53</sup> *Ibid*, 710.

<sup>54</sup> *Ibid*, 712; Catherine Samary, 'Behind the breakup of Yugoslavia' (1993) 45 *Labour Focus on Eastern Europe* 27; J Petras and S Vieux, above n23, 10.

<sup>55</sup> Susan Woodward suggests a fifth way in which IMF conditions contributed to the crisis. Woodward suggests that the demands for political change made by the IMF also eroded the state's 'political capacity for managing the transition', and that the absence of a legitimate centralised authority meant that such claims could not be successfully mediated: Susan L Woodward, above n23, 379. She defines democracy there as a system that enables peaceful

First, the programs contributed both to a sense of insecurity for the people of Yugoslavia and to resulting social instability.<sup>56</sup> The destabilising consequences of the early IMF austerity program introduced in 1982, for example, included inflation, falling real incomes, consumer goods shortages, unemployment and the threat of unemployment, the abandonment of food subsidies, and rising prices for commodities affected by import restrictions and the push for exports, such as gasoline, heating fuel, food and transportation.<sup>57</sup>

Second, economically-motivated political and constitutional reforms destroyed the means of protecting minority rights within the socialist system. That system of protection had been based upon the provision of government jobs distributed according to national status and state expenditure on cultural rights. Commentators argue that the 'multiple political arenas' created by Yugoslavia's extensive political decentralisation also operated to guarantee the protection of rights and freedoms: 'journalists who could not publish in one republic could get an audience in another; people facing discrimination in one republic could emigrate temporarily to another; and social movements repressed in one republic might hope for publicity and outside pressure in

---

resolution of conflict and entails a willingness to lose. I have less faith in benign central authority, given the absence of a willingness to lose, particularly on economically rational policy issues, amongst elites in existing democracies. Indeed, I do not see how any authority, whether or not it is benign, can mediate a system capable of reproducing and generating such extraordinary inequality and extremes of wealth and poverty, without resorting to violence. I am swayed rather more by the arguments of those who think that the Yugoslav crisis, *inter alia*, demonstrates the need to rethink the logic of late capitalism. Slovenian intellectual Slavoj Žižek, for example, argues that such cycles of racist viciousness are in part a product of capitalism's economy of enjoyment. See Slavoj Žižek, *Tarrying with the Negative: Kant, Hegel and the Critique of Ideology*, 1993. The answer for me lies with contesting the New Right's logic of efficiency and culture of control, rather than attempting to 'moderate' extremes of poverty and wealth maintained by this global system.

<sup>56</sup> Andrew Williams, 'Economic Intervention by International Economic Organizations in Central and Eastern Europe: Will it Lead to More or Less "Security" for the Region?' in Pal Dunay, Gabor Kardos and Andrew J Williams (eds), *New Forms of Security, Views From Central, Eastern and Western Europe*, 1995, 103, at 109; Susan L Woodward, above n23, 52; J Petras and S Vieux, above n23, 10; Michel Chossudovsky, above n23, 521-2.

<sup>57</sup> Susan L Woodward, above n23, 51; J Petras and S Vieux, above n23, 10.

another'.<sup>58</sup> These mechanisms for accommodating ethno-national and other differences in socialist Yugoslavia were progressively broken down from 1982 onwards. The IMF conditions contributed to the destruction of those mechanisms, by requiring fiscal cuts, greater political centralisation, and an end to nationality-based distribution of voting and positions.<sup>59</sup>

Third, the effects of IMF programs such as social polarisation, attacks on the protection of minority rights and constitutional and institutional 'reform', contributed to the nationalist dynamic developing during the late 1980s.<sup>60</sup> Those programs played a role in the rise of republican nationalism and the sense that the federal government lacked legitimacy.<sup>61</sup> Critics of IMF programs argue that, while Tito's Yugoslavia functioned as an 'imagined community' in the sense described by Benedict Anderson,<sup>62</sup> that sense of community depended upon the federal government having the ability to provide some level of economic and administrative support. When the IMF imposed the policy of structural adjustment in the 1980s, it led to the state, as usual, being stripped of most of its functions, except maintaining law and order.<sup>63</sup>

People began to look to other sources of community, and in that vacuum ethnic nationalism re-emerged to provide a new form of community and a

---

<sup>58</sup> Susan L. Woodward, above n23, 381; J. Petras and S. Vieux, above n23, 10.

<sup>59</sup> *Ibid.*

<sup>60</sup> Andrew Williams, above n56.

<sup>61</sup> Michel Chossudovsky, above n23, 521-2.

<sup>62</sup> Benedict Anderson, *Imagined Communities*, 1991, 6-7. Anderson defines the nation as an imagined community: 'imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion', and a community because 'regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship'.

<sup>63</sup> Jochen Hippler, 'Democratisation of the Third World after the End of the Cold War' in Jochen Hippler (ed), *The Democratisation of Disempowerment: The Problem of Democracy in the Third World*, 1995, 1, at 24 (arguing that often after structural adjustment, the state is only left with 'the police, the army and the secret service: the instruments of repression. By their nature, these can't [yet] be privatised or transferred to the North'.)

needed structure of identity.<sup>64</sup> The sense of community that nationalism offers under these circumstances is valued 'not because of the historical persistence and power of ethnic identities and cultural attachments, as the ethnic conflict school insists, but because the bases of existing communities have collapsed and governments are radically narrowing what they will or can provide in terms of previously guaranteed rights to subsistence, land, public employment, and even citizenship'.<sup>65</sup>

The attack on established systems of welfare also contributed to the anti-federal, republican focus of the nationalist dynamic.<sup>66</sup> While the federal government enacted rapid economic and political restructuring designed to meet with the approval of economic advisers, international institutions and private banks, republican leaders were able to appeal to those people who had to face the serious economic and social consequences of that rapid restructuring.<sup>67</sup> Nationalist republican governments thus gained popular support for the separatist policies of resisting federal taxation and opposing federal authority.<sup>68</sup> The 'gulf between richer and poorer republics' caused by economic restructuring also fuelled the separatist dynamic.<sup>69</sup> One major cause of the separation of Slovenia from Yugoslavia, for example, was the desire to abandon those republics that were 'slowing down insertion into capitalist Europe'.<sup>70</sup> Local leaders also gained support from ethnic minorities or those in

---

<sup>64</sup> J Petras and S Vieux, above n23, 10. See also Hippler's discussion of the ways in which 'other forms of identity, ethnic or ethnic-religious, become more important' in states subject to structural adjustment, as the 'national state' is stripped of its functions and becomes discredited. *Ibid*, 25.

<sup>65</sup> Susan L Woodward, above n23, 17.

<sup>66</sup> *Ibid*, 384; Michel Chossudovsky, above n23, 521-2.

<sup>67</sup> Susan L Woodward, above n23, 127; Robin Blackburn, above n47; J Petras and S Vieux, above n23, 10; Michel Chossudovsky, above n23, 522.

<sup>68</sup> Susan L Woodward, above n23, 384.

<sup>69</sup> Catherine Samary, above n54, 27.

<sup>70</sup> *Ibid*. See also Susan L Woodward, above n23, 105, 150. Woodward also notes that the shift in US and European Community policy in the post-Cold War period played a role in the breakup of Yugoslavia. During the Cold War, Yugoslavia had been central to US security policy in the region, due to its heavily armed neutrality and capacity to deter Warsaw Pact forces from Western Europe, its political stability and its independence of Moscow. After the Berlin Wall fell on November 9, 1989, as Central Europeans sought to join European institutions, it was made clear to Yugoslavia that it would have to enter the competition

poorer regions who resented the 'politics of capital cities' and its neglect of their interests.<sup>71</sup>

Fourth, the speed with which restructuring and, by 1990, shock therapy were carried out contributed to the rapid process of political disintegration that occurred once the Yugoslav crisis entered a 'nationalist dynamic'.<sup>72</sup> As the phrase 'shock therapy' suggests, economic logic dictated that speed was of the essence. The federal government and international institutions remained committed to implementing radical and far-reaching political and constitutional reforms to enable a rapid transition from a socialist economic structure to a purely market-based regime, even after the nationalist climate and violent resistance to those radical reforms became apparent.<sup>73</sup> As Woodward notes, there was a clear conflict between the conditions necessary to ensure peace and those deemed necessary for economic liberalisation. While time was the commodity that was needed to build 'cross-republican, society-wide political organisations' to avoid civil war and genocide, rapid economic and political change was considered to be essential by the IMF, banks and financial institutions.<sup>74</sup>

The genocide in the former Yugoslavia did not, of course, take place without the violence of local actors. The conditions imposed by the IMF and the consequences of those conditions were not the sole cause of that outbreak of violence. Structural adjustment and shock therapy programs have been implemented in many states without leading to genocide. Nevertheless,

---

without special status. In Western Europe's own version of 'ancient hatreds', countries of Central Europe were treated as better able to make the transition from socialism to capitalism, or from 'East' to 'West', based on historical, religious and cultural criteria. Accordingly, it was in the interest of those parts of Yugoslavia such as Slovenia and Croatia that could claim on 'cultural' grounds to be part of the 'first tier' that they 'begin a campaign to persuade Europe of their deserved eligibility'.

<sup>71</sup> Susan L Woodward, above n23, 384.

<sup>72</sup> *Ibid.*, 17.

<sup>73</sup> See Jeffrey Sachs, above n40, 21 (justifying the 'need for speed' in restructuring Eastern European political and economic institutions in 1990).

<sup>74</sup> Susan L Woodward, above n23, 384.

international institutions must take account of and responsibility for the reception of the norms and culture they impose. Conditions and processes required or supported by international institutions, when combined with local responses, led to violence in the former Yugoslavia. Responsibility for that violence belongs both to international and local actors, not to local actors alone. Experts acting on behalf of international economic institutions appear to assume that there are no limits to the ways in which local peoples can be required to conform to new economic models and priorities. The disastrous outcome of economic restructuring in the former Yugoslavia is just one example of the impact of the belief held by economic experts that human beings are infinitely and rapidly re-codeable, and that cultures and political systems are infinitely malleable.

In conclusion, focusing on international law and international institutions that facilitate economic restructuring suggests that the opposition between collective humanitarian intervention and inactivity is a false one. The international community had already intervened on a large scale in Yugoslavia before the security crisis erupted, through the activities of international monetary institutions. Inactivity, in other words, is not the alternative to intervention. The international community is already profoundly engaged in shaping the structure of political, social, economic and cultural life in many states through the activities of international economic institutions.

#### **IV. THREATS TO DEMOCRACY AND HUMAN RIGHTS**

Part III of this chapter argued that 'the international' played a role in contributing to the conditions that led to violence in the former Yugoslavia, thus unsettling the assumption that responsibility can be attributed to 'the local' alone. In this Part, I want to question the broader assumption underlying the pro-intervention approach, that international institutions are the bearers of progressive human rights and democratic values to a 'local' in need of those rights and values in the post-Cold War era.

### *A. Defining democracy and human rights*

It is first necessary to consider the meaning of democracy and human rights in the context of arguments made in favour of collective humanitarian intervention. The current enthusiasm for collective humanitarian intervention can be understood as part of a broader democratisation trend, in which 'something bearing [the] name of democracy' is 'commonly asserted as a global norm'.<sup>75</sup> It is true that the post-Cold War period has witnessed remarkable changes, many of which have subsequently been claimed in the name of democracy and many of which have led to the adoption of 'institutional mechanisms of electoral competition' and a narrow range of civil and political rights.<sup>76</sup> Whether these changes demonstrate the triumph of liberal democracy and the end of history is of course highly contested.<sup>77</sup>

International lawyers make two claims that further the democratisation project. First, scholars such as Thomas Franck claim that there is an emerging right to democratic governance against which a governmental system can be judged as legitimate.<sup>78</sup> Second, pro-intervention scholars go one step further, arguing that international institutions can intervene using force where a governmental system has been judged to be illegitimate, when assessed against criteria of democratic governance or human rights protection.<sup>79</sup>

---

<sup>75</sup> Brad Roth, 'Evaluating Democratic Progress: A Normative Theoretical Perspective' (1995) 9 *Ethics and International Affairs* 55.

<sup>76</sup> *Ibid.*

<sup>77</sup> Francis Fukuyama, *The End of History and The Last Man*, 1992; Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning, & the New International*, 1994, 15. Derrida reminds us that the themes of the end of history, the end of man and the end of Marxism were in the 1950s the daily bread of many in the West. He comments that '(f)or those who abandon themselves to that discourse with the jubilation of youthful enthusiasm, they look like latecomers, a little as if it were possible to take still the last train after the last train - and yet be late to an end of history.'

<sup>78</sup> Thomas M Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46. See also Fernando R Tesón, 'International Obligation and the Theory of Hypothetical Consent' (1990) 15 *Yale Journal of International Law* 84.

<sup>79</sup> Fernando R Tesón, above n3.



Those arguing in favour of collective humanitarian intervention offer little guidance as to the model of democracy or the particular human rights that are to be guaranteed by abandoning sovereignty or increasing international intervention. Nevertheless, it is clear that pro-interventionists adopt a liberal model of democracy, frequently importing many aspects of nineteenth century liberal political theory into assumptions made about democracy and the nature of human rights. First, those who support Security Council intervention to restore democracy focus on institutions and mechanisms of electoral competition as the markers of democratic legitimacy, while broader debates and contests concerning the ends of democracy and the role of such institutions and mechanisms in achieving those ends in particular contexts are glossed over.<sup>80</sup> Second, pro-interventionists also appear to adopt the liberal assumption that democracy is compatible with a society sharply divided according to race, class and gender.<sup>81</sup> As a result, collective humanitarian intervention is represented as legitimate if it ensures that the criteria of formal procedural democracy are met even in sharply polarised societies where large groups are excluded from decision-making power.<sup>82</sup>

Such an understanding of the meaning of democracy assumes a limited role for government and thus for public decision-making. Liberalism treats the role of democracy not as enabling 'collective participation in the decisions affecting the life of the governed', but as ensuring 'individual freedom to pursue one's own agenda without undue interference'.<sup>83</sup> Attention to some of the debates about the meaning and desirability of democracy and human rights

---

<sup>80</sup> Brad Roth, above n75, 56. In many cases, ensuring a post-conflict society that incorporates mechanisms for determining that the government is accountable to the people is an essential step. Yet to claim that this is an adequate step, that multi-party elections are markers of democratic legitimacy, and that the lack of such structures necessitates intervention is controversial. For analyses that question the utility of multi-party electoral mechanisms without other reforms, see Walden Bello, *People and Power in the Pacific: The Struggle for the Post-Cold War Order*, 1992, 7, 36; Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, 1996, 299-300.

<sup>81</sup> Brad Roth, above n75, 58.

<sup>82</sup> *Ibid*, 56, 59.

<sup>83</sup> *Ibid*, 61.

suggests that the pro-interventionist assumption about the attractiveness of liberal democratic ends and certain civil and political rights on their own is highly questionable. Yet pro-interventionist literature posits international institutions as the bearers of human rights and democracy as if, in Christine Sylvester's words, 'there were a true community of agreement on what these [concepts] mean'.<sup>84</sup>

The capturing of the term democracy to legitimise intervention masks both the long tradition of critique of liberal democracies, and fierce debates about the privileging of civil and political rights over economic, social and cultural rights. In particular, the hidden assumptions and triumphalist tenor of pro-interventionist literature hide competing conceptions about the ends of democracy and human rights protection, and debates about what these terms meant and mean in the context of colonialism and globalisation. Roth argues that liberal democracy gains much of its moral authority from the older and broader conception of substantive democracy. Substantive democracy, having as its end 'the furtherance of broad popular empowerment with respect to the full range of social decisions that condition life in society', embodies values 'at the moral core of the democratic heritage'.<sup>85</sup> That conception of democracy has not been greatly furthered by many of the recent developments celebrated in pro-intervention and democratisation literature generally.

The nineteenth century liberal form of democracy poses no risk of empowerment for those excluded or marginalised groups in rigidly stratified societies, nor as currently practised does it carry with it a risk of social reform.<sup>86</sup> The resources, both material and cultural, of dominant groups, allow

---

<sup>84</sup> Christine Sylvester, 'The White Paper Trailing' in Graeme Cheeseman and Robert Bruce (eds), *Discourses of Danger & Dread Frontiers: Australian Defence and Security Thinking After the Cold War*, 1996, 134, at 142.

<sup>85</sup> Brad Roth, above n75, 56.

<sup>86</sup> Ian Duncanson, 'Close Your Eyes and Think of England: Stories About Law and Constitutional Change in Australia' (1996) 3 *Canberra Law Review* 123. See also Noam Chomsky, *Deterring Democracy*, 1992; Karl Marx, 'On the Jewish Question' in Jeremy Waldron (ed), *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man*, 1987, 137.

them to 'undermine any electorally based challenge to the status quo'.<sup>87</sup> In societies that are marked by racial, ethnic, gendered or religious polarisation, or where for other reasons 'there is a cohesive majority faction intent on plundering the minority' the limited promise of accountability inherent in the liberal model of democracy fails.<sup>88</sup> The narrow form of liberal procedural democracy can too readily be introduced 'not as a component of social reform but as a substitute for it'.<sup>89</sup>

Finally, post-colonial or anti-colonial theorists point to the limited utility of reclaiming even the broader notion of substantive democracy without attempting to understand its meaning in the context of colonisation, patriarchy and now globalisation.<sup>90</sup> These critics are cautious about the claims made by US and Western European scholars justifying intervention on behalf of democracy or human rights, given the history of those concepts. 'The West' has historically been constructed as democratic through representations of a racialised and gendered other as non-democratic or anti-democratic. Democracy should therefore be understood as a relational rather than an absolute category.<sup>91</sup> As Toni Morrison shows, the history and origin of the organising principles of liberal democracy in the US - freedom and the rights of man - are 'permanently allied with another seductive concept: the hierarchy

---

<sup>87</sup> Brad Roth, above n75, 63.

<sup>88</sup> *Ibid*, 72. For the argument that these conditions apply in the United States, see Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy*, 1994.

<sup>89</sup> Brad Roth, above n75, 64.

<sup>90</sup> There is a growing body of critical scholarship concerned with the problematic nature of the concepts of democracy, citizenship, rights and representation with respect to marginalised groups. See, for example, Amarpal K Dhaliwal, 'Can the Subaltern Vote? Radical Democracy, Discourses of Representation and Rights, and Questions of Race' in David Trend (ed), *Radical Democracy: Identity, Citizenship, and the State*, 1996, 42; Carole Pateman, *The Sexual Contract*, 1988; Toni Morrison (ed), *Race-ing Justice, En-Gendering Power*, 1993; Anne Orford, 'Citizenship, Sovereignty and Globalisation: Teaching International Law in the Post-Soviet Era' (1995) 6 *Legal Education Review* 251; Jan Pettman, *Living in the Margins: Racism, Sexism and Feminism in Australia*, 1992; Margaret Thornton, *The Liberal Promise*, 1990; Patricia J Williams, *The Alchemy of Race and Rights*, 1993; Iris Marion Young, *Justice and the Politics of Difference*, 1990.

<sup>91</sup> Amarpal K Dhaliwal, above n90, 43.

of race'.<sup>92</sup> There is a historical connection, a necessary connection, between such democratic ideals and colonial institutions. Ownership of the term 'democracy' by states like the US depends upon the selective erasure or 'motivated forgetting'<sup>93</sup> of non-democratic or anti-democratic features of those ideal democratic states, both in the past and in the present. As Dhaliwal argues:

The fact that Britain has a monarchy in [the 1990s] and that this is not read as antithetical to democracy in the ways socialism, for example, is, is indicative of the Western, especially American, lock on the term, including its definitional boundaries.<sup>94</sup>

These scholars of colonialism and nationalism argue that historically discourses of democracy were used to argue, announce and promote the cultural superiority of colonising states, to justify democratising invasions by colonising powers and thus to consolidate the power of imperialist states. Proponents of democracy in whatever form, by ignoring the fact that democracy is a modern, racialised and gendered formation, miss the ways in which the discourse of democracy buttresses 'colonial and neo-colonial projects'.<sup>95</sup> The nature of the history and appeal of democracy is ignored in intervention literature.<sup>96</sup>

The range of human rights to be promoted by collective humanitarian intervention is similarly radically circumscribed to fit the vision of procedural democracy as the end of intervention.<sup>97</sup> That confident narrowing of the

---

<sup>92</sup> Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination*, 1993, 38.

<sup>93</sup> Michael Rogin, "'Make My Day!' Spectacle as Amnesia in Imperial Politics [and] The Sequel' in Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, 1993, 499 (discussing the operation of 'political amnesia' or 'motivated forgetting' in US imperial culture).

<sup>94</sup> Amarpal Dhaliwal, above n90, 50.

<sup>95</sup> *Ibid*, 56.

<sup>96</sup> *Ibid*, 57.

<sup>97</sup> Fernando R Tesón, above n3 (failing to make explicit the content of the category of human rights). See also Thomas M Franck, above n78, 50 (focusing on the right to free and open

meaning of human rights ignores the lively debate raging about whether civil and political rights should be given priority over economic, social and cultural rights. There is no agreement that the narrow range of human rights used to justify intervention are core rights, or rights that should be given priority. The meaning of human rights has also been contested in liberal democracies when those people who have traditionally not been constructed as rights holders or the subjects of human rights - women, indigenous peoples, non-citizens - attempt to claim them.

Whatever definition of rights and democracy we adopt, it remains necessary to question whether the powerful international institutions operating in the economic and security areas are the bearers of even these limited liberal versions of democracy and rights in the post-Cold War era. To what extent does that argument represent an idealised international realm based in turn upon selective erasures or motivated forgetting?

### ***B. The impact of international institutions on human rights and democracy***

There has been little analysis of the ways in which international actors and activities may pose a threat to democracy or human rights, and thus contribute to security or humanitarian crises. Yet the privileging of the international level of governance as the bearer of human rights and democracy does not stand up to scrutiny in the context of at least one major project of international institutions in the post-Cold War era: economic liberalisation. There is growing concern expressed by commentators in the human rights and development areas about the impact of international economic institutions on popular sovereignty, substantive democracy and on a broad range of civil, political, economic, social and cultural rights.

---

elections, the right to free speech and the right to self-determination as determinants of democratic legitimacy). For a critique of the failure of those linking security and human rights issues in post-Cold War security discourse to consider the contentious issue of what constitutes basic human rights, see Hilary Charlesworth, 'The Silences of the Blue Book' in

## 1. The World Bank and the IMF

To date, the international economic institutions with the most significant effects on domestic policy have been the IMF and the World Bank.<sup>98</sup> There is a large literature criticising various aspects and effects of IMF and World Bank policy.<sup>99</sup> I want to focus here on the impact of the policies of those institutions on human rights and democracy.

The IMF and the World Bank, with the support of economic liberals in the governments of target states,<sup>100</sup> require states to comply with certain

---

Stephanie Lawson (ed), *The New Agenda for Global Security: Cooperating for Peace and Beyond*, 1995, 133, at 136.

<sup>98</sup> Both the IMF and the World Bank are universal multilateral institutions, in that membership in these institutions is open to all states that are willing to subscribe to their charters and to pay a quota or subscription to support functions. Voting and governance of those institutions is, however, determined by reference to capital contributions; that is, by reference to economic power. The World Bank Group comprises a number of institutions. The term 'World Bank' usually refers to two members of the World Bank Group: the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). See generally Susan George and Fabrizio Sabelli, *Faith and Credit: The World Bank's Secular Empire*, 1994, 10-15.

<sup>99</sup> Criticism of World Bank and IMF policies grew during the 1980s. Critics focused on the environmental, social justice and human rights impacts of specific bank projects, on the flawed model of development that such projects revealed, on the devastating human and environmental impact of structural adjustment conditions aimed at turning economies into 'export machines', on the ways in which management and the incentive structure of those institutions rewarded lending for huge, expensive projects, on the pressure to lend driven by the limited set of borrowers and the need to cover the enormous administrative overheads of the Bank, and on the undemocratic, top-down, centralised and secretive nature of World Bank and IMF processes. See, for example, Walden Bello, *Dark Victory: the United States, Structural Adjustment and Global Poverty*, 1994; Walden Bello, *Development Debacle: The World Bank in the Philippines*, 1982; Jeremy Brecher and Tim Costello, *Global Village or Global Pillage: Economic Reconstruction From the Bottom Up*, 1994; Susan George, *A Fate Worse than Debt*, 1988; Susan George, *The Debt Boomerang*, 1992; Bade Onimode, *The IMF, The World Bank and African Debt: The Social and Political Impact*, 1989; Bruce Rich, *Mortgaging the Earth: The World Bank, Environmental Impoverishment and the Crisis of Development*, 1994; David Woodward, Anthony Costello and Fiona Watson, *Human Face or Human Facade? Adjustment and the Health of Mothers and Children*, 1994.

<sup>100</sup> It is important to stress that the activities of the IMF and the World Bank are supported by at least some members of many borrower governments. For an illustration of the relationship between elites in borrower countries and World Bank policies, see the discussion of the Sardar Sarovar dam project and the support that continued World Bank funding for the project received from both the Indian government and other borrower governments, in Bruce Rich, above n99, 150-3, 301-2.

conditions in order to make use of the resources of those institutions.<sup>101</sup> Since the early 1980s, these institutions have imposed conditions that constrain the ability of peoples or their representatives to make decisions about wage levels for workers, education policy, health policy, social security provision, provision of services, constitutional reform, levels of unemployment and federal/state relations within federations.<sup>102</sup> Those institutions also constrain decisions relating to the more traditional economic issues of monetary policy, export-targeted production and foreign investment levels.

The IMF and the World Bank influence the policies of governments in two ways. First, they directly influence the policy of governments who need to use their resources, through the imposition of conditions on access to credits and loans.<sup>103</sup> Such conditions may even relate explicitly to issues of 'governance', despite the explicit prohibition in the Articles of Agreement of the Bank

---

<sup>101</sup> No country can become a member of and receive World Bank loans unless it also becomes a member of the IMF and susceptible to IMF conditions on and management of economic performance. The World Bank in turn regularly appends IMF-like conditions to loans and theoretically will not lend to a country in breach of such conditions. The most infamous of those conditions attach to 'structural adjustment' loans, which basically require countries to adopt policies of foreign investment deregulation, privatisation, cuts to government spending on health and education, labour market deregulation, lowering of minimum wages and a focus on production of goods for export rather than domestic production. Susan George and Fabrizio Sabelli, above n98, 10-20, estimate that one quarter of World Bank loans are structural adjustment loans.

<sup>102</sup> From 1986 onwards the World Bank, under the new Presidency of Reagan appointee and former United States Republican Congressman Barber Conable, began to attach conditions to structural adjustment or policy-based loans requiring privatisation and trade and investment liberalisation. While some commentators argue that these conditions were inspired by the debt crises and the need to ensure that borrower countries had export-oriented economies that would ensure debt repayments were honoured, others suggest that the Reagan and Bush administrations were determined to impose their own monetarist policies on developing countries. Certainly, the Bank restructuring of 1987 under Conable signalled a shift away from project lending to lending organised around requiring 'effective macroeconomic management and a sound policy environment' of developing countries: 'Reorganizing the Bank: An Opportunity for Renewal, Report to the President from the Steering Committee on Reorganization of the World Bank, April 1987', paragraphs 2.05 and 2.06, discussed in Susan George and Fabrizio Sabelli, above n98, 126.

<sup>103</sup> Susan George and Fabrizio Sabelli, above n98, 16-18; John Williamson (ed), above n28. The IMF imposes economic targets and structural reforms as a condition on the use of IMF resources. Conditions attached to access to loans or credits typically include requirements for devaluation of the national currency, limitations on government spending, privatisation, wage capping and export enhancement schemes. Under the integration policies practised by the World Bank since 1987, all loans given to a country include conditions designed to contribute to the achievement of the overall World Bank plan for that country.

against interference in the political affairs of any member state.<sup>104</sup> The IMF and the World Bank are also able to influence the direction of government policies indirectly. First, due to the weight that private banks place on the IMF's approval, such approval determines a country's creditworthiness and thus its ability to access private capital markets.<sup>105</sup> Second, the IMF also exercises influence due to its role in organising debt rescheduling. Since 1982, the IMF has played a central role in arranging for private banks to take part in concerted or coordinated lending packages.<sup>106</sup> The involvement of the IMF is seen as desirable, not only because it provides extra liquidity, but more importantly because private banks assume that a lending package that includes the imposition of IMF conditionality will guarantee better and more stable economic policies in the debtor country.<sup>107</sup>

Critics argue that the combination of these factors enables major creditor governments and multilateral institutions to use the debt burdens of states as an instrument to impose policy.<sup>108</sup> In countries subject to IMF and World Bank conditionality, economic restructuring limits choices available to peoples through their governments. Decision-making power over many areas of policy is thus effectively exercised by IMF and World Bank officials.

---

<sup>104</sup> Susan George and Fabrizio Sabelli, above n98, 142. The relevant section of the International Bank for Reconstruction and Development Articles of Agreement is Article IV, Section 10 ('The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions ...'). See also Ibrahim Shihata, *The World Bank in a Changing World*, 1991, 53 (arguing that the World Bank can involve itself in political matters where they bear on economic issues).

<sup>105</sup> Laura Tyson et al, above n25, 74.

<sup>106</sup> William R Cline, *International Debt Reexamined*, 1995, 206; Marko Milivojevic, above n30, 43-5 (discussing the role played by the IMF in Paris Club debt reschedulings from the 1950s to the 1980s. The Paris Club, a group of creditor governments and multilateral institutions, would only agree to meet with a debtor government to discuss debt rescheduling if it had come to an agreement with the IMF to implement an economic adjustment program prior to the meeting).

<sup>107</sup> William R Cline, above n106, 206.

<sup>108</sup> Peter Gowan, above n40, 58.



The World Bank's 1995 World Development Report gives a sense of the extent of the areas of political and civil life and institutions that Bank officials understand as properly falling within the realm of economic and expert, rather than political and popular, decision-making and control.<sup>109</sup> Government support for areas of activity from teaching to policing is constructed as (inappropriate) government and public intervention into the economic and private life of the country. Decisions about policies governing such vital areas of social, political and cultural life as education,<sup>110</sup> health<sup>111</sup> and labour markets<sup>112</sup> are presented by the authors of that Report as within the area of expertise of economists. Decisions about those areas are portrayed as legitimately to be made by economic advisers as means to the end of achieving economic liberalisation. In states in transition from communism or socialism, like the former Yugoslavia, the IMF has required changes to the

---

<sup>109</sup> The World Bank, *World Development Report 1995: Workers in an Integrating World*, 1995.

<sup>110</sup> In the 1995 Report, the World Bank authors deal with education under the headings of 'skills for development' and 'investment' in 'human capital'. According to these authors, free public provision 'usually makes sense in primary education', but 'for most other human resource programs, free provision more often is not justified'. At least in that Report, the World Bank does not consider education as providing anything other than increased 'human capital' (*ibid*, 36-40). According to one critic, in those Eastern European countries subject to 'shock therapy' regimes, the IMF and the World Bank 'have shown not the slightest concern for protecting the educational infrastructures and public research and development budgets, nor in infrastructures for ensuring a future capacity to absorb and diffuse new technologies throughout the economy.' Peter Gowan, above n40, 47.

<sup>111</sup> Peter Gowan notes that each year, spending on health and education in countries subject to 'shock therapy' regimes is reduced. In Hungary, for example, 'in the spring of 1995, the Bretton Woods institutions required the government to charge fees for higher education and for medical treatment as a condition for providing new loans'. Peter Gowan, above n40, 47.

<sup>112</sup> The extent to which the World Bank considers restructuring appropriate, and the extraordinarily euphemistic language resorted to in justifying the devastation caused by Bank policies, can be seen from the list of change the Bank recommends in order to create an 'adaptable' labour market. The 1995 Report, above n109, 109-114, notes that there is a need for 'massive employment restructuring during periods of structural adjustment'. 'Adaptable' labour markets are essential if workers are to benefit from economic recovery. Constraints on labour mobility and flexibility must be removed. Such constraints include legal restrictions, well-entrenched habits, poorly functioning housing markets and land tenancy institutions. Hiring and firing practices must be liberalised. Rural workers must relocate to take advantage of new employment 'opportunities'. Wages must become more 'flexible'. Minimum wage levels must be *lowered*. Workers must be retrained, and entrepreneurship supported. 'Best practice in the area of mass layoffs' should be followed.

political and constitutional framework of the state in the name of economic management.<sup>113</sup>

Critics have argued that while the IMF and the World Bank are rhetorically committed to assisting in the achievement of democratisation in states subject to structural adjustment programs, the treatment of such a broad range of public activity as properly managed by economic experts rather than by the people, however conceived, suggests such institutions are committed to a very limited model of procedural democracy. The means chosen to achieve that end of market liberalisation often infringe the right to self-determination or democratic governance understood in substantive terms.<sup>114</sup>

The central economic variables in the impoverished and indebted states of the Third World are often being negotiated today directly between their finance ministers and the World Bank/IMF .... Third World parliaments, and even prime ministers, are often excluded from the decision-making process and quite often don't even have access to the necessary information.<sup>115</sup>

Not only are state budgets often decided by IMF or World Bank officials, but those institutions 'intervene directly in these countries, determining interest rates, deciding on the value, especially the devaluation, of national currency and dictating food and energy prices through cutbacks in state subsidies'.<sup>116</sup> Further, although major powers and international institutions do not represent themselves as being against democracy in states undergoing restructuring, 'they take for granted that, in the South, democracy is subordinate to their own

---

<sup>113</sup> See the discussion in Part III above.

<sup>114</sup> Jochen Hippler, above n63, 23.

<sup>115</sup> *Ibid*, 23-4.

<sup>116</sup> *Ibid*, 24.

economic and strategic interests, and they try to shape democracy in such a way that it becomes a mere form of free-market management'.<sup>117</sup>

The 'shock therapy' economic stabilisation programs that have been implemented since the late 1980s throughout Eastern Europe provide one particularly clear example of the impact of IMF and World Bank policies on democratic participation. First, the means by which these programs have been designed and implemented have denied democratic participation in decisions about whether and how to move from a socialist to a market-based political and economic system. Jeffrey Sachs, who developed the 'shock therapy' model and advised the Yugoslav government, justifies that denial of participation by arguing that the 'ends' of transition are not to be decided by the people of Eastern Europe.

(T)he eastern countries must reject any lingering ideas about a 'third way', such as a chimerical 'market socialism' based on public ownership or worker self-management, and go straight for a western-style market economy .... The main debate in economic reform should therefore be about the means of transition, not the ends. Eastern Europe will still argue over the ends; for example, whether to aim for Swedish-style social democracy or Thatcherite liberalism. But that can wait.<sup>118</sup>

While the goals of shock therapy are alleged to include the achievement of democracy and freedom, Sachs explicitly treats such goals as ends justifying economically rational means. Critics of that approach have pointed out the liberal principle is abandoned during shock therapy. According to that model, as shock therapy is the 'only, or best, path to truly democratic, legal and civil institutions',<sup>119</sup> existing forms of government or legal and civil institutions can

---

<sup>117</sup> *Ibid*, 26.

<sup>118</sup> Jeffrey Sachs, above n40, 19.

<sup>119</sup> Peter Gowan, above n40.

justifiably be destroyed in order to achieve the goal of true democracy and market economy.

Second, not only have international institutions advocated undemocratic means of achieving liberalisation, but the ends of the liberalisation process in Eastern Europe appear to assume liberal democratic models. As Roth notes, 'democratisation has so far sought to reverse those few features that, from the standpoint of substantive democracy, are favourable: relative social equality and the concentration of economic resources in the hands of a public sector that might potentially be held accountable to collective decision making'.<sup>120</sup> Decision-making over ever larger areas of what was once considered to be central to popular sovereignty and substantive democracy is now treated as legitimately within the province of economists in institutions such as the IMF and the World Bank.<sup>121</sup> The supposedly economic and technocratic changes required by those institutions shape the policy choices available to governments, alter existing constitutional and political arrangements, determine the extent to which people in many states can access health care, education, pensions and social security, shape labour markets and thus affect functions that go to the heart of political and constitutional authority. The shifting of decision-making authority from governments to international economic institutions affects both popular sovereignty and substantive democracy. In some cases, IMF and World Bank conditions have also challenged existing constitutional and governmental arrangements. Such conditions clearly impact upon constitutionalism, political participation, popular sovereignty and substantive democracy.

IMF and World Bank policies have also been criticised from a human rights and social justice perspective. Structural adjustment conditions, requiring the

---

<sup>120</sup> Brad Roth, above n75, 66.

<sup>121</sup> That is not to say that *states* are weakened through economic restructuring. Indeed, certain areas of state activity must be strengthened in order to provide secure and stable conditions for foreign investment. Instead, many aspects of what we once understood as *sovereignty* is now vested, not with 'the people' however understood, but with economic experts.

cutting of public expenditure on health and education, labour market deregulation, export-oriented production and privatisation, have led to increased income disparity, human rights abuses and marginalisation of the poor and rural populations in many countries.<sup>122</sup> Specific projects funded by the World Bank, such as the Sardar Sarovar dam project in India involving the displacement of 200,000 poor and indigenous people without adequate compensation or resettlement plans, have also been criticised for causing human rights abuses and social devastation.<sup>123</sup> Economic experts have authority and decision-making power, represented as legitimate, over many areas of political and social activity. As a result in part of the activities of the IMF and the World Bank, many peoples are unable to exercise the right to self-determination.

The imposition of 'structural adjustment' and 'shock therapy' programs also creates a climate in which abuses of human rights such as the right to freedom from torture or the right to life are more likely to occur. The effect of IMF and World Bank programmes is to strip the state of most of its functions, except maintaining law and order and facilitating private investment. At the same time, the interests of investors are protected and secured. In situations where the state appears to address only the interests of international economic institutions and corporate investors, the insecurity, vulnerability and frustration of people increases. Violent protests, political destabilisation, attempted succession and populist nationalism emerge as responses to governments that appear to be accountable only to foreign investors. The increase in insecurity of people in states targeted by structural adjustment and shock therapy programs is further exacerbated by the refusal of the IMF and

---

<sup>122</sup> *The Realization of Economic, Social and Cultural Rights, Final Report Submitted by Mr Danilo Turk, Special Rapporteur*, UN ESCOR Human Rights Committee, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 44<sup>th</sup> Session, Provisional Agenda Item 8, UN Doc E/CN.4/Sub.2/1992/16 (outlining human rights violations including an increase in infant and child mortality rates as a result of Bank-IMF policies and projects).

<sup>123</sup> The human rights and environmental impact of that project is discussed in Bruce Rich, above n99, 150-3; Susan George and Fabrizio Sabelli, above n98, at 175-183. See also the highly critical conclusions of the independent review into the project: Bradford Morse and Thomas R Berger, *Sardar Sarovar: Report of the Independent Review*, 1992, xi-xxvi.

the World Bank to require cuts to military budgets.<sup>124</sup> According to Vito Tanzi of the IMF, excessive military budgets place a heavy burden on countries, leading to increases in budget deficits and a decline in public investment. Yet, while IMF advice 'often calls for reviewing military expenditures to identify potential fiscal savings', the Fund is 'cautious not to claim expertise in evaluating the proper level of military spending in a given country'.<sup>125</sup> That caution is quite remarkable given the detailed nature of the advice that the IMF and the World Bank are prepared to offer in other areas. As events in the former Yugoslavia, and lately in Indonesia, have shown, the dangerous practice of imposing conditions that increase poverty, food scarcity, unemployment and insecurity, while failing to recommend cuts to military budgets, is a recipe for human rights abuses.

Neither the IMF nor the World Bank accept any responsibility for protecting human rights as part of their mandate or obligations as international institutions. The World Bank has never accepted that it has any legal obligations to promote human rights, has no human rights policy and has never undertaken a systematic human rights evaluation of any of its programs.<sup>126</sup> While the World Bank's legal counsel, Ibrahim Shihata, states that the Bank does promote economic, social and cultural rights in a general sense through the promotion of economic development, most human rights commentators argue that the 'segments of the population most vulnerable and at risk in human rights abuses ... rarely benefit from World Bank activity'.<sup>127</sup>

---

<sup>124</sup> Davison L Budhoo, *Enough is Enough: Dear Mr Camdessus ... Open Letter of Resignation to the Managing Director of the International Monetary Fund*, 1990, 69-72.

<sup>125</sup> Vito Tanzi, *The Changing Role of Fiscal Policy in Fund Policy Advice*, paper presented at an IMF Seminar on 'Asia and the IMF', Hong Kong, China, September 19, 1997, 9 <<http://www.imf.org/external/np/apd/asia/TANZI.HTM>>.

<sup>126</sup> Sigrun I Skogly, 'The Position of the World Bank and the International Monetary Fund in the Human Rights Field' in Markku Suski and Raija Hanski (eds), *An Introduction to the International Protection of Human Rights: A Textbook*, 1997, 193, at 195-6.

<sup>127</sup> *Ibid*, 195. Some of the NGOs, activists and academics who had been concerned about the impact of World Bank policies on human rights were initially buoyed by the apparent shift in policy signalled by the 1997 World Development Report. The World Bank, *World Development Report 1997: The State in a Changing World*, 1997. That Report claims to '[refocus] on the effectiveness of the state' (*ibid*, Chapter 2), provide a guide to 'reinvigorating institutional capability' (*ibid*, Part 3) and suggest ways to bring 'the state closer to people'

The IMF also continues to reject that human rights protection is an area of activity with which it should legitimately concern itself. The IMF remains 'adamant that human rights is an area completely outside the scope of the Fund's activities, and one which remains the responsibility of the individual government'.<sup>128</sup> Even when the IMF is considering the impact of its own policies, it treats human rights as 'a matter of domestic redistribution and outside the Fund's mandate'.<sup>129</sup> For example, in a recent response to a request from the High Commissioner for Human Rights for information concerning the relationship between its activities and the realisation of the right to development, the IMF stated that it had difficulties in commenting on the *Declaration on the Right to Development* owing to its mandate which, it says, lies primarily in the area of macroeconomic surveillance.<sup>130</sup> While the IMF now claims to attempt to mitigate the impact of adjustment on poor or vulnerable groups within a target state, it is difficult to see that the IMF in fact puts such a policy into practice.<sup>131</sup>

## 2. Multilateral and regional trade agreements

While the IMF and the World Bank have, since their inception, influenced the policies of many governments, it appears that a new institution, the WTO, will be a major influence on the capacity of peoples in all states to make decisions about the conditions affecting their lives in the future. Trade and financial liberalisation conducted through multilateral and regional trade regimes has

---

(*ibid*, Chapter 7). For the argument that a closer reading of the 1997 Report reveals little shift in the World Bank's commitment to policies of privatization and state restructuring, based on a narrow model of economic development, see Anne Orford and Jennifer Beard, 'Making the State Safe for the Market: The World Bank's *World Development Report 1997*' (1998) 22 *Melbourne University Law Review* 195.

<sup>128</sup> Sigrun I Skogly, above n126, 198.

<sup>129</sup> *Ibid*.

<sup>130</sup> *Report of the Secretary-General submitted in accordance with Commission resolution 1997/72 on the question of the realization of the right to development*, 16 February 1998, E/CN.4/1998/28, paragraph 39.

<sup>131</sup> Sigrun I Skogly, above n126, 198.

begun to limit the degree to which people are able to shape the economic, social and cultural policies of their governments.

Concerns about the ways in which trade agreements operated to constrain state action and to reorient domestic politics first emerged in commentary about the effects of regional trade arrangements such as the European Community (EC) and the North American Free Trade Agreement (NAFTA). Commentators note, for example, that the idea of a united Europe serves to obscure the fact that European integration is not a politically neutral ideal, but a project based on integration into a market. As a result, one consequence of European union has been to represent an increasingly broad range of issues as apolitical and technical.<sup>132</sup>

Similarly, commentators argue that NAFTA operates to limit the choices available to democratically elected parliaments over a wide range of policy areas.<sup>133</sup> According to Marjorie Cohen, for example, NAFTA contains requirements 'that could so change our notion of what a public sector should do, that it would be unrecognisable as an agent to meet people's needs'.<sup>134</sup> Cohen points to NAFTA provisions that facilitate privatisation of public entities, and that require government entities to 'act solely in accordance with commercial considerations', where commercial considerations are defined to mean 'those that are consistent with the normal business practices of privately held enterprises in the relevant business or industry'. As Cohen notes, the very rationale for the public sector - that it provide goods and services that the private sector cannot - is undermined by such an agreement.<sup>135</sup>

---

<sup>132</sup> J H H Weiler, 'The Transformation of Europe' (1991) 100 *The Yale Law Journal* 2403, 2479-80. See also David Kennedy, 'Receiving the International? What's the Public/Private Distinction Got to do With It?', paper presented at the New York University Institute for Law and Society, 3 March 1995, 45 (arguing that the EU has 'institutionalized the parliament as a promise', resulting in a 'broad political culture with a technocratic and legal face').

<sup>133</sup> Marjorie Griffin Cohen, 'The Return of the Robber Barons' (1995) 49 *Refractory Girl* 40.

<sup>134</sup> *Ibid*, 43.

<sup>135</sup> *Ibid*, 43-5. Cohen gives examples of the ways in which NAFTA has been used to support the interests of United States corporations and limit the scope of activity of Canadian federal and provincial governments.



These criticisms have now begun to surface at the multilateral level, in the aftermath of the Uruguay Round of GATT trade negotiations.<sup>136</sup> The Uruguay Round outcomes significantly expanded the range of activities brought within the scope of the GATT regime to include trade-related aspects of intellectual property,<sup>137</sup> trade in services<sup>138</sup> and trade-related investment measures,<sup>139</sup> and greatly increased the enforcement powers of the regime through the establishment of the WTO.<sup>140</sup> In other words, the language of 'free trade' is being used to facilitate two processes that are far removed from the traditional GATT goal of liberalising trade in goods: first, the removal of barriers to foreign direct investment and, second, the reconceptualisation and international protection of information as private property rather than as a public good. Both of these processes have implications for substantive democracy and human rights protection.

Agreements such as TRIPS and GATS have been criticised for the effects they are likely to have on poor and rural populations, particularly in the South.<sup>141</sup> These agreements radically limit policy options available to many

---

<sup>136</sup> The Uruguay Round of trade negotiations was concluded on 15 December 1993. The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations was ratified by over 120 countries in Marrakesh on 15 April 1994.

<sup>137</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, reprinted at 32 *International Legal Materials* 1197 (TRIPS).

<sup>138</sup> General Agreement on Trade in Services, 15 April 1994, reprinted at 33 *International Legal Materials* 1168 (GATS).

<sup>139</sup> Agreement on Trade-Related Aspects of Investment Measures, 15 April 1994, reprinted in Joseph F Dennin (ed), *Law and Practice of the World Trade Organization, Treaties Booklet 1, Release 95-1*, 161 (TRIMS).

<sup>140</sup> Agreement Establishing the World Trade Organization, 15 April 1994, reprinted at 33 *International Legal Materials* 1144 (WTO Agreement) and Understanding on Rules and Procedures Governing the Settlements of Disputes 1994, reprinted at 33 *International Legal Materials* 1226.

<sup>141</sup> Chakravarthi Raghavan, *Recolonization: GATT, the Uruguay Round and the Third World*, London: Zed Books, 1990. See also Hugh C Hansen, 'International Copyright: An Unorthodox Analysis' (1996) 29 *Vanderbilt Journal of Transnational Law* 579; Khor Kok Peng, 'Intellectual Property: Tightening TNC Monopoly on Technology' (1990) 3 *Third World Resurgence* 22; Chakravarthi Raghavan, 'The Real Issues in Uruguay Round' (1991) 7 *Third World Resurgence* 6; Peter Drahos, 'Global Property Rights in Information: The Story of TRIPS at the GATT' (1995) 13 *Prometheus* 6; Bruce Lindsay, 'GATT, Development and Intellectual Property' (1994) 3 *Arena Journal* 33.

governments over an extremely wide range of issues and interests. Many aspects of what were once conventional areas of government control and policy are, in the aftermath of the Uruguay Round, now characterisable as illegitimate non-tariff barriers to trade. There are four ways in which these agreements narrow the areas of political, economic and social life over which people can participate in making decisions.

First, the new investment liberalisation agenda being furthered by free trade agreements entrenches a relationship between states and transnational corporations that favours those corporations over local peoples and communities. Such agreements 'curb the right of governments to intervene in the economy for the benefit of their people while expanding the "space" for TNCs'.<sup>142</sup> TRIPS, for example, obliges states to implement patent and copyright laws and to provide infrastructure to support such regulatory schemes. One illustration of the democratic impact of that agreement is the requirement in Article 39 of TRIPS that contracting parties establish legal and institutional protection for trade secrets of investors. Critics fear that this requirement will operate to entrench the type of unaccountability of transnational corporations (TNCs) to local communities evidenced by the Bhopal disaster.<sup>143</sup> The internationalisation of the protection of the trade secrets of TNCs involves a corresponding increase in the secrecy of technological, production and manufacturing processes.<sup>144</sup> Such an increase in secrecy affects democratic entitlements by making it impossible for local communities or peoples to have knowledge of the likely risks of processes, and increases the likelihood that they will have to bear the burden of damage where accidents occur. These agreements affect the capacity of communities to participate in making decisions about whether or not hazardous industries

---

<sup>142</sup> *Ibid*, 40.

<sup>143</sup> Indira Jaising and C Sathyamala, 'Legal Rights ... and Wrongs: Internationalising Bhopal' in Vandana Shiva (ed), *Close to Home: Women Reconnect Ecology, Health and Development Worldwide*, 1994, 88.

<sup>144</sup> *Ibid*.

should be allowed, where they should be located and on what terms.<sup>145</sup> By denying local people the capacity to make informed decisions about investments, private interests are privileged over human rights such as the right to self-determination.

Second, such trade agreements shift the boundary between public good and private interest in favour of the private interests of TNCs, a shift that has profound implications for the utility of the liberal concepts of democracy and human rights operating in the public sphere.<sup>146</sup> The effect of the investment liberalisation now being furthered by post-Uruguay Round trade agreements has been to privatise much of what has been understood since the nineteenth century as public - utilities, education, libraries, information, hospitals and roads. The idea underlying liberal notions of human rights and democracy - the guarantee to individuals of formally equal access to public goods and participation in public decision-making - is undermined by the process of investment liberalisation combined with the privatisation and commodification of information. By reconceptualising aspects of the public sphere as private and thus outside the realm of liberal democracy, agreements like TRIPS limit the relevance of concepts such as equality, citizenship or human rights which imply power-sharing, claims to resources and entitlements against the state. The redrawing of boundaries between public and private operates to confine egalitarianism to an ever declining public sphere.

Third, agreements such as TRIPS may impact upon the protection and promotion of economic, social and cultural rights. The nature of intellectual property regimes in the US and Europe is such that traditional, community-based knowledge about seeds and plants is not patentable, while innovative, individually-based knowledge produced by scientific researchers but derived

---

<sup>145</sup> *Ibid*, 98.

<sup>146</sup> John Frow, 'Information as Gift and Commodity' (1996) 219 *New Left Review* 89, 105.

from traditional knowledge *is* patentable.<sup>147</sup> According to John Frow, TNCs patent the genetic properties of seeds developed over generations as insect resistant or for medical properties, and are then able to exploit the intellectual property rights to that genetic material as a commodity in the countries from which the knowledge and seeds were first taken.<sup>148</sup> That practice is particularly widespread in the agrochemical and pharmaceutical industries. As a result, access to information about food and medicines is privatised and those goods are made more expensive.<sup>149</sup> Human rights such as the right to health or the right to adequate food thus become significantly less relevant.

Finally, these agreements have an impact upon democracy and human rights because the capacity to participate effectively in government and the market is premised upon access to information. Under regimes put in place by agreements like TRIPS, information is increasingly commodified and thus is *not* publicly accessible.<sup>150</sup> That tension is negotiated through a constant promise that perfect access to information will one day be available through new technology. Access to the information needed to participate in political decision-making is perpetually deferred.

In these ways, the liberal promise of human rights and democracy is radically circumscribed. The current agenda of multilateral and regional trade agreements limits the possibility of achieving substantive democracy and makes a mockery of the guarantee of rights based on participation and resource allocation in the public sphere.

---

<sup>147</sup> *Ibid*, 98.

<sup>148</sup> *Ibid*.

<sup>149</sup> Bruce Lindsay, above n141, 38.

<sup>150</sup> John Frow, above n146, 102.

### 3. Democracy, human rights and the idea of internationalism

International law and the actions of international economic institutions also reduce the policy choices available at the state or local level, even where states are not directly subject to conditions imposed by such institutions or constrained by trade agreements.<sup>151</sup> The role of international activity and institutions in contributing to the erosion of substantive democracy, popular sovereignty and protection of human rights is somewhat more complicated where citizens elect economically rationalist governments which then proceed to restructure the state. A particular representation of globalisation and the international plays an important role in limiting the scope for political action in democratic countries that have adopted rationalist economic policies.<sup>152</sup>

Many governments of industrialised states and their economic advisers argue that globalisation and the attendant need to attract newly mobile capital necessitates significant restructuring of political, social and cultural life and institutions.<sup>153</sup> The perception of 'unlimited options for capital exit'<sup>154</sup> as a

---

<sup>151</sup> For a discussion of the 'constraints upon [states'] freedom of action in the political, economic and other spheres, which result from the process of globalisation', see Philip Alston, 'Reform of Treaty-Making Processes: Form over Substance?' in Philip Alston and Madelaine Chiam (eds), *Treaty-Making and Australia. Globalisation versus Sovereignty?*, 1995, 1, at 12. Alston points to the impact that the downgrading of a government's credit rating by an international agency such as Moody's Investors Services can have on the range of economic policies perceived to be available to a government, or the impact that regular reviews of government policy undertaken by the OECD can have on national policy debate.

<sup>152</sup> For valuable analyses of the democratic deficit of such restructuring and the implications of that restructuring for civil society and community life, see Ian Duncanson, 'Unchartered Lands in an Age of "Accountability"' (1997) 3 *Res Publica* 3; Jane Kelsey, *Economic Fundamentalism: The New Zealand Experiment - A World Model For Structural Adjustment?*, 1995 (discussing restructuring in New Zealand); Michael Pusey, *Economic Rationalism in Canberra: A Nation Building State Changes Its Mind*, 1991 (discussing Australia); Will Hutton, *The State We're In*, London: Vintage Books, 1996 (discussing the UK).

<sup>153</sup> While many governments of industrialised states have been quick to reshape domestic law and institutions according to international economic law and the dictates of international financial institutions, they have been reluctant to incorporate into the domestic realm those aspects of international law that might subvert the aims of economic rationalists. On the willingness to restructure law and institutions according to economic interests, see Michael Pusey, above n152; Will Hutton, above n152; Hilary Charlesworth, 'The Australian Reluctance About Rights' in Philip Alston (ed), *Towards an Australian Bill of Rights*, 1994, 21 (on the reluctance to incorporate rights into the domestic realm); Ian Duncanson, above n86 (arguing that to the extent Australian governments have been willing recently to

result of the deregulation of investment measures and financial markets, acts as a constraint on economic, social, industrial and cultural policy-making, and thus on human rights, labour standards and environmental protection in industrialised states. Governments make use of an 'internationalist discourse' about the need to adjust to a changing world economy in order to ensure that citizens endorse 'the modernizing actions taken by the state on our behalf'.<sup>155</sup>

The idea of a globalised economy legitimises the development of a culture in which political decisions that would once have been, at least theoretically, within the realm of parliamentary decision-making, popular sovereignty or democratic government, are now made by experts in economics. Internationalism serves to reinforce a political culture based on 'a continual assertion of the magic of expertise' and the authority generated by an 'exquisite mastery of [economic] data'.<sup>156</sup> Governments such as those who came to power in the UK, Australia, New Zealand and the US during the 1970s and 1980s, make use of a sense of national crisis in the face of global economic changes in order to delegitimise popular participation in decision-making about vital political issues, now recharacterised as purely economic and technical.

In a political culture of expertise, the limits to acceptable political speech are as carefully policed as the power to participate in public criticism is restricted: neocorporatist political pedagogy has a nasty way of feeding images and stories to the people, only to reveal the truth at strategic moments, that *serious* knowledge, *real* power, is, of necessity, elsewhere ....<sup>157</sup>

---

celebrate human rights and citizenship, that rhetorical commitment operates to gain public support for the project of reconstitution of the state between local and global to facilitate economic restructuring).

<sup>154</sup> Frances Fox Piven, 'Is It Global Economics or Neo-Laissez Faire?' (1995) 213 *New Left Review* 107, 109.

<sup>155</sup> Meaghan Morris, *Ecstasy and Economics*, 1992, 76.

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*, 79.

The inability of most people to contest and challenge decisions about many issues that shape their lives is presented as inevitable and natural, as a consequence of the disciplines and requirements of international competitiveness and of globalisation. The result is the ascendancy of a technocratic vision of 'democracy-as-management',<sup>158</sup> in which governments and experts are engaged in management of the economy and 'politics is treated as having somehow already happened elsewhere'.<sup>159</sup>

## V. POWER, KNOWLEDGE AND INTERNATIONAL INTERVENTION

Those arguing in favour of expanding the humanitarian role of the Security Council present an image of international institutions and international law as agents of democracy and human rights. That representation operates to reinforce the identity of international institutions and of major powers, particularly the US, as in turn bearers of those progressive values.<sup>160</sup> The UN and other post-World War II institutions have embodied the faith of many people in the ability of international institutions to protect ideals of universalism, humanitarianism, peace, security and human rights. Multilateralism has seemed to offer an escape from unrestrained self-interest and power politics.<sup>161</sup> That faith, if anything, has grown stronger in the post-Soviet era, with commentators treating multilateral institutions, particularly

---

<sup>158</sup> David Kennedy, above n132, 46.

<sup>159</sup> *Ibid*, 45.

<sup>160</sup> For a useful analysis of the post-Cold War construction of 'the West and the rest' that focuses on Samuel Huntington's 'clash of civilisations' thesis, see Jacinta O'Hagan, 'Civilisational Conflict? Looking for Cultural Enemies' (1995) 16 *Third World Quarterly* 19.

<sup>161</sup> Ruth Wedgwood, 'The Evolution of United Nations Peacekeeping' (1995) 28 *Cornell International Law Journal* 631 (arguing that 'in international law circles, an enthusiasm for multilateralism sometimes brings a suspension of judgment. Even international lawyers who admit the deep interweaving of law and morality, drift towards a "multilateral positivism" - the presumption that if a decision is reached multilaterally, it can't be wrong .... The ordinary inquiry appropriate to the intervention of one country into another country's affairs, a scepticism or burden of persuasion for unilateral intervention, turns to credulity if the action is multilateral.')

the Security Council, as essentially benevolent and able to bring not only peace and security, but also human rights and democracy, to the world.<sup>162</sup> Yet by representing international intervention as essentially humanitarian, pro-interventionist literature forecloses a number of important debates.

First, democracy and human rights are treated in that literature as if there were agreement about what these concepts mean. It is assumed that all debates about the values, ends and means of democracy are already resolved in favour of liberal, procedural democracy. Yet, as I have argued, the meanings of democracy and human rights are subject to radically contradictory interpretations. There is no agreement about what is meant by democracy and human rights, what values give moral or political weight to those concepts and thus no agreement as to how we will know that progress towards such goals has been achieved. Pro-interventionist literature subsumes such competing claims into a triumphalist rhetoric about the entitlement of the democratic members of the international community to intervene by whatever means to bring democracy and human rights to the world.<sup>163</sup> It is particularly important to remember the debates that are subsumed by general appeals to democracy and human rights, when such appeals are used to justify the use of violence against people in the interests of their democratic and human rights entitlements. The stakes of such legal debates are high, as lawyers are appealing to the values that underlie the moral significance of democracy and human rights in order to convince their audience that violence should be resorted to, or that its use in a particular instance was justified.<sup>164</sup>

---

<sup>162</sup> Links between the ideals informing the creation of the UN in 1945 and the post-Cold War role of the Security Council are made in many texts supporting an expanded role for the Security Council. See, for example, Ambassador Madeleine K Albright, above n16, 1605-6.

<sup>163</sup> As Brad Roth notes, democracy 'still admits of radically contradictory interpretations'. Roth argues that the dominant approach taken in democratisation literature 'exaggerates democratic progress, encouraging an unjustified triumphalism that is both messianic (with respect to those states that have not yet achieved polyarchy) and complacent (with respect to those that have)'. Brad Roth, above n75, 56.

<sup>164</sup> Walter Benjamin argues that the rule of law is established and sustained by a dimension of force or violence that holds the place of the missing foundations of law. Benjamin argues that in democratic societies, where the foundational or constitutive role of violence regarding the rule of law is most fervently disavowed, the open secret of sanctioned police violence is



Second, the focus on the role of international institutions and international law in intervening for human rights and democracy obscures the role played by international institutions and laws in contributing to economic liberalisation. By focusing only on norms of international law that relate to public issues, international lawyers fail to make visible the norms and institutions that facilitate the making of a global market. That failure contributes to the sense that economic liberalisation is natural and inevitable. Global economic restructuring is a given, and our role as humane international lawyers is only to consider norms relating to intervention, or issues such as the limits of self-determination. Accordingly, the conduct of business as usual appears both natural and politically neutral. While international lawyers have successfully politicised the making of international government, we now have to politicise the norms and institutions that facilitate the market.<sup>165</sup>

In [the dominant legal] view, only international government must be made; the international market makes itself .... Of course, as has been recognised since the last century, this approach dramatically obscures the process by which a market is constructed - the ongoing choices required to elaborate, enforce, and interpret the background norms of private law, and the financial and other service institutions which must be put in place. It not only makes the State seem too active, too able to *will* (as all international institutionalists insist), it also underestimates the politics of the private.<sup>166</sup>

---

particularly disturbing. That 'outlaw' dimension of law is apparent in debates about the use of violence by states to bring democracy or human rights to those against whom that violence is to be used. See Walter Benjamin, 'The Critique of Violence' in Peter Demetz (ed), *Reflections, Essays, Aphorisms, Autobiographical Writings*, 1986, 277, and the discussion of Benjamin in Eric L Santner, *My Own Private Germany: Daniel Paul Schreber's Secret History of Modernity*, 1996, 9-12. See also Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"' in Drucilla Cornell, Michael Rosenfeld and David Gray Carlson (eds), *Deconstruction and the Possibility of Justice*, 1992, 3.

<sup>165</sup> David Kennedy, above n1.

<sup>166</sup> *Ibid*, 372 (the author's emphasis).

Third, by failing to evaluate the relationship of the activities of international institutions to security and humanitarian crises, international lawyers avoid assessing the threats posed to security, human rights, life, substantive democracy, health and justice by economic restructuring. While the activities of international economic institutions, US and European economic advisers and private banks have arguably contributed to security crises, and certainly have substantial effects upon sovereignty, self-determination, statehood, the right to democratic governance and the protection of human rights, little or no attention has been paid to assessing the relationship of the activities of those institutions to security and humanitarian crises. Those institutions and laws have emerged untouched from the wholesale reassessment of norms and re-evaluation of the adequacy of international institutions that has taken place in light of these crises.<sup>167</sup>

In other words, the project of economic liberalisation, an enormous and influential area of international engagement and intervention, appears sacrosanct when it comes to considering how a new world order might better guarantee peace, security, human rights, respect for humanitarian norms, genocide prevention and democracy. It appears that the World Bank, for example, still does not question either the ends or the means adopted in the

---

<sup>167</sup> International lawyers have responded to post-Soviet humanitarian and security crises by re-evaluating most relevant areas of international legal activity, reconceptualising international legal norms and critically assessing the performance of international institutions. Commentators have, for instance, argued that, in the post-Soviet era and particularly in light of international legal responses to crises in the former Yugoslavia, Rwanda and Somalia, rules of intervention should be, or have been, altered, and that a liberal construction of Chapter VII of the UN Charter should be employed to authorise collective humanitarian intervention: see references above n5. Others have argued that such crises require a reconceptualisation of the principle of non-interference in the domestic affairs of states: see references above n17. International lawyers have argued that the Yugoslavian crisis requires a reassessment of the application or utility of fundamental international legal norms, such as the right to self-determination and the concept of *jus cogens*: see Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice' (1994) 43 *International Comparative Law Quarterly* 241; A Mark Weisburd, 'The Emptiness of the Concept of *Jus Cogens*, as Illustrated by the War in Bosnia-Herzegovina' (1995) 17 *Michigan Journal of International Law* 1. The theory and practice of peacekeeping and peace enforcement have been subjected to detailed scrutiny, and many commentators have argued that international institutions need to be reformed to enable them to deal with new challenges and threats to world order and global security.

process of adjustment and shock therapy. According to the 1995 World Development Report, the first policy choice to be made by those countries that 'have embarked upon transformations' due to the 'collapse of a development strategy' is '*when to start adjustment*'.<sup>168</sup> *Whether* to start adjustment is clearly not considered to be a relevant or useful question.

In the case of the Yugoslav conflict, the failure to consider the possibility that the causes of the crisis might be related to the activities of international institutions or the influence of international law, has meant that, rather than examining the role played by the international community in contributing to this situation, outside actors continued to understand the causes of the conflict as 'ethnic' or 'nationalist' in a premodern sense. Despite the lessons that might have been learned about the nature of international engagement in the former Yugoslavia, international institutions continue to cling, albeit somewhat more grimly, to the agenda of economic liberalisation and facilitation of a global division of labour.<sup>169</sup> Rather than reconsider their policies of economic restructuring or address the growing insecurity such policies generate, the international community appear to consider only whether, when and how new forms of intervention should take place.

In fact, the capacity of the international community to further projects of economic restructuring has been strengthened as part of the post-conflict peace process in the former Yugoslavia. The Dayton Peace Agreement has institutionalised the exclusion of the people of Bosnia and Herzegovina from

---

<sup>168</sup> The World Bank, above n109, 98, 101 (their emphasis).

<sup>169</sup> See William R Cline, above n27, 366 (discussing the fact that after the war, Yugoslav successor states cannot expect anything other than a modest amount of debt forgiveness, as debt indicators do not show particularly heavy indebtedness); Hermine Vidovic, 'Yugoslavia's Successors' in Gabor Hunya (ed), *Economic Transformation in East-Central Europe and in the Newly Independent States*, 1994, 209 (considering the successors to the assets and liabilities of the former Yugoslavia, the possibility of future debt servicing and the likelihood of any of those successors regaining membership of the IMF. In a triumph of technocratic analysis, Vidovic suggests that '(t)aking into account the deep rooted political and economic problems - occupation of a part of the country's territory, armed conflicts on Croatian borders, the high number of refugees and displaced persons, the transition to a market

vital economic and political decision-making.<sup>170</sup> Annex IV of the Agreement is the Constitution of the Republic of Bosnia and Herzegovina. That constitution was negotiated as part of a broader series of international negotiations relating to the 'constitutional rearrangement' of the former Socialist Federal Republic of Yugoslavia and later of the new Republic of Bosnia and Herzegovina.<sup>171</sup> The new arrangements under which the political and economic life of the people of the republic will be determined are foreshadowed in the preamble of the constitution. The preamble includes, *inter alia*, the recital 'desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy'. That desire is manifested throughout the constitution and other annexes. Article VII of Annex 4 provides for the establishment of a Central Bank of Bosnia and Herzegovina. The Bank will be the sole authority for issuing currency and for monetary policy throughout the republic. For the first six years of its existence, the Governing Board of the Central Bank will consist of a Governor appointed by the IMF after consultation with the Presidency and three members appointed by the Presidency. The Governor is not permitted to be a citizen of Bosnia and Herzegovina or any neighbouring state, and may cast tie-breaking votes on the Board. After the first six year period, the Board will then consist of five persons appointed by the Presidency of the Republic. During the years of post-conflict peace-building, however, central economic and monetary decisions will in part be made by the IMF. While that provision is theoretically open to amendment by a

---

economy - it seems rather unrealistic to expect a substantial upswing of the Croatian economy in the near future': *ibid*, 211).

<sup>170</sup> The Dayton Peace Agreement consists of the General Framework Agreement for Peace in Bosnia and Herzegovina [the GFA] and its twelve annexes (1-A, 1-B and 2-11). See The General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, 1995, reprinted at (1996) 35 *International Legal Materials* 75.

<sup>171</sup> The Republic of Bosnia and Herzegovina, the official name of which is Bosnia and Herzegovina, consists of the Federation of Bosnia and Herzegovina and the Republika Srpska: Article 1.3 of Annex IV. For a discussion of the stages of the negotiations concerning peace and constitutional rearrangements, see Paul C Szasz, 'The Protection of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia' (1996) 90 *American Journal of International Law* 301, 301-3.

democratically elected Parliamentary Assembly, it seems unlikely that such a process will take place quickly.<sup>172</sup>

Fourth, the use of force appears as a necessary response to security and humanitarian crises where such crises are understood to be caused purely by local ethnic or nationalistic tensions. The international community depicted the Yugoslav conflict principally in ethnic or nationalist terms and ignored the role that international institutions and outside actors had played in contributing to the causes of that conflict. The result of constructing the crisis in those terms had significant results for policies of intervention. The lessons learned from the Yugoslav crisis turn upon how early and to what extent force should be resorted to in such situations.

The apparent focus on the use of force as a response to security and humanitarian crises is problematic, both because it ignores the role that international institutions and policies of, *inter alia*, the EC and the US, played in creating the conditions that led to violence, and because it appears that US and other governments are in any case reluctant to commit troops for collective security purposes. For a variety of reasons, citizens of states like the US may not be willing to support military intervention, and thus force may in any case no longer be reliably available to contain crises resulting from the destabilising and oppressive consequences of economic restructuring. Accordingly, it seems timely to consider other ways in which changes to the policies of international institutions might contribute to peace and security.

The principal lesson we should have learned from Yugoslavia was, in other words, not primarily that we need a UN rapid deployment force, but that

---

<sup>172</sup> Other annexes also demonstrate a commitment to free market policy. Annex 9, for example, provides for the creation of a Commission on Public Corporations, to examine establishing public corporations to operate public facilities, such as utility, energy, postal and communication facilities. Article 1 of Annex 9 provides that the Commission is to examine 'the conditions necessary to ensure their successful, permanent operation, and the best means of procuring long-term investment capital'. In other words, those public corporations appear destined for privatisation, in line with IMF and World Bank conditions for most countries.

intellectuals and activists concerned about democratic and human rights issues should lobby their government's representatives and directors to oppose support for this model of economic liberalisation and marketisation in Eastern Europe. By structuring the debate around the use of force, we never get around to talking about those other issues.

In summary, 'the international' in pro-interventionist literature becomes that which major powers wish to claim or own - peace, democracy, security, liberty - while 'the local' becomes that for which major powers do not wish to take responsibility. It is impossible, however, to talk meaningfully about 'local' causes of conflict or 'local' threats to democracy and human rights in a world where the international, whether through institutions like the IMF and the World Bank facilitating lending by private banks, or through the WTO facilitating investment opportunities for TNCs, restructures the nature of daily life for most human beings.<sup>173</sup>

## VI. CONCLUSION

The consequences of economic restructuring require international lawyers to rethink what it means to engage with the international. While international institutions and laws do embody a commitment to achieving peace, security, human rights and democracy, 'internationalism' is equally the realm of a market-orientated and technocratic approach to government that is far removed from the rights-based and participatory model dreamed of by idealistic international and human rights lawyers. It is not possible to say that the political culture encouraged by international law and promoted by international institutions is inevitably more rational, democratic or participatory than that inspired by domestic law and institutions. The exploitative international regime that already exists in the 'forms of power and

---

<sup>173</sup> Jim George, 'Quo Vadis Australia? Framing the Defence and Security Debate Beyond the Cold War' in Graeme Cheeseman and Robert Bruce (eds), above n84, 10, at 33.

sites of choice accompanying the international market<sup>174</sup> is as much a product of internationalism as is respect for human dignity or the right to democratic governance.

The aim of this chapter is not to institute another hierarchy by romanticising the local and vilifying or stigmatising all that occurs at the international level. An enormous range of activities undertaken at the international level do further human rights, democracy and humanitarianism. UN humanitarian and relief agencies, human rights treaty bodies, aid organisations, peace activists, indigenous peoples, human rights and environmental NGOs, refugee organisations, advocates of alternative development models and many other actors and networks are working at the international level to achieve participatory democracy, full protection of civil, political, economic, social and cultural rights, environmental justice and disarmament. The object of my critique is not those poorly resourced and funded areas of international activity. Rather, I have focussed here on the ways in which human rights and democratic claims may operate to legitimise economic and military projects and actions that are less clearly humanitarian in effect.<sup>175</sup> My analysis suggests that the international as a level of governance is the site of both emancipatory and oppressive values and projects, and that threats to democracy and human rights exist at the international as well as the local level.

The alternative to the current neoliberal agenda does not have to be, as some commentators appear to fear, a return to a narrow, insular or xenophobic nationalism. Indeed, the reemergence of an insular nationalism in many states is to some extent a reaction to an elite commitment to internationalism as it is

---

<sup>174</sup> David Kennedy, above n1, 374.

<sup>175</sup> For a similar critical approach to the ways in which international institutions make use of human rights and democratic rhetoric to achieve less emancipatory ends, see Philip Alston, above n6 (arguing the Gulf War demonstrated that major powers appear to prefer ad hoc interventionist responses to human rights crises rather than supporting and strengthening existing and less coercive multilateral mechanisms for promoting and protecting human rights, as such ad hoc approaches are less principled and create fewer precedents that might constrain action in the future).

currently conceived at whatever cost, leaving marginalised and unrepresented groups to make the sacrifices deemed necessary for global competitiveness.<sup>176</sup> It is, therefore, just as likely that broad popular support for humanitarian actions could be gained by working for international institutions that do not legitimise technocratic or militaristic projects in the name of addressing human suffering. In order to be able to work for a world where substantive democracy, social justice, empowerment of women, anti-racism and ending poverty are the goals promoted at all levels of government, however, we have to subject the current military and monetary priorities and activities of international institutions to scrutiny, particularly where they are conducted in the name of human rights and democracy.<sup>177</sup>

While international lawyers should remain committed to the ideal that lies behind the notion of 'collective humanitarian intervention', what is required

---

<sup>176</sup> As Daniel Bensaid argues in the French context:

The choice is not limited to a liberal Europe running into a wall or withdrawal down the nationalist-populist blind alley. A different Europe, democratic and social, could obtain the popular legitimacy whose absence is so glaringly apparent in the case of Maastricht policy.

Daniel Bensaid, 'Neo-Liberal Reform and Popular Rebellion' (1996) 215 *New Left Review* 109. See also Mona Harrington, 'What Exactly is Wrong with the Liberal State as an Agent of Change?' in V Spike Peterson (ed), *Gendered States: Feminist (Re)Visions of International Relations Theory*, 1992, 65, at 72 (arguing that the most passionate advocates of protectionism and nationalism tend to be those who have some economic and political influence but not enough to shape events, seeking the identity of the nation to enlarge and bolster their own identities. The most powerful groups in modern societies on the other hand 'are least nationalist in outlook and identity'. Harrington notes that historically in the US the strongest isolationists have been those whose economic ground is relatively local, while the strongest internationalists are groups benefiting from the international economy. '(G)roups based on family farms and small town commerce, places once central to both the economy and the social virtues of the United States but now marginal and chronically insecure, profess an almost desperate attachment to the nation'. In other words, the 'ethic of competition and control takes one form in insecure groups and another among the economically powerful'. Harrington also points out that the most deeply insecure and impoverished groups do not identify strongly with the nation, with the international or with politics in general.)

<sup>177</sup> For examples of those arguing for alternative models of 'globalisation from below' building on decentralised transnational networks or alliances of communities, rather than the dominant model of 'globalisation from above' built on secretive, centralised, elitist institutions and bureaucracies, see Jeremy Brecher and Tim Costello, above n99, 167-184; Richard Falk, 'The Complexities of Humanitarian Intervention: A New World Order Challenge' (1996) 17 *Michigan Journal of International Law* 491, 512-3; Jim George, above n173; Bruce Rich, above n99, 301-15; Gayatri Chakravorty Spivak and David Plotke, 'A Dialogue on Democracy' in David Trend (ed), above n90, 209.



today is to put 'into question again ... the very concept of the said ideal'.<sup>178</sup> This chapter has offered a different context in which to understand post-Cold War security and humanitarian crises. Those international lawyers seeking to contribute to the realisation of substantive democracy and to the protection and promotion of human rights could better do so by acknowledging and seeking to prevent the destructive effects of international law and multilateralism as they operated in the former Yugoslavia and continue to operate in much of the world today. It is important for international lawyers to make the links which are within our areas of expertise - between, for example, the obligations imposed by the GATT Uruguay Round agreements and the narrowed scope for the operation of democracy and human rights in many states, or between the conditions of World Bank loans and the growing insecurity of people in many parts of the world. We need to take a wider view of international legal action, opening up to scrutiny the activities promoted in the name of peace, development, human rights and democracy. Such a view suggests that measures other than increased military intervention are demanded of the international community in the name of humanitarian action in the post-Soviet era.

---

<sup>178</sup> Jacques Derrida, above n77, 87.

## Chapter 4

### THE PRIVATE LIFE OF INTERVENTION

#### I. INTRODUCTION

Intervention discourse operates to make military action appear natural, necessary and humane. Whether through arguments about the need to control state aggression and increasing disorder, or through appeals to the need to protect human rights, democracy and humanitarianism, international lawyers paint a picture of a world in which increased intervention by international organisations is desirable. The stories that explain and justify international intervention have increasingly become part of everyday language through media reports and political soundbites. As a result, these highly technical, strategic accounts of the world become more and more a part of 'the stories that we are all inside, that we live daily.'<sup>1</sup> These stories create worlds inhabited by characters such as states, foreign capital and international organisations, with whom the readers of these stories are invited to identify.<sup>2</sup>

As a result of writing and presenting papers about Security Council actions, I have become increasingly interested in the investment that audiences have in the stories about intervention told in the media and by international lawyers and policy-makers. The sense of frustration that is expressed if the narrative of heroic intervention cannot be told in the usual way evidences a strong emotional engagement with security stories.<sup>3</sup> The more I reflected on what is

---

<sup>1</sup> Terry Threadgold, 'Introduction' in Terry Threadgold and Anne Cranny-Francis (eds), *Feminine, Masculine and Representation*, 1990, 1, at 27.

<sup>2</sup> Judith E Grbich, 'Taxation Narratives of Economic Gain: Reading Bodies Transgressively' (1997) V *Feminist Legal Studies* 131 (arguing that narratives of taxation law create worlds inhabited by characters such as Capital).

<sup>3</sup> The sense of frustration felt by some commentators when military intervention as an avenue for action is closed off is well illustrated by Thomas Weiss's description of the United Nations Protection Force for the former Yugoslavia as 'eunuchs at the orgy', due to the constraints imposed on their capacity to use force in that conflict. Thomas G Weiss, 'On the

at stake in such exchanges and debates that gives them their emotional urgency, the more I began to wonder about the complicated process of engagement with the narrative of intervention. Few of the people who support military actions appear to have remained interested in Yugoslavia, Iraq, Haiti or Somalia once the particular intervention has been conducted.<sup>4</sup> The media rarely reports on the conditions facing people in target states once the need to foster support for intervention has passed. There have been few attempts by those in intervening states to create solidarity or community with those in target states on whose behalf people passionately in favour of intervention have been inspired to imagine great violence. Nor has there been any attempt by the supporters of humanitarian intervention in places like Yugoslavia or Haiti to investigate domestic political freedoms and conditions that might enable the creation of greater solidarity and security with those whose suffering aroused the desire to use military force.<sup>5</sup> While conducting foreign policy differently and building a new internationalism would have material effects on the well-being and prosperity of all who live in industrialised states, those issues do not appear to lie at the heart of such passionate support for intervention. Security Council actions such as the Gulf War and the intervention in Yugoslavia have supported a form of globalisation that protects the continued prosperity and standard of living of those in

---

Brink of a New Era? Humanitarian Interventions, 1991-94' in Donald C F Daniel and Bradd C Hayes (eds), *Beyond Traditional Peacekeeping*, 1995, 3, at 8. Many lawyers with whom I come in contact have expressed a similar passion for intervention. During the period in which decisions were being made about whether and to what extent NATO should intervene in Yugoslavia, for example, I engaged in many debates with people who expressed frustration that 'we' had not been allowed to bomb the people of the former Yugoslavia sooner. Given that few of the lawyers, students or policy-makers with whom I discussed intervention were going to bomb, visit or engage with Yugoslavia, I became interested in why so many felt upset if the logic of intervention was questioned.

<sup>4</sup> For discussion of a similar phenomenon, see Edward W Said, *Culture and Imperialism*, 1993, 349-50. Said has argued that a similar lack of ongoing interest in the effects of intervention has been a peculiar feature of American foreign policy.

Few Americans have agonized over places like Haiti and Iraq once the crisis of their country's actual intervention was over .... American attention works in spurts; great masses of rhetoric and huge resources are lavished somewhere (Vietnam, Libya, Iraq, Panama), followed by virtual silence.

<sup>5</sup> See John Berger, *About Looking*, 1980, 37-40 (analysing the reasons for the failure of those looking at war photographs to explore ways of investigating political constraints limiting the creation of solidarity or community with those in war zones).

industrialised states, yet very few commentators refer to those outcomes as the basis for supporting intervention.<sup>6</sup>

This chapter explores the nature of the investment in intervention stories by drawing on theories of subjectivity, identification and interpellation. Part II of the chapter briefly outlines those theories. It develops a framework for a more detailed analysis of the relationship between representations of international intervention and subjectivity, and the ways in which readers come to live inside such stories. Part III explores how such theoretical approaches assist in making sense of the complicated and powerful appeal of stories about the need for military intervention under the auspices of the Security Council in the post-Soviet era. As a critic, I am neither outside those stories nor immune to their appeal. Rather, I am deeply implicated in the cultures from which they draw their power. My analysis is also an attempt to understand the nature of my own investment, implication and complicity in these ways of understanding the world.

## II. SUBJECTIVITY AND IDENTIFICATION

This Part develops a framework for theorising about the appeal of intervention stories, by drawing on the work of scholars who have analysed the relationship between cultural representations and the way individuals learn to make meaning of their lives and experience. The work of feminist, Marxist and postcolonial theorists unsettles the Enlightenment model of knowledge

---

<sup>6</sup> The complicated relationship between economic globalisation and the intervention in former Yugoslavia is explored in Chapter 3. For an analysis of the extent to which the Gulf War served to maintain the power of the US through protecting its control over world oil, see Ted Wheelwright, *Oil and World Politics: From Rockefeller to the Gulf War*, 1991. Marcia Langton, 'Pauline as the thin edge of the wedge' in Phillip Adams (ed), *The Retreat from Tolerance: A Snapshot of Australian Society*, 1997, 86, at 94-5, has argued that something similarly puzzling is involved in Australia in the increasingly frenzied debates about the need to discipline and dispossess Aboriginal people. As Langton notes, '(i)t is difficult to argue rationally, in the cold light of day, with all the facts at hand, that Aborigines present any threat at all to decent, law-abiding, God-fearing white Australians'. Langton suggests that the 'manufacture of the bogeyman' is about an 'indirect' fear, 'more psychological than physical'. 'Identity, not prosperity, is what is really at stake for Australians in the political psychodramas that cast Aborigines as a demonic threat.'

and individuality, by arguing that ideology or cultural representation plays a role in the creation of subjectivity. The term 'subjectivity' refers to 'the conscious and unconscious thoughts and emotions of the individual, her sense of herself and her ways of understanding her relation to the world'.<sup>7</sup> While humanist discourse has assumed a unified essence of subjectivity, the theoretical traditions drawn on in this chapter posit a 'subjectivity which is precarious, contradictory and in process, constantly being reconstituted in discourse each time we think or speak'.<sup>8</sup> Chris Weedon suggests that:

As we acquire language, we learn to give voice - meaning - to our experience and to understand it according to particular ways of thinking, particular discourses, which pre-date our entry into language. These ways of thinking constitute our consciousness, and the positions with which we identify structure our sense of ourselves, our subjectivity.<sup>9</sup>

The influential work of Louis Althusser provides a useful starting point for analysing the relationship between identification, ideology and subjectivity.<sup>10</sup> Althusser's theory of interpellation explores the process by which 'individuals are compelled to identify with the representations which their culture supplies'.<sup>11</sup> Interpellation refers to the role played by ideology or cultural representation in the creation of subjects. According to the Althusserian model, 'ideology' functions by 'interpellating' or 'hailing' the individual.<sup>12</sup>

[I]deology 'acts' or 'functions' in such a way that it 'recruits' subjects among the individuals ... or 'transforms' the individuals into subjects ...

---

<sup>7</sup> Chris Weedon, *Feminist Practice and Poststructuralist Theory*, 1987, 32.

<sup>8</sup> *Ibid*, 33.

<sup>9</sup> *Ibid*, 33.

<sup>10</sup> Louis Althusser, 'Ideology and Ideological State Apparatuses (Notes Towards an Investigation)' in *Lenin and Philosophy and other essays*, (trans Ben Brewster), 1971, 127.

<sup>11</sup> Kaja Silverman, *The Subject of Semiotics*, 1993, 218.

<sup>12</sup> Louis Althusser, above n10, 162. In Althusser's formulation, ideology 'represents the imaginary relationship of individuals to their real conditions of existence'.

by that very precise operation which I have called *interpellation* or hailing, and which can be imagined along the lines of the most common everyday police (or other) hailing: "Hey, you there!"

Assuming that the theoretical scene I have imagined takes place in the street, the hailed individual will turn round. By this mere one-hundred-and-eighty-degree physical conversion, he becomes a *subject*. Why? Because he has recognized that the hail was 'really' addressed to him, and that 'it was *really him* who was hailed' (and not someone else).<sup>13</sup>

Ideology operates 'through subjects who permit themselves to be spoken by it'.<sup>14</sup> The subject is produced in and through language. Through the process of interpellation, individuals recognise themselves as the subjects of cultural representations.<sup>15</sup> Ideology functions by 'constituting' individuals as subjects.<sup>16</sup> There is thus 'no ideology except by the subject and for subjects'.<sup>17</sup> Rather than imagining individuals as the producers of ideology or representation, Althusser suggests the reverse - that ideology or representation produces subjects. Such an approach provides a starting point for thinking about the relationship between particular representations, such as legal texts about international intervention, and the sense of self of those individuals who engage with such stories. Stories such as those told by security theorists can be understood as one of the means by which a reader of such stories gains a sense of self and a way of understanding his or her relation to the world.<sup>18</sup>

Kaja Silverman's synthesis of the theory of interpellation and feminist film and literary theory provides further resources with which to develop a

---

<sup>13</sup> *Ibid*, 174.

<sup>14</sup> Kaja Silverman, above n11, 220.

<sup>15</sup> *Ibid*.

<sup>16</sup> Louis Althusser, above n10, 171.

<sup>17</sup> *Ibid*, 170.

<sup>18</sup> Chris Weedon, above n7, 32.

framework for analysing the fascination of international law's stories.<sup>19</sup> Silverman uses feminist film and literary theory to enrich the understanding of the way in which an individual comes to identify with, or as, a particular character in a story or subject of representation. According to Silverman, the ways in which narrative operates to shape the subjectivity of the members of the audience is at the heart of the appeal of mainstream Hollywood films. The operation of narrative, and the invitation to identify with particular characters in a film, function to 'hail' the individual spectator in the way outlined by Althusser.<sup>20</sup> Through that process, the interpellation of individuals into ideology, or insertion into the symbolic order, is reinforced or reproduced.

A classic cinematic narrative functions by disrupting the established symbolic order, 'dislocating the subject-positions within it, and challenging its ideals of coherence and fullness only in order subsequently to re-affirm that order, those positions, and those ideals'.<sup>21</sup> In Althusserian terms, the function of such narratives is to reinforce the interpellation of individuals into the dominant ideology. The process functions 'not only constantly to re-interpellate the viewing subject into the same discursive positions, thereby giving that subject the illusion of a stable and continuous identity, but to re-articulate the existing symbolic order in ideologically orthodox ways'.<sup>22</sup>

The subjectivity of viewers is also produced through the process of identification with characters within the narrative. Identification is 'organised along sexual lines', producing a sexually differentiated subject.<sup>23</sup> Both male and female viewers are invited to identify with a masculine character associated with qualities such as potency and authority.<sup>24</sup> The narrative is structured around the actions of that main controlling figure with whom the

---

<sup>19</sup> Kaja Silverman, above n11, 215-236.

<sup>20</sup> *Ibid*, 221.

<sup>21</sup> *Ibid*.

<sup>22</sup> *Ibid*.

<sup>23</sup> *Ibid*.

<sup>24</sup> *Ibid*, 223.

spectator is invited to identify.<sup>25</sup> As Laura Mulvey argues, identification with the masculine character then leads to the "'masculinisation' of the spectator position, regardless of the actual sex (or possible deviance) of any real live movie-goer'.<sup>26</sup> The Hollywood film's 'patterns of pleasure and identification impose masculinity as "point of view"'.<sup>27</sup>

[I]t is always possible that the female spectator may find herself so out of key with the pleasure on offer, with its 'masculinisation', that the spell of fascination is broken. On the other hand, she may not. She may find herself secretly, unconsciously almost, enjoying the freedom of action and control over the ... world that identification with a hero provides.<sup>28</sup>

The spectator's pleasurable identification with the masculine character is further facilitated through the creation of a second character who lacks the characteristics of power, agency and authority. While the heroic central character is structurally male, the second character, representing the 'space for and the resistance to' the actions of the hero, is coded as female.<sup>29</sup> It is the hero, rather than the other characters or objects upon whom he acts, who is

---

<sup>25</sup> Laura Mulvey, *Visual and Other Pleasures*, 1989, 14. Mulvey argues that this invitation to identify is structured by 'ways of seeing and pleasure in looking' (*ibid*, 15). While 'the only truly productive gaze in the cinema is that of the camera', the camera's gaze is systematically represented as the gaze of the male character, through the use of cinematic techniques. The central male character functions as the 'bearer of the look', while female characters in general function as the image or holder of the look, 'with their appearance coded for strong visual and erotic impact so that they can be said to connote *to-be-looked-at-ness*' (*ibid*, 19). Thus a visual economy governs the sexual differentiation produced by watching films. I do not have space here to explore the ways in which identification with characters in narratives of intervention is structured by a similar visual economy, although that process is clearly part of the CNN effect produced by filming on location in (always Third World) trouble-spots.

<sup>26</sup> *Ibid*, 29.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid*. In Chapter 6, I will explore in more detail some of the conditions that may make it possible to break that 'spell of fascination'.

<sup>29</sup> Donna Haraway, *Primate Visions: Gender, Race, and Nature in the World of Modern Science*, 1989, 234.



portrayed as having agency and creativity, capable of giving birth to new creations, able to imagine and form worlds in his own image.<sup>30</sup>

(T)he female/woman is fixed in the position of the icon, spectacle, the one looked at, in which the subject sees the objectification of *his* action and subjectivity. She is his work. The female becomes his product, his reflection, perfectly mirroring his fantasy of himself ... Her matter is formed by his activity.<sup>31</sup>

In cinematic terms, the female subject has the function of diverting the attention of the viewer from his or her own passivity. The female subject signifies the lack which properly belongs to both male and female viewers.<sup>32</sup> In order to deflect attention 'from the passivity and lack of the viewing subject's own position', the narrative operates by 'displacing those values onto a female character within the fiction'.<sup>33</sup> The discovery that the passive character in a narrative lacks control, power and privilege is designed to facilitate the identification by the viewer of the film with the subject having the attributes of power and control.<sup>34</sup> Yet there is a danger associated with the

---

<sup>30</sup> Feminists in many areas have argued that this heroic narrative gives meaning to their disciplines. Judith E Grbich, above n2, for example, argues that the narratives of economic progress and growth that underlie taxation law are dependent upon such a story about the activity of the masculine subject (in that case Capital). Donna Haraway, above n29, 231-243, has shown that a similar narrative of heroic adventure underlies the scientific discourse of primatology. As Haraway shows, scientists represent their professional practice as involving only their agency. Scientists imagine and give birth to new worlds. In her study of primatology, Haraway argues that the monkeys and other artefacts used in scientific experiments function as the 'plot space, the matrix, for the heroic story of the scientist's quest and self-reflection'. She reads the truly terrible literature of primatology as a heroic myth, where scientists played the role of heroes and adventurers. Those scientists believe that they are able to imagine and create worlds in their own image, and ignore the agency of the beings over whose bodies they prove their stories. Thus a scientist is able to imagine himself as the author or originator of the world of the laboratories, while the monkeys take up the role provided for the female in that narrative. Carol Cohn, 'Sex and Death in the Rational World of Defense Intellectuals' (1987) 12 *Signs* 687, 699-702, argues that a similar story is told in the area of nuclear deterrence. Images of 'male birth and creation' are central to the ways in which defence experts imagine their role in the world.

<sup>31</sup> Donna Haraway, above n29, 234.

<sup>32</sup> Kaja Silverman, above n11, 223.

<sup>33</sup> *Ibid.*, 222.

<sup>34</sup> *Ibid.* In psychoanalytic terms, the female subject lacks the 'phallus'.

're-enactment of the primal "discovery" of the female subject's lack'.<sup>35</sup> The viewer might feel increased anxiety at the risk of identifying as, or with, the character lacking the desirable attributes of potency or authority.<sup>36</sup> '[T]he revelation of female lack can also have a very different effect upon the male subject, inducing in him the fear of a similar depravation.'<sup>37</sup>

One common technique for dealing with the anxiety produced by the discovery of the female subject's lack is to demonstrate that the female subject's weak or passive condition is her own fault, 'the result either of wrong-doing or of sickness'.<sup>38</sup> The narrative then operates to punish or save the guilty female object.<sup>39</sup> That method of resolving the problem posed by the female figure is pleasurable for the spectator identifying with the masculine character, and allows the spectator to escape the sense of anxiety produced by the revelation of the lack of the female subject.<sup>40</sup>

[P]leasure lies in ascertaining guilt ..., asserting control and subjugating the guilty person through punishment or forgiveness. This sadistic side fits in well with narrative. Sadism demands a story, depends on making something happen, forcing a change in another person, a battle of will and strength, victory/defeat, all occurring in a linear time with a beginning and an end.<sup>41</sup>

---

<sup>35</sup> *Ibid.*

<sup>36</sup> See further Krysti Justine Guest, 'Exploitation Under Erasure: Economic, Social and Cultural Rights Engage Economic Globalisation' (1997) 19 *Adelaide Law Review* 73, 75.

<sup>37</sup> Kaja Silverman, above n11, 223. Silverman puts the threat in psychoanalytic terms: 'the re-staging of the sexual division which determines subjectivity as we presently know it threatens to trigger a castration crisis in the viewer'.

<sup>38</sup> *Ibid.*, 224.

<sup>39</sup> Laura Mulvey, above n25, 21. Mulvey argues that a second strategy used in Hollywood cinema is to fetishise an aspect of the female character's body to show that, after all, she is not lacking anything.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, 21-2.

The production of subjectivity through narrative is dependent not only upon sexual differentiation, but also upon racial differentiation. Postcolonial scholars have shown that the use of heroic narratives governed encounters between Europe, later the 'West' or the 'international community', and those colonised or enslaved by Europeans.

The main battle in imperialism is over land, of course: but when it came to who owned the land, who had the right to settle and work on it, who kept it going, who won it back, and who now plans its future - these issues were reflected, contested, and even for a time decided in narrative .... The power to narrate, or to block other narratives from forming and emerging, is very important to culture and imperialism, and constitutes one of the main connections between them.<sup>42</sup>

The plot of the narrative of colonialism derives from imagining the colonised subject as 'a reformed, recognizable Other, *as a subject of a difference that is almost the same, but not quite*'.<sup>43</sup> The hero's journey is about the civilisation, progress or development of that colonised subject. Intervention by white men is justified in order first to civilise the natives of subject colonies, and later, in the era of decolonisation, to assist the development of those former colonies. The notion of progress continues to provide the imaginative framework for intervention stories in the era of decolonisation. According to the 'fantasy of timeless, even, and limitless development', '[a]ll societies will come to look

---

<sup>42</sup> Edward W Said, above n4, xiii.

<sup>43</sup> Homi Bhabha, *The Location of Culture*, 1994, 86. Bhabha traces the image of the 'mimic man' in political texts about colonial territories, such as India. Those concerned with the government of such colonies imagined that they could create a class of colonised people who would manage these colonies in the style of, and for the benefit of, the empire. Charles Grant, an influential analyst of Indian 'manners and morals', for example, suggested in 1792 that 'the expansion of company rule in India required a system of subject formation - a reform of manners, as Grant put it - that would provide the colonial with "a sense of personal identity as we know it"'. In order to produce such a group, education and civilisation was necessary, yet the process of education would bring with it the risk that such colonised subjects would desire for themselves the freedom promised to civilised subjects. The solution was partial education of colonised peoples. Grant, for example, fearful that civilised Indians might 'become turbulent for liberty', implies that 'it is the "partial" diffusion of Christianity, and the

like us, all will arrive eventually at the same stage or level, all the possibilities for the future are being lived now'.<sup>44</sup> The plot of such narratives, however, always ensures that the black subject is never truly able to claim the full subjectivity or agency reserved for the heroic character.<sup>45</sup> As Homi Bhabha notes with respect to the context of debates about governing India, 'to be Anglicized is *emphatically* not to be English'.<sup>46</sup> While the hero is free to act in the world to shape it in his image, the object he creates can never quite become him. The aim is not to make further heroes, of equal status to the hero. Rather, the colonial narrative involves making objects in the image of the white subject, who reflect his desires and ambitions but do not quite achieve them.

Such narratives produce a racially differentiated subject, through the same processes of identification and subjectivity discussed by feminist film theorists.<sup>47</sup> Diana Fuss comments that 'identification has a history - a colonial history'.<sup>48</sup> Postcolonial theorists have shown that in the narratives produced in colonial or imperial contexts, the reader or spectator is invited to identify with a white, male hero.<sup>49</sup> In cinematic terms, the imperial gaze, like the male gaze, invites the viewer's identification with the powerful, white character.<sup>50</sup> That character is associated with attributes including freedom, creativity, authority,

---

"partial" influence of moral improvements which will construct a particularly appropriate form of colonial subjectivity'.

<sup>44</sup> Kristin Ross, *Fast Cars, Clean Bodies: Decolonization and the Reordering of French Culture*, 1996, 10.

<sup>45</sup> *Ibid*, 90.

<sup>46</sup> Homi Bhabha, above n43, 85-92.

<sup>47</sup> It has been quite unusual to study texts that play a part in creating the conditions of imperialism or colonialism in order to find out something about those writing the texts. Instead, texts about colonialism have generally been read in order to see what they tell us about the objects of colonialism or imperialism, or more recently to examine what they tell us about the ways in which the objects of colonialism are imagined and represented. Scholars have traditionally assumed that imperialism only impacted upon the culture of those who were colonised or the objects of imperialism. See the discussion in Edward W Said, above n4, 40.

<sup>48</sup> Diana Fuss, *Identification Papers*, 1995, 141.

<sup>49</sup> Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination*, 1992, 38.

<sup>50</sup> See generally E Ann Kaplan, *Looking for the Other: Feminism, Film, and the Imperial Gaze*, 1997.

civilisation, power, democracy, sovereignty and wealth. The world of the colonies, or of developing states in the post-World War II context, is a space in which the white man is imagined as having an enormous freedom to act and to create ideal worlds.

The subjectivity of the viewer is constructed in opposition to a second character in the narrative, the object of the imperial gaze: the black, native or colonised subject. The black subject is a resource that allows the white man to imagine himself as civilised and free against a background of savagery and slavery.<sup>51</sup> As Frantz Fanon argues, 'not only must the black man be black; he must be black in relation to the white man'.<sup>52</sup> The creation of that second character is thus essential, both to the constitution of the white character, and to the process by which identification with that character is invited.

Heroic narratives operate to structure the subjectivity of readers or viewers by inviting identification with the white male hero, who is defined in opposition to characters who lack his potency and authority, as a result of sexual and racial differentiation. Although the white man is at the centre of such narratives, the meanings attributed to white masculinity in cultural narratives about heroism are not constant. Those meanings vary according to the challenges or crises that the white man is imagined as facing in a particular period. So, for example, as Toni Morrison has shown, the sense of freedom, autonomy, authority and absolute power attributed to the white subject in early American novels was formed against the backdrop of slavery and colonisation - '(n)othing highlighted freedom - if it did not in fact create it - like slavery'.<sup>53</sup>

---

<sup>51</sup> Toni Morrison, above n49, 44.

<sup>52</sup> Frantz Fanon, *Black Skin, White Masks*, 1967, 110.

<sup>53</sup> Toni Morrison, above n49, 37-8. Morrison argues that the 'unfree' (slaves, the colonised) were always present 'within the heart of the democratic experiment - the critical absence of democracy, its echo, shadow, and silent force' (*ibid*, 48).

The meanings of masculinity that most clearly shape post-Cold War intervention narratives are those that have emerged in US popular culture during the 1980s and 1990s. That period saw the emergence of two related images of white masculinity, which were reproduced in Hollywood films, in texts of the men's movement, in political speeches and in foreign and domestic policy-making.<sup>54</sup> The first version was the hard, competitive, decisive, tough and domineering man of the Reagan era.<sup>55</sup> The Hollywood action films of the early 1980s celebrated 'white male action heroes' involved in narratives of 'success, achievement, toughness, strength, and "good old Americanness", offering audiences the opportunity to identify with the 'hard body' and determined aggressive masculinity of a Rambo or a Terminator.<sup>56</sup>

A second version of masculinity emerged in the late 1980s and 1990s.<sup>57</sup> In films of that later period, the white male hero is portrayed as a 'sensitive family man', an 'emotional domestic hero', able to signify a new model of masculine strength and power, derived from a commitment to personal and

---

<sup>54</sup> Susan Jeffords, *Hard Bodies: Hollywood Masculinity in the Reagan Era*, 1994; Lynda Boose, 'Techno-Muscularity and the "Boy Eternal": From the Quagmire to the Gulf' in Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, 1993, 581; Michael Rogin, "'Make My Day!': Spectacle as Amnesia in Imperial Politics [and] The Sequel' in Amy Kaplan and Donald E Pease (eds), *ibid*, 499.

<sup>55</sup> Susan Jeffords, above n54, 11.

<sup>56</sup> *Ibid*, 12. Jeffords notes that some Hollywood films of that era did continue to portray alternative forms of masculinity, or attempt to counter the social messages of the Reagan Revolution. She chose to examine the most popular films of the era, however, because 'their popularity must, I believe, indicate something about what kinds of stories mainstream audiences were interested in seeing, what characters they found compelling, and what images they found worth repeating - what, in other words, they found *pleasurable*' (*ibid*, 22). As Jeffords notes, these hardened male bodies 'came to stand not only for a national character - heroic, aggressive, and determined - but for the nation itself' (*ibid*, 25).

<sup>57</sup> *Ibid*, 147. These films appeared at a point in American history when continued commitment to aggressive militaristic foreign policy had begun to appear self-destructive. The battles of the new world order were being fought over trade and investment, and the US did not seem to be winning. The narratives of films like *Kindergarten Cop* or *Terminator 2* involve the transformation of 'heterosexual white men, the men whose profit from traditional masculinities seems most threatened by the changing economic and social marketplace that typifies this period' (*ibid*). These films suggest that 'it is largely white men who have suffered from the burdens of traditional masculinity'. That representation resembles the theme that emerged during the period, that it was white men who were the casualties of the Vietnam War, rather than any of the inhabitants of Vietnam (*ibid*, 118-124). See further Lynda Boose, above n54.

family-oriented values.<sup>58</sup> While that later version of masculinity appears to offer a critique of the earlier, more violent and militaristic version, in fact it is based upon many of the same images and assumptions. Militarism, dominance, nationalism, individualism and violence continue to be at the heart of masculinity.<sup>59</sup> In the second model, however, violence is resorted to in the service of family, home and nation, rather than more overtly in the interests of competition and machismo. Those narratives offer 'a rewriting, a repetition, a retelling of the story of [white] masculinity'.<sup>60</sup>

[Although] that new writing seems on its surface to be a rejection of so many of the spectacular identifications of masculinity of the 1980s - technology, violence, power, command, strength - its mainframe is still very similar: the reproduction of masculine authority ... through the affirmation of individualism'.<sup>61</sup>

These films, and later the images of US and international interventions structured according to similar narratives, were consumed by audiences throughout the world. During the 1980s and 1990s, the heroic narrative increasingly came to govern the way in which US foreign policy, and international intervention, was presented and understood. US foreign policy, and international intervention more generally, is routinely narrated in terms of action movies, drawing on fictional narratives.<sup>62</sup> As a result, a global popular culture increasingly obsessed with white masculine heroism has emerged.

---

<sup>58</sup> Susan Jeffords, above n54, 13, 118. Jeffords notes that in each, the hero signifies an aspect of the Reagan Revolution: the hard body signifies the strong militaristic foreign-policy position, while the family reasserts the importance of a domestic regime 'dependent on the centrality of fatherhood' (*ibid*, 13). These heroes are able to reclaim domesticity without falling into the trap posed by the presumed 1970s legacy of weak white men unable to stand up to feminists, civil rights activists or to win the Vietnam war (*ibid*, 116-8, 156).

<sup>59</sup> *Ibid*, 191-2.

<sup>60</sup> *Ibid*, 176.

<sup>61</sup> *Ibid*.

<sup>62</sup> Lynda Boose, above n54; Michael Rogin, above n54, 524-9; Susan Jeffords, 'The Patriot System, or Managerial Heroism', in Amy Kaplan and Donald E Pease (eds), above n54.

These models of the relationship between narrative, cultural representations and subjectivity developed in film and postcolonial theory allow a different set of questions about the pleasures offered by narratives of intervention, and about the ways in which law's stories shape the reader's experience of the world. Part III will use the theories developed in the context of fiction to explore the ways in which readers and viewers are invited to identify with factual narratives about Security Council actions.<sup>63</sup> What framework of fantasy, of imaginative work, is the foundation of intervention discourse? What position does it invite readers to imagine themselves occupying? What is the effect of such identifications? What does it mean if the position the reader is invited to occupy (or required to represent) is a non-human character, such as the Security Council, or the International Community, or the US?<sup>64</sup> What is forgotten, what is lacking and yet needed, in order to secure and maintain the sense of the argument in favour of intervention?<sup>65</sup> How are dominant meanings made to seem natural, unquestionable and thus unalterable?<sup>66</sup> How do the social forces of race, class and gender 'invisibly rationalize irrational behaviour', allowing us to make sense of stories that without these categories would otherwise make no sense?<sup>67</sup>

### III. THE SUBJECTS OF INTERVENTION

My aim in this section is to explore the extraordinary persuasiveness of intervention stories, drawing on the feminist and postcolonial theories of narrative, subjectivity and identification discussed in Part II. Law in general,

---

<sup>63</sup> The distinction between fact and fiction is usefully broken down in Donna Haraway, above n29, 11; Alison Young, *Femininity in Dissent*, 1990, 43; Carol Cohn, above n30; Judith E Grbich, above n2. Those authors use literary theory to explore the appeal of particular disciplines, respectively sociobiology, criminology, nuclear strategic doctrine and taxation law.

<sup>64</sup> Judith E Grbich, above n2; Carol Cohn, above n30, 711-2.

<sup>65</sup> Jerry Leonard, 'Introduction: (Post)Modern Legal Studies as (Critical) Cultural Studies' in Jerry D Leonard (ed), *Legal Studies as Cultural Studies: A Reader in (Post)Modern Critical Theory*, 1995, 1, at 6.

<sup>66</sup> *Ibid*, 5-6.

<sup>67</sup> Patricia J Williams, *The Rooster's Egg: On the Persistence of Prejudice*, 1995, 187.



and international law in particular, operate not only in the realm of state systems, but also in the realm of the imagination, where meanings are created and where we are invited to see ourselves and the world in certain ways. Intervention stories become part of lived experience through the subjectivity of those reading these texts. The reader provides the links of subjectivity between particular narratives and the experience of the gendered and racialised metaphors upon which they depend as 'aspects of a private and sexualized sense of one's self'.<sup>68</sup> Legal texts about intervention can be read to explore the sense of self that they create, in order to know more about the subject of the dream of a new world order of global security and democracy.

In exploring the fascination of these stories, I am attempting to open up a conversation about their power and appeal, rather than to provide a definitive interpretation of their meaning. As Trinh T Minh-ha notes, '[e]very spectator mediates a text to his or her own reality'.<sup>69</sup> The role of critic is 'not to tell "what the work is all about", but to complete and "coproduce" it by addressing their own language and representational subject-ivity'.<sup>70</sup>

#### ***A. Disruption of the established order***

The elements of narrative that have been outlined by feminist and postcolonial theorists can be traced in stories about the need for military intervention under the auspices of the Security Council in the post-Cold War era. First, the narrative of most intervention stories begins with a crisis to the international order, whether that be an armed conflict or civil war that requires military intervention, or an economic crisis that requires monetary intervention.

---

<sup>68</sup> Judith E Grbich, above n2, 134.

<sup>69</sup> Trinh T Minh-ha, *When the Moon Waxes Red: Representation, Gender and Cultural Politics*, 1991, 93.

<sup>70</sup> *Ibid*, 94.

Collective security texts create a sense of crisis by describing an increased likelihood of violence and disorder in the post-Cold War era. The cause of the crisis facing the new world order is the power vacuum caused by the two superpowers ceasing to order and discipline destabilising forces in 'Third World' states.<sup>71</sup> The apocalyptic vision with which such narratives begin is well illustrated in the following passage by Brian Urquhart:

The world is entering a period of great instability, characterised by long-standing international rivalries and resentments, intense ethnic and religious turmoil, a vast flow of arms and military technology, domestic disintegration, poverty and deep economic inequalities, instantaneous communication throughout the world, population pressures, natural and ecological disasters, the scarcity of vital resources, and huge movements of population.<sup>72</sup>

Similar images of crises or threats to security are used as justifications for particular interventions. The Gulf War, for example, is used to demonstrate 'the already conventional wisdom that the disappearance of the inhibiting shadow of potential nuclear war between the superpowers will permit bloodier and more intractable international disputes to emerge'.<sup>73</sup> The former Yugoslavia illustrates the premodern ethnic tension that has erupted in the post-Cold War era. The 'grim story of Yugoslavia's breakup and the ensuing ethnic conflict seems all the more disturbing because it has shattered the hope

---

<sup>71</sup> Leon Gordenker and Thomas G Weiss, 'The Collective Security Idea and Changing World Politics' in Thomas G Weiss (ed), *Collective Security in a Changing World*, 1993, 3, at 14 (arguing that '(i)n fact, the international system at the dawn of the twenty-first century may well be characterized by levels of violence and unrest not even imagined when the UN Charter was drafted. The search for order may be no less quixotic as the decolonization process continues in the former Soviet Union and as ethnic particularism elsewhere comes to dominate the global and local agenda).

<sup>72</sup> Brian Urquhart, 'Learning from the Gulf' in Mara R Bustelo & Philip Alston (eds), *Whose New World Order? What Role for the United Nations?* 1991, 11, at 17.

<sup>73</sup> Abram Chayes, 'The Use of Force in the Persian Gulf' in Lori Fisler Damrosch and David J Scheffer, *Law and Force in the New International Order*, 1991, 4, at 11.

that the Cold War's end might herald a new era of peace'.<sup>74</sup> The ruins of the former Yugoslavia represent 'the crumpled dreams of a new cooperative security order in Europe'.<sup>75</sup> The cause of such crises is systematically linked to the political destabilisation resulting from the ending of the Cold War.<sup>76</sup>

The picture of the post-Cold War world that emerges from these texts is one in which 'struggles for national identity and self-determination have disintegrated into ethnic, religious, and political fragmentation'.<sup>77</sup> Far from leading to global peace, 'the passing of the Cold War has led to a new generation of conflicts: internal rather than international, driven by ethnic and communal differences rather than by political ideology, and of unprecedented levels of brutality'.<sup>78</sup> Despite initial optimism, it now appears that 'the conclusion of the Cold War does not mean an end to savagery and violence in international politics ... that yearned-for day of beating swords into plowshares must be deferred once again'.<sup>79</sup>

---

<sup>74</sup> James B Steinberg, 'International Involvement in the Yugoslavia Conflict' in Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts*, 1993, 27.

<sup>75</sup> *Ibid.*

<sup>76</sup> See, for example, Gareth Evans, *Cooperating for Peace, the Global Agenda for the 1990s and Beyond*, 1993, ('it seems the disappearance of the bipolar strategic balance was only a prelude to new kinds of turbulence and disorder'); Lincoln P Bloomfield, 'Collective Security and US Interests' in Thomas G Weiss (ed), above n71, 189, at 200, arguing that:

Murderous civil war in the Balkans, the overthrow of democracy in Haiti, and spreading battles in parts of central Eurasia long smothered under the stabilizing blanket of Soviet imperial rule have all exposed a dangerous vacuum in Western decision centers.

<sup>77</sup> Thomas G Weiss, above n3, 3.

<sup>78</sup> Larry Minear and Philippe Guillot, *Soldiers to the Rescue: Humanitarian Lessons from Rwanda*, 1996, 17.

<sup>79</sup> W Michael Reisman, 'Some Lessons from Iraq: International Law and Democratic Politics' (1991) 16 *Yale Journal of International Law* 203, 213.

## B. *'Knights in White Armour'*<sup>80</sup>

Intervention stories invite the reader to identify with a central figure with whom the qualities of agency and potency are associated. The characters given agency, and with whom identification is invited, are the UN, the Security Council, the 'international community' and the US. Those largely interchangeable characters are portrayed as the heroic agents of progress, democratic values, peace and security, who shape the Third World through their interventions. The images of new threats of violence and instability serve to announce the attractiveness of such heroes as guarantors of stability, bearers of democracy and protectors of human rights and of the oppressed.

While those heroes are not human, they are nevertheless imagined as having the characteristics attributed to white men. Stories about the need for the Security Council to restore order in the post-Cold War era, for example, draw on the image of white masculinity as tough, aggressive and decisive. When US Ambassador to the UN, Madeleine Albright used the notion of new threats and conflicts in the post-Cold War era to justify increased military intervention under Security Council auspices in paternalistic terms.

We are privileged to live at a time when the enforcement of international standards of behaviour through the actions of the Security Council is more possible, widespread, and varied than it has ever been. It is also perhaps more necessary than it has ever been. Although we are opposed by no superpower, threats and conflicts continue to arise that engage our interests, even when they do not endanger directly our territory or citizens. We live in an unsettled age,

---

<sup>80</sup> 'Knights in White Armour' is the title of a celebratory analysis of the role of UN peacekeepers in the new world order. See Christopher Bellamy, *Knights in White Armour: The New Art of War and Peace*, 1997.

beset by squabbles, wars, unsatisfied ambitions, and weapons that are more deadly and more widely available than ever in history.<sup>81</sup>

Jeffrey Clark argues that the 'vision of a pacified Somalia capable of again feeding its population is now possible' due to 'the international military forces and the tough, no-nonsense diplomacy of Robert Oakley [which] have marginalized the warlords to some extent'.<sup>82</sup> Similarly, Tom Farer paints a picture of the Security Council as a tough but fair figure, intervening in 'defense of humanitarian values or, less grandly, a modest degree of law and order'.<sup>83</sup> In Somalia, Farer suggests, intervention was necessary to restore democracy and reconstruct a 'failed state'.<sup>84</sup> The need for intervention 'arose from the tribal wars unleashed by the collapse of public authority'. To create order in 'such places', 'the cops may first have to occupy them'.<sup>85</sup> The role of the 'international community' is to create order and stability.<sup>86</sup> The international community, represented by its 'cops', intervenes to bring calm professionalism, order, peace and security to emotional, fearful and hysterical peoples.

In order to create order in 'such places', a certain amount of pragmatic leadership is necessary. Many legal commentators suggest that such leadership must be provided by the actions of the US, and where necessary by tough military leaders.

---

<sup>81</sup> Ambassador Madeleine K Albright, 'International Law Approaches the Twenty-First Century: A US Perspective on Enforcement' (1995) 18 *Fordham International Law Journal* 1595, 1597.

<sup>82</sup> Jeffrey Clark, 'Debacle in Somalia: Failure of the Collective Response' in Lori Fisler Damrosch, above n74, 231.

<sup>83</sup> Tom J Farer, 'Intervention in Unnatural Humanitarian Emergencies: Lessons of the First Phase' (1996) 18 *Human Rights Quarterly* 1.

<sup>84</sup> *Ibid*, 7.

<sup>85</sup> *Ibid*, 16.

<sup>86</sup> *Ibid*, 15.

Everyone likes to criticize US pretensions to being the constable of the world. But when people need the cops, guess who they call? The international security system depends centrally on the United States.<sup>87</sup>

The Gulf War, we are told, 'finally consummated the marriage between the UN and the one power whose backing is a precondition for any collective security system'.<sup>88</sup> Through that image of the US and the UN as man and wife, the US is portrayed as a sensitive family man, willing to defend the international values of humanitarianism, human rights, democracy and security.

Of all the states in the UN, the US has a special responsibility .... (T)he reality of the present balance of power means that there can be no effective international enforcement for the foreseeable future without a significant role for American armed forces .... As has become obvious in Somalia, Bosnia, and Haiti, if the United States does not participate in the toughest assignments, no one else will either.<sup>89</sup>

According to Clark, the US 'will have to establish credible guidelines as to when and where it will intervene to feed starving children, restore law and order, or promote democracy' in the post-Cold War era.<sup>90</sup> The 'will of the American public' is that US foreign policy be governed by human need, a desire best expressed by President Ronald Reagan in a reference to Ethiopia: 'a hungry child knows no politics'.<sup>91</sup>

Some commentators acknowledge the extent to which such images of heroism and leadership serve US interests. Bloomfield argues that 'US interests would be well served by interpreting influence as the "reputation for leadership" in

---

<sup>87</sup> W Michael Reisman, above n79, 206.

<sup>88</sup> Lincoln P Bloomfield, above n76, 190.

<sup>89</sup> Thomas G Weiss, above n3, 16.

<sup>90</sup> *Ibid*, 233.

processes of collective action that this time rest on broad international consensus'.<sup>92</sup> The international community must accept 'the reality of unequal power symbolized by American military strength and other people's money'.<sup>93</sup> Reisman notes that during the twentieth century, the US has 'actively worked to maintain world order because we have deemed it to be in our vital interest'.<sup>94</sup>

Although the UN symbol carries a heavy price tag, it also carries major benefits. United Nations' authorization is an inclusive symbol of authority and, as such, enhances any power used under its aegis.<sup>95</sup>

The narration of international intervention also draws upon the less militaristic and more family-oriented version of masculinity that emerged in US popular culture of the late 1980s. The white male hero of those later films only resorted to violence where necessary to protect family values or to guard against abusive fathers.<sup>96</sup> Using similar images, the international community is represented as the guarantor of the values of human rights and democracy, and as the protector of Third World peoples. In representations of interventions conducted by the international community in the former Yugoslavia, Haiti and Somalia, for example, the Security Council is portrayed as the sole figure capable of ensuring that the peoples of failed states or corrupt regimes receive aid and are guaranteed survival.

The image of protector of Third World peoples emerges in many discussions of the role of the Security Council. According to Leon Gordenker and Thomas G Weiss, 'security-related tasks' of the UN include 'the protection of minorities and forced migrants threatened by communal violence or other

---

<sup>91</sup> *Ibid*, 215.

<sup>92</sup> Lincoln P Bloomfield, above n76, 205.

<sup>93</sup> *Ibid*.

<sup>94</sup> W Michael Reisman, above n79, 207.

<sup>95</sup> *Ibid*, 208.

<sup>96</sup> *Ibid*, 142-3.

fighting, the maintenance of peace in civil (not international) wars, the delivery of humanitarian relief, the safeguarding of law and order during elections, [and] the monitoring of human rights violations'.<sup>97</sup> In a discussion about Security Council intervention in Somalia, Jeffrey Clark suggests that such action was designed to 'rescue both starving Somalis and a highly imperilled relief operation'.<sup>98</sup>

The international community is systematically allied with the values of human rights and democracy. Intervention by the international community is justified by reference to a history beginning with the framers of the UN Charter of 1945, who 'understood the linkage between the protection of basic human dignity and the preservation of peace and security'. The international community is the source of and necessary provider of these values to a Third World in need of saving.<sup>99</sup> It is 'the responsibility of the international community to intervene in order to preserve peace and important human values'.<sup>100</sup>

As the crises of the 1990s have exploded and persisted, there is a growing awareness of the need to look beyond state boundaries to the sources of instability within states. It is surely not now possible - if indeed it ever was - to take at face value claims of ruling elites that

---

<sup>97</sup> Leon Gordenker & Thomas G Weiss, above n71, 15.

<sup>98</sup> Jeffrey Clark, above n82, 205.

<sup>99</sup> Max M Kampelman, 'Foreword' in Lori Fisler Damrosch, above n74, vii. According to Domingo E Acevedo, 'The Haitian Crisis and the OAS Response: A Test of Effectiveness in Protecting Democracy' in Lori Fisler Damrosch, above n74, 119, at 140-1, the debate about collective intervention has led to a transformation of the notion of sovereignty, which bodes well for the protection of such values.

Human rights and, at least in the Western Hemisphere, the international protection of democracy, have been the primary beneficiaries of that transformation ... In the past, authoritarian regimes that would otherwise have enjoyed no legitimacy among the people they purported to govern, and that retained power only through a pervasive infrastructure of internal coercion and intimidation, were often shielded against collective action by an extremely narrow interpretation of the principle of nonintervention ....

<sup>100</sup> Max M Kampelman, above n99, viii-ix.



whatever goes on within state boundaries is solely a matter of domestic jurisdiction.<sup>101</sup>

These texts describe growing support for the notion of a 'global humanitarian imperative', requiring a 'duty to interfere' in countries 'in which there is widespread suffering or abuse'.<sup>102</sup> As a result of such persistent links between the international community and such desirable values, Tom Farer can argue that 'the threat to a humane international order consists not of [Security] Council hyperactivity, but rather of no action at all'.<sup>103</sup>

In intervention stories, the international community plays the character of the masculine, active hero, while states targeted for intervention occupy the position of the second, passive character. The subject of that narrative, the international community, is the character able to act in the world, to imagine, create and bring about new worlds. Agency is only held by the international community, international organisations or the US. The governments or elites of target states are portrayed as corrupt and exercising only deviant agency, if any. Missing is any sense of the agency of the peoples of the states where intervention is to be conducted. There is no sense in which these peoples are understood to be themselves actively working to shape their communities and their world, except to the extent of seeking the protection of the international community. Only the hero of the story, the international community, has any capacity to animate or shape the passive peoples of the Third World, bringing them order, human rights, democracy and stability. By identifying with the humanitarian 'knights in white armour' of intervention stories, readers experience a pleasurable sense of expanded freedom to be and act in the world.<sup>104</sup>

---

<sup>101</sup> *Ibid*, viii.

<sup>102</sup> Larry Minear and Philippe Guillot, above n78, 19.

<sup>103</sup> Tom Farer, 'A Paradigm of Legitimate Intervention' in Lori Fisler Damrosch, above n74, 316, at 330.

<sup>104</sup> Christopher Bellamy, above n80.

### *C. Symbols of helplessness*

The third element of narrative that can be traced in intervention stories is the constitution of black or feminised characters who serve as a background and foil to the actions of the hero. The values of the new world order are defined through actions taken against weak or evil Third World nations, whose leaders need to be taught that the hard body of the international community can impose its will on others.

Identification with the potent character of the Security Council is facilitated through the creation of a character lacking power and authority, the failed state. The heroic narrative depends upon the constitution of that second passive character, which the hero is able to shape or act upon in order to make his mark upon the world. The ground for the hero's actions or 'space' through which the hero moves in intervention stories is the 'Third World', always presented as an international symbol of helplessness. International organisations and major powers are imagined as the bearers of human rights and democracy, while local peoples are presented as victims of abuses conducted by agents of local interests.<sup>105</sup> The people of states in Africa, Asia, South America and Eastern Europe are portrayed as unable to govern themselves.<sup>106</sup> Those states, or their leaders, are the source of instability, to be refashioned as an extension of the self of the hero.<sup>107</sup> States subjected to intervention are nothing but the work of the hero, 'matter formed by his activity'.<sup>108</sup> The international community, as represented by the actions of the

---

<sup>105</sup> See the argument in Chapter 3 above.

<sup>106</sup> Patricia J Williams, above n67, 204-5 (arguing that discussions of the need for Security Council intervention in Somalia involved the 'resurgence of the genre of Africa-imaging', and were based on the premise that 'some people just aren't able to govern themselves and it's about time the wise strong hand of greater minds intervened. Surprise, surprise, most of those unruly masses happen to live in Africa').

<sup>107</sup> See Chapters 2 and 3 above.

<sup>108</sup> Donna Haraway, above n29, 234.

Security Council, is 'defined in and through the white male body and against the racially marked male body'.<sup>109</sup>

The reader's identification with or as an active, autonomous self who can act in the world as a rescuer or saviour depends upon imagining those who live in states like Haiti or Somalia or Yugoslavia in racialised terms. Security texts regularly portray the leaders or elites of states like Iraq or Somalia as oppressors, criminals or primitive barbarians, requiring disciplining and controlling.<sup>110</sup> The leaders of Third World states are described as '[t]inhorn dictators' or 'contemporary tyrants',<sup>111</sup> while the people are engaged in childlike 'squabbles', motivated by 'unsatisfied ambitions'.<sup>112</sup> According to Farer, intervention on the basis of 'feed and leave' could not have succeeded in Somalia, as the people of Somalia could not be expected to govern themselves.<sup>113</sup> Many security texts suggest that irrational 'ethnic particularism' or religious tensions are emerging in the post-Soviet era as major threats to peace and security.<sup>114</sup> Farer, for example, suggests that the international community needs to intervene to control the hysterical urges of those engaged in conflicts motivated by religious or ethnic tension: 'peoples in a state of ecstatic mutual fear' are 'likely to go on clawing at each other unless external actors can either club them into submission, break the stalemate ..., and/or

---

<sup>109</sup> Susan Jeffords, above n54, 148.

<sup>110</sup> The effect of those representations is the same: each justifies the use of force in the interests of the greater good. Missing is any recognition that the oppressors and the victims are equally likely to suffer from the military intervention that these texts authorise and legitimise.

<sup>111</sup> W Michael Reisman, above n79, 213 (arguing that 'tinhorn dictators' and 'contemporary tyrants' threaten post-Cold War peace and security).

<sup>112</sup> Ambassador Madeleine K Albright, above n81, 1597.

<sup>113</sup> Tom J Farer, above n83, 16. See the discussion of the racial stereotypes underlying media coverage of Security Council intervention in Somalia in Patricia J Williams, above n67, 202. Williams notes that 'the Somalis, all Somalis, were described as "undisciplined", "criminal elements", whose criminality involved "stealing from their own"'.<sup>114</sup>

<sup>114</sup> Leon Gordenker and Thomas G Weiss, above n71, 14 (treating 'ethnic particularism' as a threat to peace and security); Michael Stopford, 'Locating the Balance: The United Nations and the New World Disorder' (1994) 34 *Virginia Journal of International Law* 685, 686, 698 (suggesting that the breakdown of internal state structures and ancient ethnic and religious tensions are the major challenges to peace and security). See also the references in Chapter 2, notes 112, 127.

guarantee the safety of those willing to assume a defensive posture'.<sup>115</sup> The hierarchy of race underpinning such representations of the need for intervention is illustrated by Max Kampelman in his comments on the breakup of the former Yugoslavia:

Are we entering a new form of Dark Age? Is the defeat of order and decency that is now so evident in Europe only a temporary barrier on the path to a new civilized order? If Europe fails, how can we expect Asia and Africa to succeed?<sup>116</sup>

Security texts also regularly produce images of the people who live in states targeted for intervention as starving, powerless, suffering, abused or helpless victims, often women and children, in need of rescue or salvation. Thomas Weiss, for example, suggests that the 'UN's member states have been groping toward arrangements by which egregious aggression, life-threatening suffering, and human rights abuses more routinely become legitimate international concerns'.<sup>117</sup> While both 'Third World naysayers' and 'civilian humanitarians ... working in the trenches on the frontlines to alleviate suffering' may oppose military intervention, intervention may nonetheless be 'absolutely essential to halt genocide, massive abuses of human rights, and starvation'.<sup>118</sup> Such intervention is necessary to deter 'the abuse of populations by political authorities'.<sup>119</sup>

Many minority groups experiencing severe repression are likely to seek support from the international community as they struggle for protection of their basic human rights .... For years to come, the UN will receive pleas like that of Bosnian Foreign Minister Haris Silajdzic, who has asked: Why can't we have a safe haven zone like

---

<sup>115</sup> Tom J Farer, above n83, 15.

<sup>116</sup> Max M Kampelman, above n100, viii.

<sup>117</sup> Thomas G Weiss, above n77, 5.

<sup>118</sup> *Ibid*, 6-8.

the Kurds? The fate of many suffering men, women, and children depends on the answer.<sup>120</sup>

The capacity to imagine that a heroic international community is needed to rescue huge numbers of the world's peoples is made possible because the image of the Third World as helpless and underdeveloped is constantly reproduced in other similar stories. As Arturo Escobar has argued, the Third World has been made and remade as a symbol of poverty and helplessness since the end of World War II, through the dominant discourse of development.<sup>121</sup> That discourse has both constituted and disciplined the people of developing countries. The image of the 'starving African' portrayed in so many media stories symbolises the way in which developmentalism produces the Third World as a problem in need of a ready solution: international intervention.

(W)hat we are talking about when we refer to hunger or population is people, human life itself: but it all becomes, for Western science and media, helpless and formless (dark) masses, items to be counted and measured .... The language of hunger and hunger of language join forces not only to maintain a certain social order but to exert a kind of symbolic violence that sanitizes the discussion of the hungry and the malnourished. It is thus that we come to consume hunger in the West

.....<sup>122</sup>

Just as colonialism allowed nineteenth century citizens of imperial nations to imagine the rest of the world as inhabited by peoples who could be displaced, enabling reproductions of Europe to be constructed, so intervention stories

---

<sup>119</sup> *Ibid*, 8.

<sup>120</sup> Jane E Stromseth, 'Iraq's Repression of Its Civilian Population: Collective Responses and Continuing Challenges' in Lori Fisler Damrosch, above n74, 77, at 103.

<sup>121</sup> Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World*, 1995.

<sup>122</sup> *Ibid*, 103-4.

enable the 'conversion of ordinary lives into a set of problems to be solved'.<sup>123</sup> The agency of those targeted by such intervention is rendered invisible. The international community intervenes militarily in order to shape the Third World and ensure that it can develop and progress to become more like the 'West'. Yet, as in colonial narratives, those states who are the objects of intervention are not expected to become quite the same as those who conduct such intervention. The nature of international intervention rules out the possibility of the people of Bosnia and Herzegovina, Somalia, Haiti or Kuwait choosing political, social or economic arrangements that differ from those in place in intervening states such as the US. The people living in states subjected to intervention are only free to choose to be (almost) the same as those 'saving' them.

The nature of the self created through identification with the role of saviour depends upon the existence of such victims. David Kennedy has explored that relationship, through an analysis of the shifting meanings he made of his role as a human rights activist on a US delegation to Nicaraguan prisons in 1984.<sup>124</sup> Kennedy draws attention to the way in which his identity as an active, American lawyer on a mission for human rights depended upon imagining those in prison as passive victims. When he met with a female prisoner whom he characterised as a victim of human rights abuses, Kennedy experienced a heightened sense of purpose and motivation. In contrast, when he met with two male prisoners visited by his delegation as equals and political activists engaged in struggle, he was left feeling solidarity but a lack of agency, connected but resigned.

Ramon and Francisco seemed to carry themselves as temporarily defeated warriors in a greater political struggle, and that is how they seemed to view their own stories of capture, torture, and

---

<sup>123</sup> Patricia Stamp, 'Pastoral Power. Foucault and the New Imperial Order' (1994) 3 *Arena Journal* 11, 19.

<sup>124</sup> David Kennedy, 'Spring Break' (1985) 63 *Texas Law Review* 1377.

imprisonment. Imprisoned warriors like Ramon and Francisco seemed our equals; they needed no rescue. To them we were comrades, coparticipants in a political struggle. The connection we had felt when in their presence ... diminished my sense of purpose .... (T)he passive victim awakens my indignation and motivates me to act .... We might be able to do something.<sup>125</sup>

This gendered differentiation between active political equal and passive victim, between political person and abject object, between warrior body and violated body, structured Kennedy's 'sense of progress, of moving meaningfully forward with our mission .... (T)he incomprehensible violation of a woman's body kept something hidden and mysterious, so that something else, intentional knightly deployment, could seem familiar'.<sup>126</sup> Kennedy reveals that the sense of agency and movement he felt was dependent upon constructing those he met as 'victims'. The gendered distinction between responding to those prisoners as active warriors or passive victims shaped the meanings that his human rights team made of their experiences. Those distinctions between saviour and victim, between international and local, between avenger and abused, are at the heart of the fascination of security stories. These oppositions are necessary to sustain the feeling of progress, agency and freedom that such narratives engender.<sup>127</sup>

Kennedy's analysis stresses the importance of the second passive character to the subjectivity of those who identify with the heroic figure. The passive victim exists in these texts in order to constitute the hero or internationalist as the holder of those values which the victim lacks. In the same way, stories about Security Council actions involve detailed descriptions of powerless, victimised states and peoples, in order to facilitate the reader's identification with the heroes of intervention. The reader who identifies with those heroes

---

<sup>125</sup> *Ibid*, 1402-5.

<sup>126</sup> *Ibid*, 1404-5.

<sup>127</sup> *Ibid*, 1402-5.

comes to form his or her sense of self at least partly around that identification. That pleasurable process allows the reader to imagine himself or herself to be on the side of the good and the just, part of a state or international community actively able to shape the world in the image of the ideals of freedom, democracy and order.

#### **D. *Fear of powerlessness***

The fourth aspect of theories of subjectivity and narrative which applies to intervention stories is the analysis of the resolution of the threat posed by the introduction of the feminised or racialised character. As discussed above, film theorists suggest that the creation of a passive character is supposed to facilitate the identification by the viewer of the film with the subject having the attributes of power and control. Yet the creation of a powerless or passive character also carries risks. The reenactment of the discovery of the second subject's lack may induce in the viewer 'the fear of a similar deprivation'.<sup>128</sup> That anxiety is resolved through demonstrating that the lack of power or agency is somehow the result the second subject's wrong-doing, to be redressed through punishment or forgiveness.<sup>129</sup>

That process is at work in intervention stories. The audience for such stories is clearly in an extremely passive position, with no authority or potency with respect to the story of the crisis unfolding. Any anxiety about the possibility that the viewer or reader is in a position to suffer as a result of the crisis, or any sense that the viewer or reader is in fact powerless, is healed by the creation of a feminised character, a 'Third World' state, whose lack of power, authority or agency is attributable to their own mistakes, corruption or fault. In order to heal any anxiety aroused in the viewer by the 'fear of a similar deprivation', the narrative systematically constructs the lack of power experienced by states in crisis as caused by their own mistakes. The

---

<sup>128</sup> Kaja Silverman, above n11, 223.

<sup>129</sup> *Ibid*, 224.



governments or elites of those states are portrayed as corrupt, nepotistic, overreaching and authoritarian, and the people of those states are portrayed as being engaged in savage ethnic or religious conflicts. The origins of crises lie with defective governance or an inability of peoples to govern themselves.

The assumption that international actors played no role in causing the crisis is central to establishing the fault of the target state. There is no discussion in representations of heroic intervention by the international community that international actors may have had any role to play in contributing to the crisis. Raising such considerations would threaten the progress of the narrative. The ferocity of the attack on states or groups who resist intervention operates to ensure that readers and viewers do not succumb to the temptation to identify with a particular target state, its leaders or its people. The target state is finally subjugated through punishment or forgiveness. The sacrifice and punishment of that state are central to the successful resolution of the anxiety produced by the introduction of the passive character.

#### ***E. Reaffirmation of the existing order***

The progress of the narrative, from crisis to resolution through the punishment, sacrifice or forgiveness of the target state, operates to reaffirm the order, position and ideals that were threatened at the start of the narrative.<sup>130</sup> Narratives of crisis and redemption operate to reinsert the viewer into a 'cultural discourse' or symbolic order which heals the crisis revealed at the start of the narrative. While the representation of a post-Cold War security crisis operates to disrupt 'the existing symbolic order, dislocating the subject-positions within it, and challenging its ideals of coherence and fullness', intervention by the international community serves 'subsequently to re-affirm

---

<sup>130</sup> See Antony Anghie, 'Francisco de Vitoria and the Colonial Origins of International Law' (1996) 5 *Social and Legal Studies* 321, 333 (arguing that 'the construction of the barbarian as both within the reach of the law and yet outside its protection creates an object against which sovereignty may express its fullest powers by engaging in an unmediated and unqualified violence which is justified as leading to conversion, salvation, civilization').

that order, those positions, and those ideals'.<sup>131</sup> International intervention promises the restoration of order and stability.

The sense of a restoration of order is well illustrated by statements made by Madeleine Albright. Albright argues that 'UN peacekeeping contributes to a world that is less violent, more stable, and more democratic than it would otherwise be'.<sup>132</sup> She uses as an example the intervention in Haiti, suggesting that it led to 'the effort to place the law on the side of the people of Haiti for perhaps the first time in that nation's history'.<sup>133</sup> According to Albright, the steps 'we' have taken in Haiti 'have honored our values, eased a humanitarian crisis, and enabled Haiti, in the words of the UN Charter, to pursue "social progress and better standards of life in larger freedom"'.<sup>134</sup> She sees as 'our mandate in this new era' the need to develop a 'framework of law, principle, power, and purpose' similar to that forged by the generation that drafted the UN Charter.

We have a responsibility in our time, as our predecessors did in theirs, not to be prisoners of history, but to shape it: to build a world not without conflict, but in which conflict is effectively contained; a world not without repression, but in which the sway of freedom is enlarged; a world not without lawless behaviour, but in which the law-abiding are progressively more secure.<sup>135</sup>

---

<sup>131</sup> Kaja Silverman, above n11, 221.

<sup>132</sup> Ambassador Madeleine K Albright, above n81, 1599.

<sup>133</sup> *Ibid.*, 1603. For a discussion of the amnesia at work in such representations of the history of Haiti, see Noam Chomsky, *World Orders, Old and New*, 1994, 36-7; Edward W Said, above n4, 349 (arguing that 'almost from the moment Haiti gained its independence as a Black republic in 1803, Americans tended to imagine it as a void into which they could pour their own ideas'); Greg Chamberlain, 'Up by the Roots: Haitian History Through 1987' in North American Congress on Latin America, *Haiti: Dangerous Crossroads*, 1995, 13.

<sup>134</sup> Ambassador Madeleine K Albright, above n81, 1599.

<sup>135</sup> *Ibid.*, 1605-6.

Albright is able to draw on a long history in which Americans have used Haiti and its people to symbolise 'degeneracy' and 'racial inferiority'.<sup>136</sup> She can be confident that few amongst her audience will forgo the pleasure offered by the narrative of heroic intervention long enough to consider the extent to which the history of US humanitarian interventions in Haiti have served to enshrine the rights of US corporations at the expense of the agency of the Haitian people.<sup>137</sup>

#### ***F. Violence and narrative pleasure***

The operation of intervention narratives, and the pleasures offered to the reader by identifying with the hero's freedom of action and control over the world, depend upon the acceptance of gendered and racialised metaphors. While blackness represents ungovernability and inferiority,<sup>138</sup> femaleness represents the lack of agency and potency. Those narratives describe a world in which the Third World, as passive substance or matter, waits to be animated by some other imagined character, such as the international community or the Security Council. A culture that imagines itself in such heroic terms develops because of, not coincidentally with or in spite of, the presence of dispossessed, enslaved and exploited peoples. Difference, particularly 'racial' difference, becomes a way of making sense of exploitation.<sup>139</sup>

Debates about whether to intervene in Yugoslavia, Haiti or Somalia are shaped by and in turn shape ideas about race and gender, and more generally

---

<sup>136</sup> Edward W Said, above n4, 349.

<sup>137</sup> Noam Chomsky, above n133, 36-7 (analysing the impact of US support for France's violent attempt to repress the Haitian slave rebellion of 1791 and of the nineteen-year US occupation of Haiti from 1915); Alex Dupuy, *Haiti in the New World Order*, 1997 (providing an analysis of the political economy of the 1993 intervention conducted under Security Council auspices).

<sup>138</sup> Patricia J Williams, above n67, 105 (arguing that a 'stigma of inferiority' is 'embodied in black presence').

<sup>139</sup> Krysti Justine Guest, above n36, 93

about belonging and entitlement.<sup>140</sup> The 'persistence of prejudice' limits the extent to which it is possible to address the requirements of a just and democratic world order. Intervention stories provide 'a powerful schema of thought justifying significant intrusions' into the lives of those in 'Third World' states.<sup>141</sup> Assertions that a heroic subject acting on behalf of the international community knows better than those in such states, and that the development of those peoples will save them, plays 'dangerously against a backdrop in which slavery's history of paternalistic white protectionism still demands black loyalty to white people and their lifestyle as a powerful symbolic precedent for deeming black social organisation "successful"'.<sup>142</sup>

The horror of such narratives is that they can be, indeed must be, retold over and over, with the promised redemption involving 'an ever greater subordination to already existing scenarios'.<sup>143</sup> The creation or production of the self of the international community becomes an endlessly repetitive project. As the serial post-Cold War security crises reveal clearly, that project is always carried out over the bodies of others.<sup>144</sup> Intervention stories highlight the sadism of all heroic narratives, which depend upon the fantasy of 'reducing the other to a flawless, perfectly controlled mirror of the self'.<sup>145</sup> The appeal of the new world order, with its linked portrayals of masculinism, whiteness and internationalism, depends 'on the successful reproduction of certain images and definitions of masculinity'.<sup>146</sup> The problem facing all of those against whom the subject of the new world order defines himself is that in order to

---

<sup>140</sup> Patricia J Williams, above n67, 8.

<sup>141</sup> *Ibid*, 177.

<sup>142</sup> *Ibid*, 221.

<sup>143</sup> Kaja Silverman, above n11, 231.

<sup>144</sup> Elaine Scarry suggests that this sadistic project of making the self through marking the world is at the heart of the activities of not only torture and war, but all the ways in which Western cultures makes artefacts and, through them, the world. See Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World*, 1985; Anne Orford, 'Liberty, Equality, Pornography: The Bodies of Women and Human Rights Discourse' (1994) 3 *Australian Feminist Law Journal* 72.

<sup>145</sup> Donna Haraway, above n29, 233.

<sup>146</sup> Susan Jeffords, above n54, 156.

'keep the revolution going', the US, and now the Security Council, must regularly set up, and win, military confrontations.<sup>147</sup>

#### IV. CONCLUSION: DANGEROUS FICTIONS

The approach taken in this chapter involves a shift of the focus of analysis from the objects of security stories to their subjects. It is easy to believe that white imperialism only shapes the subjectivity of the colonised, indigenous peoples or enslaved peoples, for example, so that postcolonialism becomes the study of the effects of imperialism or colonisation on such dispossessed groups. Imperialism produces imperialists and their descendants as subjects who see themselves as hard-working pioneers, protectors of the values of liberty, democracy and freedom. The project of analysing the production of subjects 'is an effort to avert the critical gaze from the racial object to the racial subject; from the described and imagined to the describers and imaginers; from the serving to the served'.<sup>148</sup> Rather than investigate the impact of intervention on those who are the objects of such intervention, the focus of this chapter has been the effects of intervention stories on those invited to identify as, or with, the subjects of intervention: those in whose name (as 'the West' or 'the international community' or 'the liberal alliance'), or on behalf of whose supposed values (free markets, democracy, human rights), those interventions are being conducted. This chapter is animated by the desire to talk about the relationship between the way in which the 'Third World' is imagined as either a symbol of helplessness or a site of deviant agency, and the way in which those who engage with security stories come to gain their sense of self as part of a heroic, progressive or hard-working community.

---

<sup>147</sup> *Ibid.*

<sup>148</sup> Toni Morrison, above n49, 90. Morrison argues that the practice of considering racism only 'in terms of its consequences on the victim' should be 'joined with another, equally important one: the impact of racism on those who perpetuate it' (*ibid.*, 11). See also Judith Grbich, 'The taxpayers's body: genealogies of exertion' in Pheng Cheah, David Fraser and Judith Grbich (eds), *Thinking Through the Body of the Law*, 1996, 136, at 159 (analysing narratives of sexuality within which the modern subject learns to recognise the self).

I have argued that the fascination of intervention stories is produced through the process of identification with, or as, the heroes of intervention. Intervention stories are premised on the notion of an international community facing new dangers, acting to save the oppressed and to protect values such as democracy and human rights. The reader of intervention literature is asked to identify with the active hero of the story, be that the international community, the Security Council, the UN or the US at the cost of the violence done to the imagined objects who form the matter of the hero's quest. The hero possesses the attributes of that version of aggressive white masculinity produced in late twentieth century US culture, a white masculinity obsessed with competitive militarism and the protection of universal (read imperial) values.<sup>149</sup>

The fact that the reader is invited to identify with a white, violent, masculine hero has a number of effects. First, treating a character such as the international community or the Security Council as the reference point of security texts limits the capacity of international law to address the ways in which the hero's journey of action and self-validation impacts on the lives of human beings. The reader is invited to recognise only the non-human hero's senses of pleasure and pain.<sup>150</sup> There is no space within the dominant narrative of post-Cold War internationalism to consider the effects of the hero's actions on the human targets of intervention, or to treat the targets of intervention (whether states or peoples) as having legitimate agency. Any attempt to act out or imagine ways of being in the world that differ from those desired by the US or the international community is presented as a threat to the control, virility and freedom of action of the hero. As a consequence, violence becomes a logical form of self-defence. The self that is being defended (when the Security Council authorises the use of sanctions that lead to the deaths of

---

<sup>149</sup> For a discussion of the relationship between colonialism and universality, in which 'European practices are posited as universally applicable norms with which the colonial peoples must conform', see further Antony Anghie, above n130, 332-3.

hundreds of thousands of Iraqi children, or imposes economic regimes on post-conflict states that lead to the increased exploitation and dispossession of their citizens) is the militaristic, competitive, irresponsible and brutal self of white masculinity, reproduced unendingly in late twentieth century US, and thus increasingly global, popular culture.

A second effect of inviting the reader to identify with a violent, masculinist character is that it becomes illegitimate to bring other human concerns into debates about internationalism and collective security. This is particularly the case where the hero with whom the reader is invited to identify is not human. As Carol Cohn argues:

[I]f human lives are not the reference point, then it is not only impossible to talk about humans in this language, it also becomes in some sense illegitimate to ask the paradigm to reflect human concerns. Hence, questions that break through the numbing language of strategic analysis and raise issues in human terms can be dismissed easily. No one will claim that the questions are unimportant, but they are inexpert, unprofessional, irrelevant to the business at hand.<sup>151</sup>

Finally, not only is the story of intervention one in which readers are invited to identify with a violent, masculine character at the expense of their own interests, but this technical security discourse becomes increasingly naturalised. The militaristic heroic model becomes the commonsense framework for understanding international relations in the era of globalisation. The reader or viewer is invited to forget the power relations involved in the creation of such a closed and glossy story about rescue and salvation.<sup>152</sup>

---

<sup>150</sup> Judith Grbich, 'Reading the Phantom: Taxation Law, Psychoanalysis and Apparitions' (1997) 8 *Australian Feminist Law Journal* 81, 84-5 (asking of taxation law: 'whose senses of pleasure and pain is the reader invited to recognise?').

<sup>151</sup> Carol Cohn, above n30, 711-2.

<sup>152</sup> Rey Chow, 'Violence in the Other Country: China as Crisis, Spectacle, and Woman' in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres (eds), *Third World Women and the Politics of Feminism*, 1991, 81, at 84. Chow argues that the relations that enable the

Investigating how the reader is invited to participate in imagining the world in those terms, and exploring the nature of the pleasures offered in the process of identifying with the heroes of such stories, provides ways to think through the 'entrapping qualities' of the language and authority of collective security texts.<sup>153</sup> As Laura Mulvey argues, the reader may find him- or herself 'secretly, unconsciously almost, enjoying the freedom of action and control over the ... world that identification with a hero provides'.<sup>154</sup> On the other hand, the reader may be 'so out of key with the pleasure on offer, with its "masculinisation", that the spell of fascination is broken'.<sup>155</sup> That spell may be broken more easily if readers remember that the stories about intervention and the characters that inhabit them are the effect of imaginative processes and of struggles for meaning.<sup>156</sup> The pleasures that identification with a hero provides, and the images and myths that underlie the appeal of the story of intervention, are vital to its success in becoming one of 'the stories that we are all inside, that we live daily'.<sup>157</sup> Only by thinking through the force of that appeal is it possible to begin to come to terms with the personal and political investment we have in the power relations such stories engender. In the following chapter, I focus on the ways in which intervention stories solicit the identification and investment of international lawyers in particular.

---

telling of stories about the 'Third World' are themselves the result of violence. The 'First World' continues to exploit the 'Third World' as a market, a resource and now through the violence of producing the 'Third World' as a spectacle for the entertainment of 'Western' audiences.

(T)he 'Third World', as the site of the 'raw' material that is 'monstrosity', is produced for the surplus-value of spectacle, entertainment, and spiritual enrichment for the 'First World' .... Locked behind the bars of our television screens, we become repelled by what is happening 'over there' ....

<sup>153</sup> Carol Cohn, above n30, 712.

<sup>154</sup> Laura Mulvey, above n25, 29.

<sup>155</sup> *Ibid.*

<sup>156</sup> Judith Grbich, above n148, 137.

<sup>157</sup> Terry Threadgold, above n1.





## Chapter 5

# EMBODYING INTERNATIONALISM: THE MAKING OF INTERNATIONAL LAWYERS

### I. INTRODUCTION

Even when we think we are simply communicating information, or being rigorously and exclusively intellectual, or just talking, we are in fact engaged in performances, in relation to others, that are ethical and political in character and that can be judged as such .... Whenever we talk we create a character for ourselves and a relation with others: we offer to constitute a community of a certain kind, for good or ill, and this is often the most important part of what we do.<sup>1</sup>

This thesis has explored the ways in which international lawyers present stories about collective security and international intervention, and has analysed the political nature of that process of writing and reading about 'the international'. I have treated narratives about intervention and security as cultural products, and explored the ways in which the readers and writers of such narratives are invited to identify with particular characters. Those aspects of the operation of law as a cultural process have particular relevance for international lawyers, who through disciplinary training come to embody and internalise the foundational narratives of their discipline. This chapter reflects upon the way in which the self-image or sense of self of international lawyers is shaped by those narratives.<sup>2</sup> My aim is to think about what lawyers are

---

<sup>1</sup> James Boyd White, *Justice As Translation: An Essay in Cultural and Legal Criticism*, 1990, ix.

<sup>2</sup> I explore the impact of intervention narratives on international lawyers, not due to a belief that they are the originators or authors of such narratives, but rather because lawyers are the people who perhaps live intervention stories most closely, whose professional status is dependent on the embodiment of law's stories, and whose lived daily experience involves protecting and policing such narratives. For a useful rethinking of the 'author-function', see

doing when they reproduce and perform intervention stories: the characters and relations with others they create, the communities they offer to constitute, and some of the effects of such actions. In so doing, I attempt to provide a broader insight into the way in which law operates through embodied human beings.

My treatment in this chapter of the way in which international lawyers are produced draws on Michel Foucault's conception of 'technologies of the self'.<sup>3</sup> Foucault's conception of the self is an overtly political one. Rather than positing the existence of an essential or true self, Foucault conceives of the self as 'a strategic possibility' or process.<sup>4</sup> The self does not exist as a pre-given entity outside of politics, but rather as an effect of power relations. In particular, Foucault sees subjectivity, including the belief in a true self, as a central aspect of the way in which individuals are governed or made docile in liberal societies.

Of particular interest to feminists and cultural theorists is Foucault's work on the ways in which, in their private lives, individuals are made subject to forms of political power that operate in liberal societies.<sup>5</sup> Foucault suggests that a new technique of power 'applies itself to immediate everyday life which categorises the individual, marks him by his own individuality, attaches to him his own identity, imposes a law of truth on him which he must recognize

---

Michel Foucault, 'What Is an Author?' in Donald F Bouchard (ed), *Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault*, (trans Donald F Bouchard and Sherry Simon), 1977, 113.

<sup>3</sup> Luther H Martin, Huck Gutman and Patrick H Hutton (ed), *Technologies of the Self: A Seminar with Michel Foucault*, 1988.

<sup>4</sup> David Halperin, *Saint Foucault: Towards a Gay Hagiography*, 76.

<sup>5</sup> Michel Foucault, 'Afterword: The Subject and Power' in Hubert L Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, Second Edition, 1983, 208, 213. Foucault's studies of governmentality and the relation between the state or social identity and the individual have a slightly different focus. Foucault there analyses the 'political technology' of individuals, or the ways in which individuals are led to recognize themselves as a part of a social entity, such as a nation or a state. His focus is on the techniques or practices of government which give rise to particular subjects, forms of rationality and relations between the society and the individual. See Michel Foucault, 'The

and which others have to recognize in him'.<sup>6</sup> That form of power makes individuals 'subjects', tied to their own identity 'by a conscience or self-knowledge'.<sup>7</sup> Individuals are asked to recognize themselves as having an essential self, a self that is recognized by others, which constitutes the 'truth' of that individual.<sup>8</sup> Thus, for example, an individual may be asked to recognize herself as a woman, or criminal, or mad, or heterosexual, and such categories function as forms of social and personal regulation. As David Halperin explains:

The kind of power Foucault is interested in, ... far from enslaving its objects, constructs them as subjective agents and preserves them in their autonomy, so as to invest them all the more completely. Liberal power does not simply prohibit; it does not directly terrorize. It normalizes, 'responsibilizes', and disciplines. The state no longer needs to frighten or coerce its subjects into proper behaviour: it can safely leave them to make their own choices in the allegedly sacrosanct private sphere of personal freedom which they now inhabit, because within that sphere they *freely and spontaneously* police both their own conduct and the conduct of others - and so 'earn', by demonstrating a capacity to exercise them, the various rights assigned by the state's civil institutions exclusively to law-abiding citizens possessed of sound minds and bodies.<sup>9</sup>

The notion of the self as a process and as an effect of power relations informs my account in this chapter of the making of international lawyers. Part II analyses the relationship of the sense of self of international lawyers to the heroic narratives of internationalism. That Part asks what images of

---

Political Technology of Individuals' in Luther H Martin, Huck Gutman and Patrick H Hutton (ed), above n3, 145, 146, 153.

<sup>6</sup> Michel Foucault, 'Afterword: The Subject and Power', above n5, 212.

<sup>7</sup> *Ibid.*, 212.

<sup>8</sup> David Halperin, above n4, 95.

<sup>9</sup> *Ibid.*, 19.

internationalism and professionalism shape the sense of self of international lawyers. Part III considers some of the processes by which the subjectivity or sense of self of international lawyers is produced or shaped. I focus in particular on legal education and engagement with the broader culture of imperialism as relevant 'technologies of the self'. Part IV explores some of the ways in which intervention stories operate to create stable and secure identities for international lawyers.

## II. REPRESENTATIONS OF INTERNATIONAL LAWYERS

The writing, reading and performing of narratives of intervention by international lawyers operates to constitute a community of a certain kind, by creating characters for international lawyers and relations with others. Two aspects of intervention narratives in particular shape the sense of self of international lawyers. First, that self-image is formed in part by the new meanings attributed to professionalism in the post-Cold War era, with lawyers able to imagine themselves as part of a heroic, important and influential network of professionals engaged in solving the major and pressing problems facing the world community. Second, intervention narratives provide idealistic images of international law and international institutions as agents of humanitarianism and democracy, with which international lawyers are able to identify. Part II will explore those two aspects of the self-image of international lawyers encouraged by intervention narratives.

### *A. New world order professionals*

As I have shown, the dominant story told in collective security discourse is that, for a brief moment at the end of the Cold War, it seemed that the dream of a new world order was to be realised. In 1990, the world was offered the second chance this century for rebirth, the first opportunity having arise with the creation of the UN after World War II. Despite the promise demonstrated through the decisive and 'effective' actions of the 'revitalised' Security Council

during the Gulf War, the international community has apparently failed to recognise that potential to date, due to a lack of political will and to a lack of resources provided to the UN and in particular to peacekeeping forces. Accordingly, there will inevitably be continued threats to world security as a result of violent clashes caused by 'ethnic' or even 'tribal' differences, the demise of bipolarism and the lack of power exercisable by the UN. The conclusion reached by many commentators is that the UN must step in earlier to intervene in domestic disputes, actual or anticipated. Preventative diplomacy, along with the creation of a standing UN force, is now the favoured option in policy documents. In portraying the world in those terms, international lawyers also produce a role for themselves in intervention stories. Both the security-based and the humanitarian-based justifications for intervention offer distinct roles for international law, and thus for international lawyers, in the post-Cold War era.<sup>10</sup>

One role imagined for international lawyers in such intervention stories is as pragmatic, problem-solving professionals, striding the corridors of power and present at history-making events. International law is presented as offering a programmatic, functional and yet civilised process by which to manage threats to global peace, security and prosperity.<sup>11</sup> Collective security texts invite lawyers to see themselves as managerialists, acting in a cool, professional and realistic way to advise those with power about the law. From representations of the Gulf War as clean, quick and surgical, through the images of international law engaged in efficiently saving lives and protecting human rights and democracy, to the description of pragmatic international lawyers who are proficient in providing technical, legal advice, international law draws on and reinforces the image of a professional style of heroism for a new

---

<sup>10</sup> The security-based justification for intervention is analysed in detail in Chapter 2. It can be contrasted with the humanitarian justification for intervention, analysed in Chapter 3.

<sup>11</sup> See the references in Chapter 2 above. For a broader example of a description of international law as a problem-solving process, see Rosalyn Higgins, *Problems and Process: International Law and How We Use It*, 1994, vi ('the acceptance of international law as process leads to certain preferred solutions so far as ... great unresolved problems are concerned').

world order.<sup>12</sup> The image of the role required of those engaged in international intervention in the post-Soviet era is well-illustrated by Larry Minear and Philippe Guillot.

The hallmarks of effective interventions are common ... whether the actors are military or humanitarian. Successful efforts are generally carried out by dedicated and energetic professionals who are well-informed about the complexities of a given situation and well-trained in their respective specialities, pragmatic rather than ideological in approach, and able [to] draw on institutional experience to adapt strategies and resources to circumstances.<sup>13</sup>

The image of international lawyers as managerialists is shaped by a new world order professionalism that has emerged in the highly militarised and masculinised political culture of story-telling about international intervention. The promotion of a particular version of international managerialism through global media regimes has been explored by Susan Jeffords in the context of the Gulf War.<sup>14</sup> Jeffords argues that one significant outcome of the Gulf War was the construction of the character of the 'managerial hero', who will 'stand as the US contribution to the New World Order, a character that serves as a quasi-technological imperial offering that reinforces US interests in dominating that "new order"'.<sup>15</sup> The managerial hero is a pragmatic internationalist, whose effectiveness is a result of his professionalism and managerial style. Jeffords argues that both the media reporting of the Gulf War and the popular cultural representations that surrounded it functioned to create and celebrate that character.

---

<sup>12</sup> See the references in Chapters 2 and 3 above.

<sup>13</sup> Larry Minear and Philippe Guillot, *Soldiers to the Rescue: Humanitarian Lessons from Rwanda*, 1996, 161.

<sup>14</sup> Susan Jeffords, 'The Patriot System, or Managerial Heroism' in Amy Kaplan and Donald E Pease (eds), *Cultures of Unites States Imperialism*, 1993, 535.

<sup>15</sup> *Ibid*, 536.

Jeffords gives as one example of the attributes of that character the way in which the media described and applauded George Bush. According to Jeffords, media analysts concur that Bush's performance during the Gulf War redeemed his public image.<sup>16</sup> The particular skills for which Bush was lauded were not, as might have been expected, his military skills, but skills of management. According to *Fortune* magazine, for example: 'The President has focused his enormous energy on the *managerial tasks* proper to his role: setting goals, providing resources, monitoring progress, making strategic decisions, selling the war, and putting out periodic fires'.<sup>17</sup> The role of manager of the Gulf War involved delegation, systems coordination, marketing, goal-setting and efficient decision-making, rather than the more traditional Presidential role of making strategic decisions about targets or troop movements.

Jeffords points to a similar 'heroism of choice' described in 'today's techno-thriller best-sellers'.<sup>18</sup> The heroes of such novels and their counterparts in the new world order are distinguished by 'a professional quality - a "character" - that not only makes them successful but, in each case, resolves violent and desperate international crises'.<sup>19</sup> A key feature of the new world order professional promoted in such American (and thus global) cultural representations is that their success is due not to individual knowledge or skill, but rather to their ability to gather information and to draw upon and manage the skills of a network of other professionals.<sup>20</sup> Jeffords argues that 'world-crisis-resolving decision makers' such as George Bush or his fictional counterparts are 'at the pinnacle of an integrated network of information managers upon whom they depend'.<sup>21</sup> These 'information managers' include 'intelligence agencies, information-gathering computerized systems, large

---

<sup>16</sup> *Ibid*, 544.

<sup>17</sup> *Ibid*, 545.

<sup>18</sup> *Ibid*, 548.

<sup>19</sup> *Ibid*, 549.

<sup>20</sup> *Ibid*, 548.

<sup>21</sup> *Ibid*.



corporations, government administrators, skilled field operators, ... a wide-ranging police/military structure' and, I would add, international lawyers.<sup>22</sup>

One effect of the selling of the managerial hero and the 'success' of the Gulf War has been to validate the operations of that network of information managers, and to make it easier for people in states involved in the Gulf War to imagine themselves as engaged in activities that support managerial heroes.<sup>23</sup> The meaning of work and of professionalism is reconstituted by the notion that managerial heroes depend upon and coordinate a network of other professionals serving the interests of their country and the new world order. Being a professional in such a context means following the lead of the heroic decision-makers, acting as a part of a system, being a 'patriot', doing a job that will contribute to the nation's defence, not asking unnecessary questions, and accepting the message that, in Jeffords' words: 'You will probably never know the real role your work will play in world events, but be assured that it will'.<sup>24</sup> Each professional should be concerned only with being proficient and competent in performing their particular function - be that providing legal advice, making computer chips that are necessary for weapons systems, or dropping napalm.<sup>25</sup> Broader ethical or political questions are, by implication, best left to those who understand the whole system, rather than to those who have a defined but minor role to play in world events. Those cultural representations of professionalism play a part in shaping the subjectivity of all those who identify as part of the 'patriot system'.

International lawyers are increasingly invited to be part of that system of heroic managerialism. During the Gulf War, for example, delegates to the Security Council concerned themselves with the legality of the various

---

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid*, 550.

<sup>24</sup> *Ibid*, 550-1.

<sup>25</sup> For a discussion of the range of workers in militarized countries who are dependent on military spending for their livelihoods, see Cynthia Enloe, *The Morning After: Sexual Politics at the End of the Cold War*, 1993, 38-70.

courses of action open to the Council as part of the process of determining what action should be taken and producing public justifications for such action.<sup>26</sup> While Martti Koskenniemi, a legal adviser to the Finnish delegation, saw in this the potential of international law to become a 'gentle civilizer', international law can equally be seen to have been in service to the more pragmatic, bureaucratic managerialism dominating the Council.<sup>27</sup> As Koskenniemi notes, both the Security Council and the UN more broadly are governed by just such a technocratic ethos.<sup>28</sup> Delegates to the Security Council have traditionally been trained in the 'hard realities of power politics - one does not get into a Council delegation by having served in development assistance'.<sup>29</sup> The UN is characterised by 'an international culture of functional specialization and compartmentalization'.<sup>30</sup> Representations of the legality of the Gulf War and its conduct under the auspices of the UN may have increased its public legitimacy, but it is far from clear that the place of law in decision-making acted to 'civilise' the effects of that action on the Iraqi people, or to import a meaningful 'process of justification' into Security Council practice.<sup>31</sup>

### **B. Agents of humanitarianism**

Intervention texts create a second role for international lawyers as humanitarians, saving victims of corruption and human rights abuses. Those arguing in favour of collective humanitarian intervention present an image of international institutions and international law as agents of democracy and human rights. Such intervention stories speak to those who dream of working for a participatory and just world order, involving those international lawyers

---

<sup>26</sup> Martti Koskenniemi, 'The Place of Law in Collective Security' (1996) 17 *Michigan Journal of International Law* 455, 473-4, 476.

<sup>27</sup> *Ibid.*, 489.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, 490.

<sup>30</sup> *Ibid.*, 479.

<sup>31</sup> *Ibid.*, 478. See also the discussion in Chapter 2 above.

interested in refugee law, human rights law or international humanitarian law. The muscular humanitarian, a 'knight in white armour',<sup>32</sup> is able to champion the causes of democracy and freedom due to the force exercisable by the Security Council and by international financial institutions in defense of those values.

Perhaps the most useful work done on this aspect of the role of international law is that of David Kennedy, who offers a careful reflection upon the self-constitution of international lawyers.<sup>33</sup> Kennedy explores the nature of the way in which the belief in the role of international law is embodied in the everyday life of those who imagine themselves as agents of humanitarianism and human rights. His work reflects upon the role of human rights lawyer and professor that he is invited to create and live inside as he moves through the international legal world of conferences, human rights activism, field work, international travelling, teaching and administration. According to Kennedy, the human rights lawyer embodies the promise of liberal institutionalism - that law exists to bring freedom and order to those in need of these values. Lawyers imagine the law as 'an instrument of social change, a force for freedom', 'something fabulous, abstract, even magical', and 'constitute themselves as activists in its service'.<sup>34</sup> That role involves defining the professional self against emotional, idealistic and irrational political actors,

---

<sup>32</sup> See generally Christopher Bellamy, *Knights in White Armour: The New Art of War and Peace*, 1997.

<sup>33</sup> David Kennedy, 'Spring Break' (1985) 63 *Texas Law Review* 1377; David Kennedy, 'Autumn Weekends: An Essay on Law and Everyday Life' in Austin Sarat and Thomas R Kearns (eds), *Law in Everyday Life*, 1993, 191. The impact of Kennedy's work in that area is greater than would appear from a survey of written responses or references to those articles. While the questions about the self-constitution of international human rights lawyers raised by those two articles on human rights activism have generated much discussion and debate amongst international lawyers informally, little has been written in response to those articles. The few written responses that have appeared tend to treat those articles as examples of narcissism rather than critical self-reflexion. See, for example, Dianne Otto, 'Of Messiahs and a Better World: Critiquing and Embracing New Approaches to International Law', *Supplement to Proceedings of the Fifth Annual Conference of the Australian and New Zealand Society of International Law*, 1997, 1, 7; Deborah Z Cass, 'Navigating the Newstream: Recent Critical Scholarship in International Law' (1996) 65 *Nordic Journal of International Law* 341, 368.

<sup>34</sup> David Kennedy, 'Autumn Weekends', above n33, 195.

against rigid technocrats and against those passive and helpless victims receiving international aid. Kennedy suggests that the identity of international lawyers is premised upon the construction of a distance between the world of activism and the professional world of legality.<sup>35</sup> He uses the example of his attendance at a conference in Portugal on Timorese self-determination to describe the way in which the fantasy of his own role as representative of 'a force for freedom' is dependent upon an opposition between the universalism of international law and the messy particularities of the world of victims and activists.

I think about myself going to Lisbon - I may become magic, an objective expert, a professional agnostic, a temporary interloper, a generalist, a formalist, bringing world public opinion, world public order, the rational and the reasonable into the continuing everyday of Timor activism. As a lawyer, I will be more than my everyday.<sup>36</sup>

The character of the lawyer is constituted through creating a distance, both from the 'victim' of human rights abuses or the client, and from activists whose relationship with those clients or victims is much more engaged. The 'collective fantasy' of the victim shores up the fantasised role of the international lawyer, and creates a shared community that emerges, allegedly as a by-product of 'our earnest work' on behalf of the victims.<sup>37</sup> The lawyer thus arrives in the 'everyday' in a 'messianic or metropolitan posture - a lawyer gone to activism, the general arrived in the specific'.<sup>38</sup> The human rights lawyer is constituted as a leader rather than a comrade, imagined as existing in the public sphere outside of personal networks and relations. The everyday life of international human rights lawyers involves creating communities,

---

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid*, 195.

<sup>37</sup> *Ibid*, 203.

<sup>38</sup> *Ibid*, 197.

characters and relations with others that act to preserve the international lawyer's sense of relevance, power, pragmatism and effectiveness.

The humanitarian international lawyer is also a new world order 'professional' in the sense Jefford describes. The professionalism at work in that area of international law requires human rights lawyers not to rock the boat of internationalism, while ensuring that human rights and democracy are brought to those people in need of saving. Too often lawyers in these fields do not question the extent to which international intervention or the activities of international institutions in fact destroy the values that they are allegedly designed to promote.<sup>39</sup> Missing from such representations of the role played by international lawyers in world affairs is any recognition of the political or dimensions of that role.

### *C. Handmaidens and gentle civilisers*

The picture of international lawyers painted in security texts draws upon broader representations of the role of international lawyers. The narratives that underlie both sets of justifications for international intervention provide international lawyers with a sense of belonging to an elite group - a group that has an influence on history, on powerful institutions and on states.<sup>40</sup> That sense is reinforced by the genre of biographical and autobiographical musings in journals, by analyses that describe the relationship of lawyers to important events and by the nature of the issues dealt with in international law.<sup>41</sup> Many reflections on international legal education and practice convey a sense of a close relationship or proximity to powerful and elite institutions. Such visions

---

<sup>39</sup> See the discussion in Chapter 3 above. See also the critique in Philip Alston, above n43.

<sup>40</sup> For a reflection on the relationship of international lawyers and governments, see Oscar Schachter, 'The Invisible College of International Lawyers' (1977) 72 *Northwestern University Law Review* 217.

<sup>41</sup> See, for example, the comments by Oscar Schachter, Stephen M Schwebel, Thomas M Franck and Sudhir K Chopra, 'In Memoriam: Judge Manfred Lachs (1914-1993)' (1993) 87 *American Journal of International Law* 414; Stephen M Schwebel, 'Hersch Lauterpacht: Fragments for a Portrait' (1997) 2 *European Journal of International Law* 305.

of the role of international lawyers create a strong sense of their authority, status and expertise. Those conceptions of the elite and functional role of international law and international lawyers inform intervention narratives of the post-Cold War era.

Central to the self-image of international lawyers reinforced by intervention narratives is the notion that, while their role involves a close relationship to those with real power, such power is not exercisable by lawyers themselves.<sup>42</sup> Two articles that explore the role of international lawyers in the post-Cold War era provide good examples of the tendency to represent international lawyers as if they do not in fact exercise power. In his article criticising the failure of international lawyers to recognise or challenge the changes posed by economic globalisation, Philip Alston portrays lawyers as 'handmaidens' to those with power.<sup>43</sup> Similarly, Martti Koskenniemi sees international law as a potential 'gentle civiliser' in the field of collective security, involving the 'curious, yet typical, ability to engage the practitioner in political action while seeking distance from anyone's idiosyncratic interests'.<sup>44</sup> In representing lawyers and law in feminine terms, those articles tap into the traditional representation of international lawyers as practitioners or scholars who do not themselves exercise power, but simply act as the facilitators of what people with real power have decided to do. Like a Nancy Reagan or a Dame Pattie Menzies, international lawyers stand beside or behind statesmen and world

---

<sup>42</sup> In writing about the need for international lawyers to support a collective security system that privileges the interests of powerful states, for example, W Michael Reisman, 'The Constitutional Crisis in the United Nations' (1993) 87 *American Journal of International Law* 83, 97, can argue that '[s]ecurity in the final analysis, is not a verbal exercise but the exercise of power in defence of public order. Without power, security is a word. The design of a realistic international security system cannot ignore how power is actually distributed.' See.

<sup>43</sup> Philip Alston, 'The Myopia of the Handmaidens: International Lawyers and Globalization' (1997) 8 *European Journal of International Law* 435. Thanks are due to Hilary Charlesworth for pointing out the feminisation of the role of international lawyers in Alston's use of the image of handmaidens. Although I do not agree with his representation of lawyers as handmaidens to power, I agree strongly with Alston's argument that international lawyers do not have an adequate understanding of or engagement with significant changes brought about by the ending of the Cold War and the consequent speeding up and attendant normalisation of economic restructuring.

<sup>44</sup> Martti Koskenniemi, above n26, 489-490.

leaders, from time to time whispering advice into their ears about legal constraints on action, but not in fact exercising power themselves. Such glossy images of international lawyers as humane, professional, elite advisers to real decision-makers are seductive and dangerous, promising access to power while denying responsibility for its exercise.

### III. THE DISCIPLINING OF INTERNATIONAL LAWYERS

Lawyers' perception of their role is produced or shaped both through the disciplinary processes involved in becoming a professional, and through subject-forming practices or 'technologies of the self' that take place outside disciplinary fora. As the work of feminist theorist Terry Threadgold has shown, the process of being trained in a discipline often involves coming to believe, reproduce, guard and pass on the narratives at the heart of that discipline.<sup>45</sup> Central to that process of becoming disciplined as a lawyer is the role played by stories or narratives.

To be disciplined ... is to learn to embody, to perform, and to enact on a daily basis, in the workplace, as everyday pedagogy, not only the academic genres that constitute the theories and practices of the discipline, but also the genres of social relations and embodied subjectivity that construct the discipline as "a body" of knowledge .... To succeed in the discipline means to be able to perform its genres, and to speak and write and embody its favourite discourses, myths, and narratives.<sup>46</sup>

Threadgold argues that as scholars and teachers many of us 'find ourselves reproducing the languages and practices' that characterised those who taught us, and that 'we do this because we have been "disciplined" (trained within a

---

<sup>45</sup> Terry Threadgold, 'Everyday Life in the Academy: Postmodernist Feminisms, Generic Seductions, Rewriting and Being Heard' in Carmen Luke (ed), *Feminisms and Pedagogies of Everyday Life*, 1996, 280, at 281.

discipline and made subject to it) by the technologies of a profession (its languages and practices, its rules of inclusion and exclusion, its prevailing orders of social relations) which have produced us as particular kinds of people'.<sup>47</sup>

The question of how academics and others are disciplined has become of interest to feminists and others investigating the conditions of their own authority and the lack of disciplinary authority of disqualified groups.<sup>48</sup> For women and others who suffer an epistemological disqualification, becoming a lawyer, an academic, an expert, an internationalist, or all at once, means becoming at the same time authorised and unauthorised, a subject with a stake in power and an object of power, oppressor and oppressed. While the same may be true even of those who seem to suffer from no such epistemological disadvantage, the nature of disciplining is particularly complicated and at times painful to explore for those of us who negotiate with authority in such a way.<sup>49</sup>

The ways in which lawyers are disciplined is rarely explored, largely because the protocols of scholarly writing in disciplines like law have for a long time required that the 'author' be absent from the text.<sup>50</sup> Areas of knowledge such as law, which claim to be objective and technical, require that the embodied nature of the human being creating the texts in question be forgotten. An analysis of the ways in which lawyers are produced is, therefore, seen as irrelevant to the central debates of the discipline. The process of disciplining

---

<sup>46</sup> *Ibid.*

<sup>47</sup> Terry Threadgold, 'Critical Theory, Feminisms, The Judiciary and Rape' (1993) 1 *Australian Feminist Law Journal* 7.

<sup>48</sup> Judith E Grbich, 'The Body in Legal Theory' in Martha Albertson Fineman and Nancy Sweet Thomadsen (eds), *At the Boundaries of Law: Feminism and Legal Theory*, 1991, 61, at 69.

<sup>49</sup> Examples of those who have explored these issues with reference to their own experience include Patricia J Williams, *The Alchemy of Race and Rights*, 1993; Toril Moi, *Simone de Beauvoir: The making of an intellectual woman*, 1994; Jane Gallop, *Thinking Through the Body*, 1988; David Halperin, above n4.

<sup>50</sup> Judith E Grbich, above n48, 61.



becomes relevant, however, if we want to analyse the subject position of rescuer, or humanitarian, or professional, offered to international lawyers, and to consider why such subject positions are appealing.

In order to analyse how professionals have been made subject to the disciplines that regulate their actions, it is necessary to focus not only on the way in which they are disciplined or produced as professionals or experts, but also the ways in which they are produced through other subject-forming practices, such as family life, friendships or watching media stories about crises in the Third World.

We have all been produced within the disciplines, and within different vocational practices, not to speak of our differently embodied pasts in specific regimes of family and school, regimes that intersect with sexual, gendered, class-based and colour-based differences and countless other kinds of interpersonal relationships which quite literally have been "technologies" for making difference, different selves, and different sorts of reality.<sup>51</sup>

The ideologies of legal professionalism do not encourage any reflection upon the extra-disciplinary processes by which lawyers are formed; instead lawyers understand themselves as acting objectively in their professional roles, outside the realms of the everyday. Nevertheless, like all other human beings, lawyers are produced not only through professional and disciplinary training, but also through 'pedagogies of everyday life'.<sup>52</sup> The role international lawyers imagine for themselves as global saviours and problem-solvers in the interventionist debates is unimaginable outside a world defined and ordered according to categories of gender, class, race and sexuality. Those roles only make sense if the assumptions learned as part of being middle-class colonising men and women, for example, are taken for granted. In particular, television news,

---

<sup>51</sup> *Ibid*, 9.

<sup>52</sup> Carmen Luke (ed), above n45.

popular novels and Hollywood films are saturated with narratives of internationalism and particular images of what it is to be a professional within the new world order. Those US-dominated cultural representations are part of the process of producing the subjects of law.

The subjectivity of international lawyers in states like Australia or the US is also shaped by cultures of imperialism. Those who imagine themselves as inhabiting the role of representative of the 'West' or the 'international community' in bringing human rights and democracy to a local in need of saving, are as much a product of the history of colonialism as they are a product of legal disciplining. The promises of international lawyers in the post-Soviet era are the same promises as those made by benevolent colonial missionaries and government functionaries during the era of classical imperialism. The constitution of a professional self as neutral, as a leader who represents nothing but freedom and order, is an understanding of the self that is necessary for those who cannot afford to think about the history or consequences of their actions.

The following sections explore the ways in which the subjectivity of sense of self of international lawyers is shaped through legal education, through engagement with popular representations of international intervention and through cultures of imperialism.

#### ***A. Legal education as a technology of the self***

Perhaps most obviously, the self-image of international lawyers is produced in and by the legal education process. Legal education is a site where certain kinds of selves are produced, and international law has a unique place within that process. Traditional forms of Australian, English and American legal education teach law students that law is a body of knowledge and rules that is separate and distinct from politics or morality. Such 'positivist' approaches to law have been widely criticised, indeed some argue discredited, yet the notion

that the law exists as a discrete phenomenon that can be separated from policy considerations or context is still the founding assumption of much legal education.<sup>53</sup> Conservative teachers of traditional law subjects premise their teaching upon the assumption that 'law' can be understood as a self-referential body of rules, distinct from 'policy' considerations, a term used by lawyers to describe that which is not 'law'.<sup>54</sup> Even progressive subjects focus on 'law' in 'context', as if the two existed as discreet spheres of action.<sup>55</sup> The effect of such teaching practices is to institutionalise a lack of ethical sense amongst lawyers. Positivism leads to a pedagogy of irresponsibility, in which one's own professional behaviour is in no way implicated in broader social questions.

Those processes are central to the sense of self of international lawyers. Although international law is traditionally understood as less easily separable from 'politics',<sup>56</sup> nevertheless international lawyers do not understand their

---

<sup>53</sup> Leading proponents of 'positivism' such as HLA Hart have been influential in shaping generations of students of law. For an exposition of Hart's view of positivism, see the essays in H L A Hart, *Essays in Jurisprudence and Philosophy*, 1983. Despite its continued place in legal education, positivism has been the subject of sustained critique over decades by scholars associated with traditions such as Natural Law or Legal Realism, arguing that the distinction between law, morality and politics is not sustainable. For the suggestion that legal positivism is 'on the decline as an intellectually respectable approach to law and adjudication', see Tom D Campbell, 'Democracy, Human Rights, and Positive Law' (1994) 16 *Sydney Law Review* 195, 196.

<sup>54</sup> An analysis of the political nature of that drawing of boundaries between the inside and outside of law is made well by Margaret Davies, *Asking the Law Question*, 1994.

<sup>55</sup> See, for example, Stephen Bottomley, Neil Gunningham and Stephen Parker, *Law in Context*, Revised Edition, 1994. That book is based upon a first-year course taught at the Australian National University, which introduces the study of 'law in its political, social and economic context' (Foreword, iii). For particularly insightful critiques of such approaches to law, see Ian Duncanson, 'Legal Education and the Possibility of Critique: An Australian Perspective' (1993) 8 *Canadian Journal of Law and Society* 59, 69-70; Andrea Rhodes-Little, 'Review Essay: Who Do We Think "We" Are?' (1997) 8 *Australian Feminist Law Journal* 149, 149-50.

<sup>56</sup> See, for example, Oscar Schachter, above n40, 218, 220, 224. Schachter, like most international lawyers, accepts that international law is not free from politics, understood as the politics of states, especially in areas like peace and security. However, Schachter believes in the capacity of lawyers to be objective and independent: while even 'independent scholars will often appear to be reaching their conclusions on the basis of their preferences for a particular outcome rather than by the objective application of accepted principles', somehow the 'impression of relativism can be counteracted' through 'reasoned application of competing principles, including those expressing fundamental values, validated by evidence of practice and consensus in international society' (*ibid*, 220). Schachter also maintains a distinction

own practices as political, in the sense of involving an exercise of power. As a result, while the impact of politics on the formation of law cannot be ignored by international lawyers, who more readily admit that international law serves the interests of the statist status quo and the superpowers who dominate it, international lawyers can ignore the political nature of their own work practices. It is very rare for international lawyers to investigate the ways in which their reproduction or retelling of stories about the world contributes to making that representation of the world seem real or natural. Those who do undertake such reflection are treated as apolitical and self-indulgent,<sup>57</sup> or as engaged in writing that exhibits 'albeit consciously, all the worst traits of me-generation pop psychology narration'.<sup>58</sup> There is real resistance to considering the ways in which the narratives that found the profession serve to produce exotic identities of 'others', and to secure the identities of 'selves'. Dianne Otto, for example, criticises David Kennedy's lack of political engagement, charging that his work reveals no commitment 'to fostering change in the local, everyday lives of people'.<sup>59</sup> In such criticism, politics is understood only in bureaucratic and legal terms. Missing is any sense that there is a pressing need to foster change in the local, everyday lives of lawyers, law students and law teachers, rather than in the lives of exoticised others about whom international lawyers produce knowledge.

Rather than explore the centrality of international law to past and present processes of imperialism, exploitation, domination, recolonisation and elite identity formation, international law students and teachers idealise international law as a subject devoted to world order, humanitarianism, human dignity, peace and security.<sup>60</sup> International law's favourite narratives are

---

\*  
between law and 'matters of a non-legal character - political, economic, technical and so on' (*ibid*, 224).

<sup>57</sup> Dianne Otto, above n33, 7.

<sup>58</sup> Deborah Z Cass, above n33, 368.

<sup>59</sup> Dianne Otto, above n33, 6.

<sup>60</sup> Surprisingly little is written about the role of international law in legitimising and enabling imperialism and recolonization. For examples of analyses that do take that approach to international law, see James Thuo Gathii, 'International Law and Eurocentricity: A Review

premised upon an image of the international community as the heroic agent of progress, security, order, human rights and democracy.<sup>61</sup> As those who succeed in the discipline of international law are called upon to speak, write, perform and embody such heroic narratives, their subjectivity is shaped by that process. International lawyers come to understand themselves as the embodiment of heroic internationalism, and of the values and myths that underlie international law. The role imagined for international law and international lawyers is premised upon an idealism about the capacity to do good through international law, a theme which is present in much writing about the role of international law.<sup>62</sup> Working as an international lawyer, perhaps for the UN, offers the opportunity for public service, humanitarianism or involvement in issues of historical significance. Matthew Alder, for example, reflects:

I took my first international law class as an undergraduate in 1979, at the last full blooming of the Cold War, just before the Soviet invasion of Afghanistan. My notions of precisely what international law was were not dissimilar from those of the students I now interview; I had some idealistic idea that international law would both prescribe a moral set of rules for the World to abide by, and, not incidentally, let me travel often. I was half right (on the travel side).<sup>63</sup>

The nature of the idealism described by international lawyers involves the desire to be good, to be active and to be leaders. This is the idealism of people

---

Essay' (1998) 9 *European Journal of International Law* 184; Antony Anghie, 'Francisco de Vitoria and the Colonial Origins of International Law' (1996) 5 *Social and Legal Studies* 321; Antony Anghie, "'The Heart of My Home": Colonialism, Environmental Damage, and the Nauru Case' (1993) 34 *Harvard International Law Journal* 445; Chakravarthi Raghavan, *Recolonization: GATT, the Uruguay Round and the Third World*, 1990.

<sup>61</sup> See further the discussion in Chapter 4 above.

<sup>62</sup> The idealistic image of international law matches to an extent the utopian approach to the utility of international law identified by Martti Koskenniemi. See Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, 1989.

<sup>63</sup> Matthew H Adler, 'International Law's Contribution to Security in the Post-Cold War Era: From Functional to Political and Beyond' (1996) 19 *Fordham International Law Journal* 1955.

who imagine themselves as performing good deeds to save others, in the public sphere of institutions and NGOs, in jobs with some degree of visibility and status, as leaders or professionals rather than as activists.<sup>64</sup> It is perhaps that process of romanticisation of the place of international law which creates such resistance to investigating its role in reproducing dispossession or exploitation, and to consideration of the power relations responsible for the creation of the status and privilege of international lawyers. Hilary Charlesworth argues that the image that many international lawyers hold of themselves as humane may make it difficult for them to accept criticisms of the effects or history of international law.<sup>65</sup>

International lawyers often see themselves as outsiders, crusaders of principle, of unfashionable virtue, and they have generally found it hard to accept that their tools and concepts may be open to challenge on the basis that they create another class of outsiders ....<sup>66</sup>

Legal education also systematically produces an identification with a particular version of masculinity. While such a criticism can be made of many forms of professional training, where young male and female students are convinced of the utility or desirability of identifying with or as senior men, it is particularly true of law.<sup>67</sup> The 'subject' of law is an aggressive, capitalist, heterosexual, white man.<sup>68</sup> Law not only serves the interests of that embodied subject, but invites identification with that subject position. Lawyers read and

---

<sup>64</sup> The self-constitution of international lawyers as something other than activists is explored in David Kennedy, above n33, 197 ('For the activists, I might be law to their politics ... I constituted the group against my identity as a lawyer, a generalist, an internationalist, above all, someone who legitimately didn't know much about what was to go on').

<sup>65</sup> Hilary Charlesworth, 'Feminist Critiques of International Law and Their Critics' (1994-5) *Third World Legal Studies* 1.

<sup>66</sup> *Ibid.*

<sup>67</sup> Margaret Thornton, 'Discord in the Legal Academy: The Case of the Feminist Scholar' (1994) 3 *Australian Feminist Law Journal* 53.

<sup>68</sup> *Ibid.*, 55 (defining 'benchmark men' in anti-discrimination law as 'Anglo-Celtic, heterosexual, able-bodied, middle class, and who tend to espouse middle-of-the-road political and religious beliefs'); Ngaire Naffine and Rosemary J Owens (eds), *Sexing the Subject of Law*, 1997.

write stories, indeed live and embody stories, that constitute that subject as normal.<sup>69</sup> Behaviours attributed to that subject are imagined as 'human nature'.<sup>70</sup>

The discrediting of the voices or position of those other than powerful or elite groups is shaped through a process of legal education in which 'hard' or compulsory subjects are concerned with those facets of law that further the aspirations of economic man, such as contract law, criminal law, corporate law or property law.<sup>71</sup> Such subjects are treated within law schools as 'rigorous' and 'practical', and as based upon a form of reasoning or system of self-referential rules that is peculiar to law.<sup>72</sup> The study of areas of law that are more clearly concerned with the interests of less privileged groups, such as feminist legal theory, welfare law or indigenous peoples and the law, is dismissed as a 'soft' option.<sup>73</sup> The policing of hard and soft options operates to produce a privileged form of subjectivity, that of the rational, property-owning, contracting, heterosexual, economic man, and to invite identification with that subject. Against that subject position are posed those who are not constructed as capable of producing rational knowledge about the law: women, aborigines, working class people. Students are taught the practice of 'classifying law in terms which are professed to have universal application, and then again in terms of people who are different from the universal subject'.<sup>74</sup> The claim of lawyers to have 'unique knowledge about the nature and meaning' of law means that law students are coerced into 'conformity and

---

<sup>69</sup> For arguments that the bounded, impermeable, unified, Western sovereign state is represented as the masculine subject of international law, while the sovereign body of less powerful states is represented as permeable and thus female, see Anne Orford, 'The Uses of Sovereignty in the New Imperial Order' (1996) 6 *Australian Feminist Law Journal* 63, 75-81. See also Hilary Charlesworth, 'The Sex of the State in International Law' in Ngaire Naffine and Rosemary J Owens (eds), *ibid*, 251.

<sup>70</sup> Andrea Rhodes-Little, above n55.

<sup>71</sup> Margaret Thornton, 'Portia Lost in the Groves of Academe Wondering What to Do About Legal Education' (1991) 9 *Law in Context* 12.

<sup>72</sup> Ian Duncanson, 'Broadening the Discipline of Law' (1994) 19 *Melbourne University Law Review* 1075, 1081.

<sup>73</sup> *Ibid*.

<sup>74</sup> *Ibid*.

hierarchy', while other forms of knowledge about law 'originating elsewhere in the social order' are made to seem foolish.<sup>75</sup> Law curricula leave little space for subjects which question the way in which law operates to produce and privilege particular subjectivities.

The possibility that viewed from a position other than that of social privilege the authoritative manipulation of doctrines may appear not to be part of the working through of a special form of rationality, but instead to be one more instance of oppression, is not given much space in the hard, compulsory, areas of legal education.<sup>76</sup>

Indeed, the space that did exist for such subjects is rapidly closing, as law schools rationalise their curricula in order to attract more students and funding from law firms.<sup>77</sup> Solicitors, barristers and judges police law studies, requiring that law schools 'produce competent technicians' by focusing on teaching legal doctrine or skills relevant to a particular understanding of the practice of law.<sup>78</sup> Any concern with issues such as poverty or suffering is thus systematically challenged.<sup>79</sup> In such a context, 'the reality made by law and lawyers can thus begin to look even more real, especially to the people

---

<sup>75</sup> *Ibid.* Duncanson compares the process to 'the Anglophone determination to shout at "foreigners" in English instead of learning their language. It is an aggressive and authoritarian practice, serving to accomplish, through the silencing of the other, the hegemonic position of the speaker'.

<sup>76</sup> *Ibid.*, 1082.

<sup>77</sup> Andrea Rhodes-Little, above n55, 151.

<sup>78</sup> Ian Duncanson, above n72, 1078. Duncanson notes that, while 'much is made of the need to produce competent technicians ... this may be a coded way of speaking of people with the correct attitude toward official explanations of the world. Non-academic lawyers often want both to scrutinise the content of academic law courses in the name of relevance to their own professional preoccupations and simultaneously to tell their new recruits to forget their university training because it is irrelevant.' See also Ian Duncanson, 'Legal Education and the Possibility of Critique', above n55, 80 (arguing that the bureaucratic managerialism and anti-intellectualism dominating higher education policy in Australia results in 'a publicly reiterated philosophy of education that disguises a mistrust of nonconformity as a concern for "relevance"').

<sup>79</sup> *Ibid.*, 1081.



making it'.<sup>80</sup> Such processes shape the subjectivity and identification of lawyers, including those who become international lawyers.

In this sense, legal education is political, an exercise or reproduction of power relations.<sup>81</sup> Law students quickly come to believe that the world is naturally ordered in a particular way.<sup>82</sup> Of course, legal training is not the only, or even necessarily the most important, place where people are invited to identify with a particular white, masculine subject position. Nevertheless, the implications of that process are important for critical legal practice, including international legal practice. Identification with other positions created in law's narratives, such as workers, criminals, peasants, indigenous peoples, terrorists or resistance fighters, is rigidly policed and framed.

The tension between 'hard' and 'soft' subjects that structures legal education serves to give international law a romanticised place within the legal curricula. By studying international law, students imagine the possibility of being both powerful and humanitarian, pragmatic and idealistic, hard and soft. In an account of the dreams of students who come to study international law at Harvard Law School, David Kennedy captures the nature of the fantasy that international law can reconcile the twinned desire for status and public service.<sup>83</sup> At Harvard, he suggests, 'young lawyers from peripheral capitals' seeking 'to make a bid for the cosmopolis' meet 'hundreds of middle-class Americans in the process of professionalization, struggling with hopes for fulfilment, class advancement, assimilation to the establishment, practical skills, and savvy reflections'.<sup>84</sup> International law offers these students the hope that they might 'transcend the details of national practice for the broad

---

<sup>80</sup> Andrea Rhodes-Little, above n55, 151.

<sup>81</sup> Duncan Kennedy, 'Legal Education and the Reproduction of Hierarchy' (1982) 32 *Journal of Legal Education* 591.

<sup>82</sup> Discussed in Ian Duncanson, above n72; Andrea Rhodes-Little, above n55. See my analysis of the constitution of the 'real world' in international collective security texts in Chapter 2, above.

<sup>83</sup> David Kennedy, 'Autumn Weekends', above n33.

<sup>84</sup> *Ibid*, 230.

generalities and courtesies of international affairs; their own capitals too provincial, the role of the metropolitan civil servant too banal'.<sup>85</sup> International law becomes 'an arena of desire and fantasy'.<sup>86</sup> Kennedy's role as an American international law lecturer in this 'trajectory of self-development' is 'to open a cosmopolitan everyday in what might otherwise be a tiresome imperialism'.<sup>87</sup>

Finally, students of international law are disciplined by the sense that, as international lawyers, they will be involved in an 'invisible college' of lawyers that 'extends into the sphere of government'.<sup>88</sup> The role of both government and non-government international lawyers is to gather and analyse information about international needs and pressures, construct new normative and regulatory schemes to respond to such needs and to participate in legislative and judicial law-making.<sup>89</sup> The fact that the 'teachings of the most highly qualified publicists' of international law are listed in Article 38 of the Statute of the International Court of Justice as 'subsidiary means for determination of the rules of law',<sup>90</sup> has meant that academic international lawyers have seen their role as producing books that can be used as the basis for judicial decisions and state practice.<sup>91</sup> Little space is left for teaching and writing about international law in ways that ask different questions about law and international relations as objects of knowledge.

---

<sup>85</sup> *Ibid*, 231.

<sup>86</sup> *Ibid*.

<sup>87</sup> *Ibid*, 232.

<sup>88</sup> Oscar Schachter, above n40.

<sup>89</sup> *Ibid*, 224-5.

<sup>90</sup> Article 38(1), Statute of the International Court of Justice, concluded at San Francisco, 26 June 1945, entered into force, 24 October 1945, 1978 *YBUN* 1052.

<sup>91</sup> Anthony Carty argues that Article 38 and what it represents has influenced the lack of theoretical debate in international law in England. See Anthony Carty, 'Why Theory? - The Implications for International Law Teaching' in Philip Allott, Anthony Carty, Martti Koskenniemi and Colin Warbrick, *Theory and International Law: An Introduction*, 1991, 75.

## ***B. Imperial pleasures***

The stories told and read by international lawyers about the collective security crisis facing 'the world' today draw upon the pleasures offered both by broader cultural representations, and by other, older and terribly familiar stories. Newspaper reports, television news and films are sites of the production of knowledge about the conditions which make intervention desirable, where dominant stories about cultural identity and myths about heroic destiny are formed.<sup>92</sup> International legal texts mirror or reproduce stories told in other cultural sites, and are rich in metaphoric language which leads the reader to make links between global security and other powerful stories. While representations in novels, plays, operas, academic scholarship and newspapers have always been vital to the business of empire, the importance of such representations today is magnified by the dominance of television and newspapers as the source of 'information' about the world.<sup>93</sup>

Today, as in the late nineteenth century, imperial subjects experience many of the pleasures of imperialism, perhaps the most insidious being 'a self-forgetting delight in the use of power - the power to observe, rule, hold, and profit from distant territories and people'.<sup>94</sup> As with classical imperialist culture, arguments in favour of intervention are combined with an 'intellectual blotting out of what "we" do in the process' of intervening in the interests of humanity.<sup>95</sup> There remains little analysis in international legal texts, for example, of the violence rained on the Iraqi people by forces authorised by the Security Council during the Gulf war, little analysis of rapes by peacekeepers even in official reports to

---

<sup>92</sup> Susan Jeffords, above n14, 535; Lynda Boose, 'Techno-Muscularity and the "Boy Eternal": From the Quagmire to the Gulf' in Amy Kaplan and Donald E Pease (eds), above n14, 581; Patricia J Williams, *The Rooster's Egg: On the Persistence of Prejudice*, 1995.

<sup>93</sup> On the relationship between imperialism and cultural practices, see generally Edward W Said, *Culture and Imperialism*, 1993; Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination*, 1992; Kristin Ross, *Fast Cars, Clean Bodies: Decolonization and the Reordering of French Culture*, 1996; Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest*, 1995; Amy Kaplan and Donald E Pease (eds), above n14.

<sup>94</sup> Edward W Said, above n93, 158.

<sup>95</sup> *Ibid*, 348.

the Security Council by the Secretary General,<sup>96</sup> and little attention to the effect free trade agreements have on workers.

Imperialist culture invited Europeans to share in stories about their redemption and salvation through the civilising mission. Non-Europeans were represented as unable to govern themselves. As Edward Said notes, 'the lasting social meaning imparted to the fact of color (and hence of race) by philosophers like John Locke and David Hume, made it axiomatic by the middle of the nineteenth century that Europeans ought always to rule non-Europeans'.<sup>97</sup> Imperialism and colonialism were impelled by the ideology that 'certain territories and people *require* and beseech domination'.<sup>98</sup> The production of knowledge about the inability of the 'other' to govern themselves 'allowed decent men and women to accept the notion that distant territories and their native peoples *should* be subjugated', for their own good.<sup>99</sup> The acceptance of 'the *idea of having an empire*' made empire possible.<sup>100</sup> Despite the focus on salvation and redemption, the 'civilising mission' was never in fact conducted benevolently, but 'was always accompanied by domination'.<sup>101</sup>

Justifications for military and monetary intervention draw strongly upon these stories of those who cannot govern themselves, who beseech dominance.<sup>102</sup> For the dominant groups whose opinions influence domestic and foreign policy, such representations shape the sense of their role, both domestically and internationally, as legitimate and benevolent. Such benevolence is certainly far preferable to the ruthless policies of economic rationalism sponsored by international financial institutions, yet, 'the rhetoric of power all too easily

---

<sup>96</sup> See Chapter 2 above.

<sup>97</sup> Edward W Said, *The Question of Palestine*, 1992, 75.

<sup>98</sup> Edward W Said, above n93, 8. See also Patricia J Williams, above n92; Toni Morrison, above n93; Kristin Ross, above n93.

<sup>99</sup> Edward W Said, above n93, 10.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*, 158-9.

<sup>102</sup> Patricia J Williams, above n92, 204-8.

produces an illusion of benevolence when deployed in an imperial setting.<sup>103</sup> For those of us who live in European settler cultures or in metropolitan imperial centres, imperialist pleasures and illusions are dangerously ready to hand.

The sense of freedom and entitlement to intervene is based on, and depends upon, structures of coercion and colonialism. Those structures are generally rendered invisible in the intervention debate. By arguing that any lawyers or theorists who question intervention are 'cultural relativists' whose position 'rewards tyrants' and 'betrays the very purposes of the international order',<sup>104</sup> attention is systematically diverted from those intervening (except to the extent that their defenders argue that we should focus on their *intentions*, which are good, rather than the consequences of their acts, which are far less important than their feelings). The gaze is always, in other words, upon those who need saving. If we begin to focus instead on the saviours, rather than those who supposedly need saving, we can see that the desires and experiences of the saviours are structured by colonial power relations. The desire to be charitable in such a context is one that shores up power relations.

#### IV. ANXIOUS IDENTITIES AND THE USES OF INTERVENTION

Part III looked at the ways in which international lawyers come to embody internationalism. In this Part, I consider the effect that embodying and performing international law's foundational narratives has on international lawyers. What happens to those lawyers once they have learned, as Threadgold puts it, 'to embody, to perform, and to enact on a daily basis' the discourses, myths and narratives of intervention?<sup>105</sup> What uses does the narrative of intervention have for international lawyers, as the people who

---

<sup>103</sup> Edward W Said, above n93, xix.

<sup>104</sup> Fernando R Tesón, 'Collective Humanitarian Intervention' (1996) 17 *Michigan Journal of International Law* 323, 342.

<sup>105</sup> Terry Threadgold, above n45.

come to embody it so intimately? Images of crisis and stories about redemption provide ways to resolve other kinds of crises that may exist for the people writing these fictions. In particular, the telling of such stories of crisis and redemption serves to resolve certain kinds of anxieties facing those writing the stories.

### *A. Disciplinary threats*

Intervention stories preserve a particular self-image for international lawyers in the face of wide-ranging attacks on Western elite identity. As I have argued throughout this chapter, law's stories about intervention create a role for international lawyers, as pragmatic, apolitical, civilised, humane and cosmopolitan professionals, whose work is central to the march of human history and to achieving the goals of dignity, world peace, human rights, development, universal democracy and civilisation. The assumption that such a role is available for Western representatives of the international community is threatened on many fronts. The most immediate are threats to the old order of international law, posed by those who seek to critique law's assumptions and to take it in new directions. Such criticisms come from those who have been the objects of imperialism and of military interventions, and increasingly from scholars within the discipline, and point to the central role international law played in imperialism and now recolonisation, the failure of international lawyers to take account of that violent history, and the raced and gendered assumptions upon which international law is based.

Intervention stories serve to allay anxieties produced by such challenges to the traditional priorities and ordering practices of international law. Those stories reassure lawyers that there is no time to waste on dealing with theoretical irrelevancies, when their profession is engaged in more important life and death matters. The demonstration of the centrality of the discipline in solving major crises serves to delegitimise attempts to question disciplinary assumptions and priorities. Thus Fernando Tesón can argue that the

'formalism' of those who question the ethics of collective military intervention 'betrays the purposes of the very international order that they claim to protect',<sup>106</sup> while Thomas Weiss can respond to critics of the selectivity of UN intervention by asking: 'in light of genocide, misery, and massive human rights abuses in war zones around the world, should Pontius Pilate be the model for both the American and the international response?'<sup>107</sup> Such arguments reassure writers and readers that the old mission of international law is still central to achieving a shared global future. Their rhetoric renders it unnecessary to respond to the arguments of feminists, Third World scholars, postcolonial theorists and critical theorists, whose work is largely ignored in the flood of articles celebrating democratisation, the end of history, the triumph of liberal institutionalism and the place of law in solving security and humanitarian crises.

Challenges to the disciplinary authority of international law are part of a broader challenge to the claims of modernist knowledge. Where such knowledge offered 'a sense of certainty as to one's place in a symbolic network',<sup>108</sup> those challenges can be experienced as destabilising. The continued need to announce the superiority of 'Western', and now 'international', values of human rights and freedom can also be read as a response to attacks on the effects of 'Western' or 'international' interventions in the name of such values. These attacks have come not only from those in former colonies who now experience a repeat of the colonial desire to secure and protect the property of foreigners in those states, but from those subjects of industrialised states who have not benefited from industrialisation.<sup>109</sup> The sense of threat such challenges

---

<sup>106</sup> Fernando R Tesón, above n104.

<sup>107</sup> Thomas G Weiss, 'On the Brink of a New Era? Humanitarian Interventions, 1994-94' in Donald C F Daniel and Bradd C Hayes (eds), *Beyond Traditional Peacekeeping*, 1995, 3, at 15.

<sup>108</sup> Eric L Santner, *My Own Private Germany: Daniel Paul Schreber's Secret History of Modernity*, 1996, 8.

<sup>109</sup> Many people are sensitive to attempts to engage in recolonisation due to their 'memory of past imperialisms'. As Edward W Said, above n93, 348, argues, '[t]here are far too many politicized people on earth today for any nation readily to accept the finality of America's historical mission to lead the world'.

pose to the identities of international lawyers is expressed in articles about feminist and progressive approaches to law, and resolved, *inter alia*, in intervention stories. Where once international lawyers were a self-referential elite who could be counted upon to hold the same values and have attended the same schools, the post-Cold War international lawyer can not be counted upon to see himself or herself as engaged in the project of preserving security and world order, while paternalistically deciding what is in the interests of the vulnerable.

The marginalisation of critical approaches to international law, and thus the avoidance of any ethical reflection on law's role in facilitating imperialism and exploitation, is evident in those legal texts which engage with feminist and progressive scholars. Such texts give a useful insight into the threat experienced by those who perceive themselves as representing the old school of international law when faced with scholars asking a different set of questions about internationalism. Masculinist responses to feminist work on international law seek to control, characterise and order particular feminist approaches, and to reassert the orderliness and priorities of international law.<sup>110</sup> Anthony D'Amato, for example, responds to the threat posed by feminist international legal theory in a review of a book of essays entitled *Human Rights of Women: National and International Perspectives*.<sup>111</sup> In his review, D'Amato reasserts the order and structure of international law, thus reproducing a vision of an ideal law with which he identifies. Rather than engaging with the ideas and arguments of feminists, the role of law is to 'compensate women' for their weakness and vulnerability, particularly during child-bearing years, thus contributing to the creation of an 'advanced civilisation'.<sup>112</sup> D'Amato argues that such a civilisation is marked by its

---

<sup>110</sup> Hilary Charlesworth, 'Cries and Whispers: Responses to Feminist Scholarship in International Law' (1996) 65 *Nordic Journal of International Law* 557.

<sup>111</sup> Anthony D'Amato, 'Book Review: Rebecca Cook (ed), *Human Rights of Women: National and International Perspectives*' (1995) 89 *American Journal of International Law* 840.

<sup>112</sup> *Ibid*, 840-1. According to D'Amato, it is 'a fact of nature that women are on the average physically weaker than men. Moreover, they pay the physical price for perpetuating the



distance from one in which we behave 'like animals'.<sup>113</sup> In the animal world, according to D'Amato, bullying behaviour is the norm: 'on the whole, animals decide questions on the of life and death on the basis of physical power and brute force', and 'if an animal is weak, lame or infirm, other animals of its own species may kill or abandon it'.<sup>114</sup> Having reassured himself that 'on average', women are in fact in this weaker position and thus likely to be murdered or abandoned, D'Amato argues that international law should aim to bring all cultures close to those of 'highly industrialized countries', where in recent times women have made great progress in resisting institutionalised bullying.<sup>115</sup> As women are weak and likely targets for violence, the role of international law and international lawyers is to protect them.

According to D'Amato, feminists should commit themselves to this task, rather than seeking to dismantle the system set up to save women from the laws of the jungle. He is particularly scathing of those feminist scholars who go beyond a traditional critique of the content of international law by 'accusing international law itself for having an andocentric nature that privileges a male view of world society'.<sup>116</sup> He challenges that approach on the grounds that it is like 'criticizing a house for having oppressively straight walls that meet each other at 90-degree angles and unnaturally level floors that do not tilt, and then blaming the end product on the fact that the T square was set at 90 degrees instead of 80, the saw was *not* warped, and the nails were excessively straight'.<sup>117</sup> The comparison of international law to an orderly, systematic and efficient 'end product' of a building project reassures

---

human species; during their child-bearing and child-nurturing years they are especially weak and vulnerable'.

<sup>113</sup> *Ibid*, 840. D'Amato appears not to recognize that 'we' are animals.

<sup>114</sup> *Ibid*. For an excellent analysis of the way in which such stories about animal and nature are produced in order to legitimate certain social hierarchies or methods of ordering, see Donna Haraway, *Primate Visions: Gender, Race and Nature in the World of Modern Science*, 1989.

<sup>115</sup> As Hilary Charlesworth, above n110, 563, argues, by drawing a distinction between 'highly industrialized' and 'patriarchal' states, D'Amato attempts 'to quarantine more generally the problem of women's oppression to a few hot countries'.

<sup>116</sup> Anthony D'Amato, above n111, 843.

D'Amato and his audience that feminist criticisms are no threat to international law's rationality, civilising mission and contribution to world order. If feminists want to 'use law to transform an oppressive society', they would be better off 'taking law as it is, with all its rationality, objectivity and abstraction'.

If you want an unusual house and are dissatisfied with existing models, you are better off using traditional tools rather than eccentric ones, because the latter are less likely to produce the house that you want - the resulting house may well be skewed, but in a quite different way from what you had in mind.<sup>118</sup>

Unruly lawyers who seek to question or challenge the role of international law are constituted as marginal in order to contain the threats they pose. A good example is provided by the nature of Ian Brownlie's attack on lawyers who propose new human rights, such as the right to peace. Brownlie argues that international lawyers should not develop proposals for change, nor purport to adopt radical interpretations of what the law is, without first engaging in 'the real pioneering' work of diplomacy and persuasion, that is, of engaging with governments.<sup>119</sup> Brownlie argues that '[i]nternational law is about the real policies and commitments of governments, it is not about the incantations of secular or religious morality'.<sup>120</sup> Only those with the ear of governments are able to take part in that process of 'pioneering'. Brownlie makes clear his disdain for the type of lawyers whose 'enthusiastic legal literature' has a tendency to 'develop as an isolated genre, with the select few repetitiously citing one another and the same materials, completely outside the main stream of diplomacy and international law'.<sup>121</sup> Brownlie makes clear his own position

---

<sup>117</sup> *Ibid*, 843.

<sup>118</sup> *Ibid*.

<sup>119</sup> Ian Brownlie, 'The Rights of Peoples in Modern International Law' in James Crawford (ed), *The Rights of Peoples*, 1992, 1, at 14.

<sup>120</sup> *Ibid*, 15.

<sup>121</sup> *Ibid*, 14.

as part of the main stream, noting that 'the launching of new normative candidates by anyone who can find an audience' results in 'appalling abstract' documents in the provisions of which 'those of us who are engaged in the practical solution of problems relating to group rights can find no assistance'.<sup>122</sup> The 'single-minded' enthusiasts engaged in such exercises fail to respect the 'quality and coherence of international law as a whole'.<sup>123</sup> Brownlie's passage operates to draw boundaries between those professionals on the inside, who have influence with governments, acting as the guardians of 'international law as a whole' and engaged in the practical work of problem-solving, and those on the outside, who fail to respect the quality and coherence of the body of international legal knowledge, and engage in self-indulgent conversations at the margins.

In these examples, law as tradition, right and reason is redeemed. The 'characterization of feminist work in international law as eccentric, emotional and irrational', the attempt to oppose good liberal feminism and bad radical feminism, the representation of women as 'weak and vulnerable' and the drawing of boundaries between pragmatic professionals and those 'outside the main stream of diplomacy and international law', are all attempts to shore up an image of 'traditional' international law as reasonable, rational, and objective, and its male practitioners as strong and heroic.<sup>124</sup> According to Cynthia Weber, such attempted 'mastery' of those who appear to threaten the discipline is necessary for those in the 'authorial position', that is, the 'body which views, writes about, and disciplines its object of analysis from an empowered subject position'.<sup>125</sup> For those who understand themselves as

---

<sup>122</sup> *Ibid*, 12.

<sup>123</sup> *Ibid*, 15.

<sup>124</sup> Hilary Charlesworth, above n110, 563-6.

<sup>125</sup> Cynthia Weber, 'Good Girls, Little Girls, and Bad Girls: Male Paranoia in Robert Keohane's Critique of Feminist International Relations' (1994) 23 *Millennium* 337. Cynthia Weber has explored the similar emergence of male paranoia as a response to feminist critical analyses within the discipline of international relations. Weber argues that male scholars respond to the paranoia engendered by feminist engagement with international relations by attempting to control and contain that threat, reasserting disciplinary boundaries and seeking to discredit those aspects of feminist and critical theory that cannot be contained. Weber

occupying that authorial position, a threat to the core of a discipline 'is equivalent to a threat to the [authorial] subject position' from which such authorities see and describe their field.<sup>126</sup> In the discipline of international law, intervention stories offer those threatened authorities the reassertion of their legitimate role in bringing values of order, democracy and human rights to a chaotic, ungovernable and poverty-stricken world of failed states and fundamentalists. As such, intervention stories perhaps do more than any other narrative to secure the identity of international lawyers in an uncertain postmodern era.

### ***B. The need for enemies***

Intervention stories can be read as a response to broader threats to the identity of international lawyers and other Westerners. Intervention narratives represent the current period in world history as one of unity challenged by fragmentation, of ordered and stable sovereign states challenged by pre- or post-modern fragmentation.<sup>127</sup> Such stories are premised upon nostalgia for the Cold War era of stable, sovereign states, predictable patterns of Cold War brinkmanship and secure borders. The Cold War constituted the identities of those who identified with the US and its allies during that period. The passing of the Soviet Union represents the end of an era of Cold War certainties and the identity that those certainties provided.<sup>128</sup>

---

argues that Robert Keohane's critique of feminist international relations produces two bodies: 'the feminist body of literature which is the text's object of analysis and Keohane's authorial body which views, writes about, and disciplines its object of analysis from an empowered subject position'.

<sup>126</sup> *Ibid*, 347-8.

<sup>127</sup> See references to that threatened disorder in Chapter 2.

<sup>128</sup> Donald E Pease, 'Hiroshima, the Vietnam Veterans War Memorial, and the Gulf War: Post-National Spectacles' in Amy Kaplan and Donald E Pease (eds), above n14, 557 (discussing the constitution of US identity during the Cold War).

A sense of anxiety has paradoxically been produced by the absence of an identifiable enemy in the post-Soviet era.<sup>129</sup> Far from marking the end of Cold War paranoia, the break up of the former Soviet Union has led commentators to ask whether the 'West' can survive without enemies.<sup>130</sup> The Cold War provided a comforting ordering of the world into allies and foes. While that division was of use to military and civilian strategists, offering a 'mental map' or 'cognitive system for dividing the world into friends and enemies, shaping a response to overseas crises, and providing a rationale for periodic military intervention abroad',<sup>131</sup> it can also be seen as having served a far more personal and intimate function. The division of the world into friends and enemies served more fundamentally to secure the identities in whose name the Cold War operated.<sup>132</sup> The identities of those who understood themselves as allies of the US were secured by narratives of danger, difference, otherness and freedom.<sup>133</sup> The enormous sense of hostility that citizens of democratic states were encouraged to feel towards violent, brainwashed, irrational or ideologically driven Communists allowed for the comforting fantasy that the sacrifice of those people would remove such traits from the world.

David Campbell argues that the Cold War enmity towards Communism and the Soviet Union in the West reproduced 'the structural and the narrative qualities of danger' that had been developed about different enemies, and thus functioned to reinscribe 'multiple boundaries between the "civilised" and the "barbaric", the "normal" and the "pathological"'.<sup>134</sup> If the Cold War is read as a struggle over the production and security of identity, then 'while the objects of

---

<sup>129</sup> Michael Klare, *Rogue States and Nuclear Outlaws: America's Search for a New Foreign Policy*, 1994; Thomas M Franck, 'United Nations Prospects for a New Global Order' (1989-90) 22 *New York University Journal of International Law and Politics* 601.

<sup>130</sup> John J Mearsheimer, 'Why We Will Soon Miss the Cold War' in Phil Williams, Donald M Goldstein and Jay M Shafritz (eds), *Classic Readings of International Relations*, 1994; Charles William Maynes, 'America Without the Cold War' (1990) 78 *Foreign Policy* 3.

<sup>131</sup> Michael Klare, above n129, 4.

<sup>132</sup> David Campbell, *Writing security: United States foreign policy and the politics of identity*, 1992, 5.

<sup>133</sup> *Ibid*, 5.

<sup>134</sup> *Ibid*, 195.

established post-1945 strategies of otherness may no longer be plausible candidates for enmity, their transformation has not by itself altered the entailments of identity which they satisfied.<sup>135</sup> In other words, the end of the Cold War has created a vacuum in the dominant narratives of otherness and danger. The rise of a paranoid form of politics, including paranoia about the new world order, can be seen as a response to such a vacancy.<sup>136</sup>

[That paranoia] emerges at precisely the moment when one would expect an easing of paranoid anxieties about dangers emanating from the 'evil empire' and its satellites. It now appears that cold war paranoia may have actually played the role of a collective psychological defense mechanism against a far more disturbing pathology that is only now beginning to find public avenues of expression. Nostalgia for the more ordered world of cold war anxieties would appear to be a nostalgia for a paranoia in which the persecutor had a more or less recognizable face and a clear geographical location.<sup>137</sup>

Collective security discourse operates as a response to the desire for enemies. Intervention narratives allow the reinscription of boundaries between 'civilised' and 'barbaric', creating new 'others'. Those narratives create a plot which resembles that of the Cold War. Corrupt elites, ruthless Third World tyrants, dictators, terrorists, rogue states and religious fundamentalists are the new threats to the free world. Images of a world in crisis serve to announce the legitimacy of the need to sacrifice and subjugate racialised others. Such stories, with their creation of heroes and villains, allow a new way of recreating the belief that we are ordered, Enlightenment subjects, and only our enemies have the capacity for violence, evil or abuses of power. The constant reference to the crisis facing the world in the post-Soviet era, and the new

---

<sup>135</sup> *Ibid.*

<sup>136</sup> Eric L Santner, above n108, xiii.

<sup>137</sup> *Ibid.*

disorder and anarchy that this era has supposedly ushered in, is used to justify the use of extreme violence against those understood as representing the evils of chaos or corruption.

Intervention narratives, with their glorification of the role of international lawyers, help to secure the identities of those who believed they were on the side of freedom during the Cold War era. The identity produced by such narratives is dependent upon the valorisation of a violent managerial masculinity through the sacrifice of racialised enemies. That process can be seen clearly in the representations of the Gulf War.<sup>138</sup> Michael Rogin argues, for example, that the 'Reagan Era's main contribution to American imperial representation' was the spectacle of 'state-supported American heroes in violent, racial combat'.<sup>139</sup> Political spectacle such as the televising of the Gulf War functions to display, and at the same time repress, a series of myths that are at the foundation of Americanised culture, and yet which the culture can no longer overtly embrace. Those myths include the organisation of politics around 'racial domination', 'redemption through violence', the 'belief in individual agency' and 'identification with the state, to which is transferred the freedom to act without being held to account'.<sup>140</sup> Such myths operate to support the identity of the coherent, rational male, integrated by, and into, a 'managerial structure of violence'.<sup>141</sup>

Post-Cold War spectacles of intervention serve to reclaim and reproduce a particular version of masculinity: one which was under threat in the aftermath of the Vietnam war, when it seemed that many young men in countries like the US and Australia might indeed have found a way of being in the world that did not depend upon sacrificing 'their race and gender others'.<sup>142</sup> The Gulf

---

<sup>138</sup> See Lynda Boose, above n92; Susan Jeffords, above n14.

<sup>139</sup> Michael Rogin, "'Make My Day!': Spectacle as Amnesia in Imperial Politics [and] The Sequel' in Amy Kaplan and Donald E Pease (eds), above n14, 499, 508.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*, 525.

<sup>142</sup> *Ibid.*, 505.

War functioned to restore the sense of identity of those men who felt under siege in the post-Vietnam climate.<sup>143</sup> The spectacle of the war was tightly controlled, particularly through gendered codes. In the US, women peace activists were demonised as having betrayed 'our boys' in Vietnam, and Vietnam veterans, particularly those 'missing in action', were recast as the victims of the Vietnam war.<sup>144</sup> The Gulf War effectively shut down the public space for articulating reasons to reject increased militarism and warfare.

Violent international intervention operates as a means of preserving 'the fiction of a center', that centre being at once the all-powerful state or liberal alliance, and at the personal level, a particular construction of violent, white masculinity. In a world where there is 'massive suffering and individual helplessness', the audience for and creators of such spectacles are invited to identify with an all-powerful actor and to imagine having personal control through violence.<sup>145</sup> That audience is, however, encouraged to forget that, as with the Gulf War, 'the history of American heroism in war has mainly pitted white men against militarily weaker and racially stigmatized foes'.<sup>146</sup> The kind of amnesia which operates in texts about the humanitarianism of intervention allows international lawyers to identify with an all-powerful force for good, while forgetting the context in which that sense of heroism is produced.

The white hero is remembered; the context that produced him is buried .... In the American myth we remember, men alone risk their lives in equal combat. In the one we forget, white men show how tough they are by resubordinating and sacrificing their race and gender others.<sup>147</sup>

Collective security texts can be seen as a response to the anxieties produced by the ending of the Cold War. That order was secured during the Cold War

---

<sup>143</sup> Lynda Boose, above n92.

<sup>144</sup> *Ibid.*

<sup>145</sup> Michael Rogin, above n138, 509.

<sup>146</sup> *Ibid.*, 527.



through the repeated sacrifice of those imagined as other to the self of the liberal alliance. Through intervention narratives, a collective identity is formed against enemies or aggressors. Fantasies of humanitarianism and power secure the identity of those who imagine themselves as part of the international community.

### *C. Making globalisation palatable*

Humanitarian and security-based justifications for intervention function to mediate between the more exploitative interests of those intervening in the new world order, and the targets of intervention. Lawyers arguing in favour of increased intervention serve to make the current globalisation process palatable.<sup>148</sup> Intervention stories reproduce a model of charity, in which the image of impoverished, victimised people in the Third World serves to provide an alibi for the involvement of powerful states in Africa, Asia, South America, the Caribbean and Eastern Europe. According to that story, the international community intervenes militarily and monetarily, with the best intentions, to help people who are less fortunate than those in industrialised states. In contrast, as I have argued throughout this thesis, the governance and political arrangements furthered by military and monetary interventions serve principally to protect the interests of a small group, which includes foreign investors, elites within target states and those in industrialised states who depend upon the current economic order to sustain their lifestyles.<sup>149</sup> The idea of charity is an extremely problematic one in a context where the wealth and

---

<sup>147</sup> *Ibid*, 505.

<sup>148</sup> Ian Duncanson, "'Close Your Eyes and Think of England': Stories about Law and Constitutional Change in Australia' (1996) 3 *Canberra Law Review* 123 (arguing that stories about human rights and constitutional change make globalisation palatable in the way that stories about 'civilising centralisation and constitutionalism' operated to legitimise changing economic relations during the early modern period in England). For examples of those advocating an abandonment of sovereignty to enable greater intervention, see Fernando R Tesón, above n104; Mark R Hutchinson, 'Restoring Hope: U.N. Security Council Resolutions for Somalia and an Expanded Doctrine of Humanitarian Intervention' (1993) 34 *Harvard International Law Journal* 624; Thomas M Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46.

<sup>149</sup> That argument has been made in detail in Chapters 2 and 3 above.

standard of living of the charitable is created by the exploitation of those imagined as needing charity.<sup>150</sup> Neither military nor monetary intervention as conducted in the post-Soviet era promote the human rights, democratic or security interests of most human beings. Those relationships mirror those of classical imperialism or colonialism, with small groups within the 'colonising' states exploiting the resources and labour of people in the states targeted by intervention.

In such a context, the discourse of security can be read as a discourse of justification or legitimation, serving to quell anxieties about the morality of a militaristic, capitalist version of *pax Americana*. International institutions face a new crisis of legitimacy, inspired in part by the success of the liberal alliance in dominating the post-Soviet agenda of such institutions. Those in favour of expanding the mandates for those international institutions use intervention narratives to justify their glaring lack of institutional legitimacy. The effect of intervention stories based on the model of charity is to create a sense of a shared dependency between interveners and those who are the targets of intervention. That sense of interdependence serves to mask the increase in inequality on a global scale, and the transfer of wealth from Third World states to industrialised states, facilitated in large part by the activities of international institutions.<sup>151</sup> The story of intervention is stripped of all political struggle and history, thus reassuring its audience that there are really no consequences of colonialism or militarism to be faced. The Security Council is present in Africa or Eastern Europe or the Caribbean as a representative of progress, democracy, humanitarianism and freedom, not as a representative of former colonial powers who face the threat of expulsion for good. That

---

<sup>150</sup> Krysti Justine Guest, 'Exploitation Under Erasure: Economic, Social and Cultural Rights Engage Economic Globalisation' (1997) 19 *Adelaide Law Review* 73.

<sup>151</sup> The notion of charity also creates a sense that those in states subjected to intervention should be grateful to their rescuers. On the tyranny of demands for gratitude in such circumstances, see Toni Morrison, 'Introduction: Friday on the Potomac' in Toni Morrison (ed), *Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality*, 1992, vii.

presence creates a myth of universalism, in which man can exist outside history.

Such depoliticised intervention stories allow international lawyers to believe that, lessons of history to the contrary, elites in states like Australia, the US, the UK or France can be good and humane on a global scale. To remember the history of imperialism and colonialism leaves very little room for such elites to imagine themselves as humane world leaders. The post-Soviet context makes such a self-image particularly difficult. It is perhaps the desire to be humane and heroic leaders that creates pressure to write only the kind of 'inspirational prose' that leaves elites feeling that they are part of a force for good, without having to make any changes to their lives or ways of being. The desire to be good is channelled into the 'leadership complex' and a belief in the ethical hero who exists outside of history. Gayatri Spivak argues:

[I]n the United States, the worst thing is the leadership complex. We want to help. And of course if you take this away then there is rage and anguish. But you work at it by saying 'how about trying to undermine the exploitation in however small a way?'<sup>152</sup>

In the post-Cold War era, international lawyers are able to imagine military invasion and economic restructuring and to see that translated into action. Many lawyers still celebrate the globalisation of human rights or the triumph of liberal democracy without considering what the new muscular humanitarianism means either at home or abroad. Intervention narratives allow lawyers to imagine themselves as having the freedom to act in the world without restraint, while the humanitarian bases for intervention make it unnecessary to take responsibility for the destructive consequences and effects of such actions.

---

<sup>152</sup> Gayatri Chakravorty Spivak, 'Culture Alive' (1995) 5 *Australian Feminist Law Journal* 3, 6. See also the discussion in Gayatri Chakravorty Spivak and David Plotke, 'A Dialogue on Democracy' in David Trend (ed), *Radical Democracy: Identity, Citizenship, and the State*, 1996, 209, at 214.

#### ***D. Power without responsibility***

Intervention stories allow lawyers to feel that the threats of violence and the destructive power being used by states or international organisations or foreign capital are 'extensions of the self, rather than threats to it'.<sup>153</sup> Technocratic international lawyers are imagined as professional, technocratic, dutiful advisers to powerful entities. As such, the role imagined for international lawyers in relation to states and international organisations resembles the role imagined for economists in relation to capital, the role imagined for defence intellectuals in relation to weapons, and the role imagined for priests in relation to deities. That sense of a closeness to power allows international lawyers to imagine themselves as sharing in the power of omnipotent entities, such as states or international organisations, or processes, such as globalisation. Carol Cohn has analysed the appeal of that imagined relationship to power in her work on the way in which US defence intellectuals understand themselves and the world.<sup>154</sup> Cohn suggests that the language spoken by those intellectuals, and the relationship to power it allows them to imagine themselves adopting, creates a feeling of security.

I suspect that much of the reduced anxiety about nuclear war commonly experienced by new speakers of the language and long-time experts come from characteristics of the language itself: the distance afforded by its abstraction; the sense of control afforded by mastering it; and the fact that its content and concerns are that of the users rather than the victims of nuclear weapons. In learning the language, one

---

<sup>153</sup> Carol Cohn, 'Sex and Death in the Rational World of Defense Intellectuals' (1987) 12 *Signs* 687, 707.

<sup>154</sup> *Ibid.* At 687-8, Cohn defines 'defense intellectuals' as 'civilians who move in and out of government, working sometimes as administrative officials or consultants, sometimes at universities and think tanks. They formulate what they call "rational" systems for dealing with the problems created by nuclear weapons'.

goes from being the passive, powerless victim to the competent, wily, powerful purveyor of nuclear threats and nuclear explosive power.<sup>155</sup>

At the same time, by representing themselves as 'handmaidens' to those with power, rather than in fact exercising power themselves, international lawyers are able to maintain a respectable distance from the excesses and destructive activities attributed to powerful states, to international markets or to economic globalisation. Like the prophets of a vengeful God, international lawyers gain an aura of power through their ability to translate or interpret the desires and aims of powerful entities, without having to take responsibility for the way that the knowledge they produce about such entities creates a particular image of the world and makes it seem real.

## V. CONCLUSION

This chapter has argued that international lawyers benefit in complicated ways from their disciplinary status as the performers, embodiars and writers of the narratives of intervention. Traditional lawyers use such intervention narratives as a source of continued identity, status, authority, legitimacy and control. Such narratives can be understood as a disciplining response to the sense of anxiety produced in the elite men and women of international law by the challenges of the post-Cold War era. Intervention stories are an attempt to avoid recognising the 'optional nature of the certainty [law] is founded upon',<sup>156</sup> in order to avoid doubting in turn other things about which international lawyers want to remain sure - the certainty of Western identity, of subjectivity, of hierarchy, of gender, of otherness and of superiority.

Nevertheless, one source of optimism is the fact that the uncertainties posed by the Cold War have led to a blossoming of theoretical work in international law and international relations, exploring the ways in which the discourses of

---

<sup>155</sup> *Ibid*, 707.

<sup>156</sup> Ian Duncanson, above n55, 64-5.

international law and foreign policy function to create identities and boundaries between self and other. As Anthony Carty notes:

[T]heory can be expected to mushroom in a discipline when uncertainty increases concerning the appropriate agenda for the discipline. Radical changes such as ... the disappearance of the Cold War are bound to affect the frameworks of analysis which the discipline has developed.<sup>157</sup>

Clearly, international lawyers are faced with challenges from many quarters, alleging their discipline's involvement in legitimising and normalising the processes of exploitation and domination. Yet rather than respond to those challenges as dangerous threats, they can be welcomed as offering the possibility of opening international law up to critique and of encouraging international lawyers to engage in interdisciplinary work and conversations. Such opportunities will be missed if lawyers instead succumb to the apparent temptations of a celebratory post-Cold War narrative, according to which the liberal alliance will finally be able to guarantee peace, security, order, justice, human rights and democracy to a world of victims in need of rescuing through violent intervention. In the final chapter, I will explore some of the ways in which those seeking to develop critical and ethical approaches to internationalism might make use of the post-Cold War gift of uncertainty.

---

<sup>157</sup> Anthony Carty, above n91.



## Chapter 6

### ENGAGING WITH INTERNATIONALISM

#### I. INTRODUCTION

Surprisingly, the prospect of reflecting upon my own writing fills me with melancholy. Perhaps the unconscious effects of a still-powerful, though disavowed, Enlightenment wish contribute to this mood. It would be pleasant to chart a straightforward and progressive course: from error to truth, from uncertainty to clarity, from confusion to complex simplicity, from relative poverty to the accumulation of theoretical excess. Instead, I feel compelled to tell a more ambiguous story whose content mixes personal history and theoretical reflection.<sup>1</sup>

Reflecting upon this thesis on collective security originally produced in me also a sense of melancholy, the effect of 'a still-powerful, though disavowed, Enlightenment wish' to uncover the truth about the nature of collective security actions.<sup>2</sup> I found that it had not been possible, in writing about post-Cold War intervention, to 'chart a straightforward and progressive course: from error to truth, from uncertainty to clarity, from confusion to complex simplicity'.<sup>3</sup> This thesis can be read instead as a process of developing and trying out strategies for engaging with the language and narratives of collective security. The aim of this concluding chapter is to review the way in which the thesis illustrates the challenges, problems and choices I faced in seeking to develop strategies for negotiating with the powerful narratives and myths underlying international law. The chapter analyses how critical scholars

---

<sup>1</sup> Jane Flax, *Disputed Subjects: Essays on Psychoanalysis, Politics and Philosophy*, 1993, 3.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*



can best engage with the narratives and languages that shape professional disciplines.

I have decided not to attempt to resolve the problems and conflicts that arose during the process of learning a technical and strategic language like international law. Rather, I have decided to use the different and competing strategies I have attempted at different stages of writing this thesis to illustrate the choices and problems that arise for critical scholars trying to effect social change. The thesis represents a movement or process of coming to understand the limits, dangers and utility of various attempts to read and engage with collective security texts. In writing this chapter, I have kept in mind that the different strategies adopted throughout the thesis, while at times conflicting, nevertheless offer resources to feminist and critical scholars.<sup>4</sup> I do not want to close off or out the versions of feminism and other critical theories that have been used to attempt to engage with militarism and monetarism.<sup>5</sup>

In this concluding chapter, I also try to keep in mind the idea that this work is not a 'product' that can be understood outside of social relations.<sup>6</sup> Terry Threadgold suggests we easily forget the 'speaking subjects who labour to

---

<sup>4</sup> For feminist scholarship that does not try to order and privilege feminist strategies and approaches, see Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613.

<sup>5</sup> Cynthia Weber, 'Good Girls, Little Girls, and Bad Girls: Male Paranoia in Robert Keohane's Critique of Feminist International Relations' (1994) 23 *Millenium* 337, 347-8. Cynthia Weber argues that attempts by mainstream scholars to order the body of feminist work can be seen as an attempt to discipline and control feminism, in order to make it serve the predetermined interests of a discipline. Weber argues that in his analysis of feminist contributions to international relations theory, Keohane 'mutilates' the body of feminist literature. She argues that, 'without erasing or writing out aspects of the feminist body, this body could not be disciplined. And it must be disciplined. For, from Keohane's authorial position, a threat to the core of international relations is a threat to the subject position from which Keohane's text sees and describes international relations theory'. See also Hilary Charlesworth, 'Cries and Whispers: Responses to Feminist Scholarship in International Law' (1996) 65 *Nordic Journal of International Law* 557. For a further discussion of 'male paranoia' in response to feminist scholarship, see Chapter 5. Feminists also engage in such attempts to order and discipline their colleagues. While debates within feminism are necessary, there are times when it seems to me that a desire for orthodoxy, and thus for security and approval, can close off strategies that might be useful in different situations.

<sup>6</sup> For models of such writing, see Jane Gallop, *Thinking Through the Body*, 1988; Patricia J Williams, *The Alchemy of Race and Rights*, 1993.

make meaning', viewing the meanings they make as 'products' and forgetting the processes by which such products are produced.<sup>7</sup> It is that forgetting of 'the labour of making meanings' that 'makes it so hard for us to see that the truth-effects of signifying practices are lies', in the sense of being 'constructions' or 'fictions'.<sup>8</sup> The function of the author is too often to make the finished product - whether a piece of scholarship or an authorial self - appear coherent and integrated.<sup>9</sup> Rather than adopt such a role as author, I have instead tried to show that all writing, including this thesis, is dependent upon power relations, the history of imaginative formations and the conditions necessary to enable experts to gain access to their objects.

Accordingly, in writing this conclusion I want to avoid the temptation to make the conditions of possibility for my own work invisible. Rather, by reflecting upon the choices I have made as an authorial subject in the writing of this thesis, I want to challenge the conventions that govern scholarship in the area of international law, and that require international lawyers to hide the marks of their own subjectivity in the work they produce. If critical scholars produce knowledge that is more reflexive, it may become possible in turn to ensure that the networks that enable state-supported knowledge become open to question. Such writing may make it easier to remember the conditions or

---

<sup>7</sup> Terry Threadgold, 'Introduction' in Terry Threadgold and Anne Cranny-Francis (eds), *Feminine, Masculine and Representation*, 1990, 1, at 5, argues '[t]hat is of course the risk and the paradox - and it is where the truth-effects of representation always lie: the point at which the subject who has laboured to understand, to *make* sense, a subject in process, becomes a finished product, and confuses the semiotic products of her labours, the meanings and the self she has constructed, with some kind of natural, unmade, pre-given reality'.

<sup>8</sup> *Ibid*, 3, 5. On breaking down the distinction between 'fact' and 'fiction', see Michel Foucault, 'The History of Sexuality' in Colin Gordon (ed), *Michel Foucault Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (trans Colin Gordon, Leo Marshall, John Mepham and Kate Soper), 1980, 183, at 193, arguing 'I am well aware that I have never written anything but fictions. I do not mean to say, however, that truth is therefore absent. It seems to me that the possibility exists for fiction to function in truth, for a fictional discourse to induce effects of truth, and for bringing it about that a true discourse engenders or "manufactures" something that does not as yet exist, that is "fictions" it. One "fictions" history on the basis of a political reality that makes it true, one "fictions" a politics not yet in existence on the basis of a historical truth'. See also Donna Haraway, *Primate Visions: Gender, Race and Nature in the World of Modern Science*, 1989, 3-5.

<sup>9</sup> Michel Foucault, 'What is an Author?' in Donald F Bouchard (ed), *Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault*, 1977, 113.

technologies that enable the production of knowledge about collective security and the 'Third World'. At present, the models of knowledge production that dominate international legal scholarship about collective security make it possible to forget that our knowledge of and access to 'others' depends on 'a network of demands, negotiations, and coercions that are themselves bound by historical determinants constructed on slaughter and bloodshed'.<sup>10</sup> For entities like states or corporations to exercise the kind of accumulation of power that international lawyers recognise as 'sovereignty', they must maintain blood-soaked networks of 'demands, negotiations, and coercions' in order to retain the power to name or simulate sovereignty, intervention, democracy, human rights and security.<sup>11</sup>

Part II of this Chapter involves the 'personal history' that Jane Flax refers to in the opening quotation.<sup>12</sup> In that Part, I outline the ways in which my sense of the utility and limits of different methods of engaging with collective security discourse has been shaped by the process of writing and presenting work on this topic. Part III involves what Flax refers to as 'theoretical reflection'. There, I consider what collective security discourse reveals about the complex emotions, desires, identifications and investments embodied both in knowledge and in ignorance. Part IV considers the place of the academic project of exploring and contesting knowledge production within a broader communal project of resisting the forms of power exercised in the post-Cold War politics of intervention. That Part explores strategies for challenging and resisting the knowledge that is produced about collective security in the absence of faith in the Enlightenment strategies of relying upon truth and rationality.

---

<sup>10</sup> Rey Chow, 'Violence in the Other Country: China as Crisis, Spectacle and Woman' in Chandra Mohanty, Ann Russo and Lourdes Torres (eds), *Third World Women and the Politics of Feminism*, 1991, 81, at 85.

<sup>11</sup> '(W)hat a state must do in order to be sovereign is control the simulation of its "source" of sovereign authority and simulate a boundary ... which marks the range of its legitimate powers and competencies. Investigating state sovereignty, then, requires investigating how states are simulated'. Cynthia Weber, *Simulating Sovereignty: Intervention, the State and Symbolic Exchange*, 1995, 129.

<sup>12</sup> Jane Flax, above n1.

## II. 'PERSONAL HISTORY': RETHINKING MODES OF ENGAGEMENT

In reviewing the methodologies I have made use of and developed in writing this thesis, I find myself unsure of the utility of reason, or even of reasoning about emotion, as a method for addressing and resisting intervention stories. International legal stories participate in creating worlds inside which we live everyday. Those stories at once make us feel less anxious about our own insecurity and more complacent about the insecurity and suffering we inflict on others. Reasoned argument cannot counter the speed with which such stories can be constructed and conveyed, the capacity of the media to lavish attention upon a particular state, the amount of information that is hidden in public debates about the desirability of intervention, the great leaps of logic that occur between one story and the next, and the ability of intervention stories to dismiss enormous numbers of people dead and extremes of brutalisation and suffering as somehow necessary.

Nevertheless, my initial response to arguments in favour of increased intervention was to test their claims rationally. My aims in embarking on a project about collective security included investigating the claims made by those celebrating post-Cold War interventions, refuting their arguments, correcting factual misrepresentations and telling the stories of those whose voices were left out of the texts of international law. In planning this thesis, my intention was that my version of international intervention would explain how Security Council actions in the post-Cold War had led to the coercive imposition of a narrow, destructive world order, and the perpetuation of patterns of exploitation and injustice. My strategy was to present such a well-researched, factually correct and rationally argued analysis that those who read my work or heard me lecture would be quickly persuaded by the compelling arguments I was making based on verifiable facts.

For example, in Chapter 2 I attempted to add information about the experiences of women and marginalised groups to the dominant security literature. I sought to show that the effects of intervention included rape, impoverishment, militarisation of cultures, starvation and the death of civilians. In Chapter 3, I argued that those advocating humanitarian intervention ignored the context of economic restructuring within which security crises occurred. In both chapters, I concentrated on making new facts available about the causes and consequences of intervention.

It quickly became clear to me, however, that the barriers to recognising or acting upon links between intervention and growing inequality, or paternalistic protectionism and increased exploitation, are not a result of a lack of 'information'. After all, information relating to the effects of intervention and the abuses conducted in the name of liberal foreign policy is already readily available. In turn, my experience of presenting people with information relating to the effects of intervention or causes of crisis revealed to me that for many people it was easy to use that information as a further justification for intervention or as part of the old story. I regularly received emotional and identity-based responses to papers I presented dealing with issues of security and intervention. For example, a common response to the argument I make in Chapter 2 that intervention has destructive effects was the answer that only cowards or those who chose to 'do nothing' would advocate rethinking the trend towards military intervention in the post-Cold War era.<sup>13</sup>

Without investigating the power of the narrative that made intervention appear

---

<sup>13</sup> One member of an audience for a presentation based on this thesis told me that I had destroyed everything he had ever believed in the world, and what was he supposed to do now? Another very senior academic told me that my criticism of the actions of the IMF in Yugoslavia was merely irresponsible academic game-playing, as there was nothing that could be done about such exploitation: the only real question for academics to address was how to ensure that such activities are carried out by public institutions like the IMF acting in the public interest, rather than by private actors who cannot be controlled. At a conference where I presented a paper based on the second chapter of this thesis, a member of the audience responded that my work supported oppressive regimes, and that surely it was better to do something in response to genocide and human death and suffering, even if we caused harm in the process, rather than sit back and do nothing. Such a response made clear that the failure to reflect upon what 'we' do in the process of saving the world cannot be countered by the provision of information about the effects of intervention.

natural and humane, and any critique of intervention appear cowardly and inhumane, no amount of appealing to 'facts', 'information' or 'reason' could begin to address what is at stake in the stories that surround and make sense of intervention. Over time, the responses I received to my questioning of the logic of intervention made me realise that the barriers to recognising the ways in which the new world order continues to benefit those in industrialised states are not the result of a lack of information.

Instead, I began to see that the desire to intervene is a product of the deeper narrative and flow of meaning within which intervention stories are inserted. That deeper narrative recreates the sense that actions undertaken to enable the exploitation and control of people and resources in target states are in fact about charity and benevolence. The sense of shared dependency and interests created by stories about international cooperation provide an alibi for the presence of the international community in states that are subject to economic restructuring and military intervention. The constant linking of violence to local passions and chaotic nationalism masks the more far-reaching forms of violence that are now conducted through massive restructuring and social upheaval in the name of free trade or economic liberalism. I began to understand that it would be necessary to think about questions of identification, narrative and the private effects of intervention in order to begin to address the power of that way of writing about and imagining the world.

As I began to write the thesis, an additional set of issues arose relating to the use of the language and framework of law as a basis for the critique of Security Council actions. Speaking the language of law does allow the development of a dialogue with those whose professional role it is to write about, justify, plan and explain military intervention. Chapters 2 and 3 did engage in that process, and were presented at professional conferences and published in professional journals. A number of problems arose in adopting that strategy. First, attempting to communicate in the language of the law the

political and ethical concerns that had originally motivated my work on this topic proved increasingly difficult. In analysing her experience of a similar phenomenon, Carol Cohn argues that it is tempting to attribute these problems of communication and imagination 'to qualities of the language, the words themselves - the abstractness, the euphemisms, the sanitized, friendly, sexy acronyms'.<sup>14</sup> If the problem lay simply with disciplinary language, 'then all we would need to do is change the words, make them more vivid; get the military planners to say "mass murder" instead of "collateral damage" and their thinking would change'.<sup>15</sup> The problem is not, however, that the language used by professionals describing and advocating intervention 'removes them from the realities of which they speak'. The problem is instead that '[t]here *is* no reality of which they speak'.<sup>16</sup> In other words, the 'reality' of intervention stories 'is itself a world of abstractions'.<sup>17</sup> The danger that arises with the temptation to learn the language of security and then seek to enter into a dialogue in that language results from that fact. When critics speak in the language invented by intervention stories, they enter into a world of abstractions and become 'subject to, subjects in, and accountable for' that world.<sup>18</sup> There are times when it is useful to accept the imagined world of intervention stories in order to achieve a change that is possible within its logic. On the other hand, there are many occasions when it is not productive to accept the rules of that imagined world, given the many limitations imposed by the assumptions upon which such rules are based.

Trinh T Minh-ha suggests that this is a particular problem for feminist critics.

[I]n every corner of the world, there exist women who, despite the threat of rejection, resolutely work toward the unlearning of

---

<sup>14</sup> Carol Cohn, 'Sex and Death in the Rational World of Defense Intellectuals' (1987) 12 *Signs* 687, 709.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Donna J Haraway, *Modest\_Witness@Second\_Millennium*, 1997, 97.

institutionalized language, while staying alert to every deflection of their body compass needles. *Survival*, as Audre Lord comments, 'is not an academic skill .... It is learning how to take our differences and make them strengths. *For the master's tools will never dismantle the master's house*. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change. The more one depends on the master's house for support, the less one hears what he doesn't want to hear.<sup>19</sup>

A second problem that arises for critical scholars seeking to challenge dominant legal discourses such as that relating to collective security involves the pleasure and status that derives from engaging with mainstream lawyers on their own terms. The seductions of disciplinary language are complicated, and raise questions particularly for feminists learning and seeking to make use of professional or disciplinary languages.<sup>20</sup> Carol Cohn points to a similar challenge faced by feminists having mastered the technostrategic discourse of nuclear deterrent theorists.

You can find all sorts of ways to seemingly beat the boys at their own game; you can show how even within their own definitions of rationality, most of what is happening in the development and deployment of nuclear forces is wildly irrational .... There is tremendous pleasure in it, especially for those of us who have been closed out, who have been told that it is really all beyond us and we should just leave it to the benevolently paternal men in charge.<sup>21</sup>

---

<sup>19</sup> Trinh T Minh-ha, *Woman, Native, Other: Writing Postcoloniality and Feminism*, 1989, 80.

<sup>20</sup> For analyses of those questions, see Carol Cohn, above n14; Jane Gallop, above n6; Toril Moi, *Simone de Beauvoir: The making of an intellectual woman*, 1994; Terry Threadgold, 'Everyday Life in the Academy: Postmodernist Feminisms, Generic Seductions, Rewriting and Being Heard' in Carmen Luke (ed), *Feminisms and Pedagogies of Everyday Life*, Albany: State University of New York Press, 1996, 280.

<sup>21</sup> Carol Cohn, above n14, 714.



It is helpful to think about that seduction, and the temptation for outsiders and critics to become caught up in the game of trying to 'beat the boys'. Working 'within their own definitions of rationality' is seductive as it does allow outsiders to prove that, after all, it is not 'really all beyond us'. Yet working within that framework serves the ends of those who imagine the world in these terms. That process of attempting to 'out-reason' professionals at their own games is dangerous because it 'gets you thinking inside their rules, tacitly accepting all the unspoken assumptions of their paradigms'.<sup>22</sup> As I became aware of the ways in which such assumptions were limiting the direction of my own work, I began to reflect upon the need to develop a means of engaging with intervention stories that did not reproduce established narrative, theoretical and epistemological frameworks.

Writing within law's framework curtails critique in another way. Liberal legality is premised upon an assumption that problems must be responded to with programmatic solutions. Criticism on its own is seen as unproductive, if it is not accompanied by alternatives or proposals for change. The siren call of liberal legality requires that lawyers must claim the capacity to solve all problems through public, institutional means. One problem with joining in the project of developing such alternatives is that proposals for change are easily dismissed as impractical, idealistic and irrelevant to the central concerns of the discipline. More importantly, even if such programs could be readily implemented, that implementation could take place without much changing the direction and effect of international law. As Alison Young argues, it is necessary to reject the tenets of liberalism, precisely because liberalism offers 'readily identifiable and paradoxically impossible solutions', superficially powerful programs for action that serve to increase the status of the proponent but fail to change 'everyday lives'.<sup>23</sup> There is something unreal in mapping and planning ways to save the world and humanity from a comfortable office in a wealthy Australian university. Both analyses of security crises, and critical or

---

<sup>22</sup> *Ibid.*

<sup>23</sup> Alison Young, *Femininity in Dissent*, 1990, 12.

feminist approaches to engaging with reforming law or legal analysis, offer 'readily identifiable and paradoxically impossible solutions'.<sup>24</sup> I began to look for modes of critique that could be creative without the need to propose new institutional solutions.<sup>25</sup>

Finally, the method I had adopted in Chapter 2 of engaging in critiques of international law from the perspective of marginalised women also began to trouble me. Such critiques involved constructing knowledge about other women to bolster my own program: the rebuilding of international law in a more inclusive image. In doing so, I risked ignoring my role in both producing and benefiting from the difference my work assumed between my authorised position as expert, and the women I was representing. Women-and-children appeared in my analysis as victims that I could help to save. That project of reconstitution of law and law's others in turn constituted me as a feminist legal scholar. About this time, Catharine MacKinnon published a piece on the links between genocide and pornography that illustrated well the tendencies that were beginning to make me uncomfortable about the approach I had adopted.<sup>26</sup> I felt that MacKinnon was making use of a traumatic event in the history of the people of Yugoslavia to further her own feminist project. Her telling of stories about pornography and rape in Yugoslavia was as much an objectification of, and thus a violence done to, the objects of her story as was the process of constructing knowledge about security that I was criticising. My critical response to her approach foreshadowed the realisation

---

<sup>24</sup> *Ibid*, 12.

<sup>25</sup> Michel Foucault, 'On the Genealogy of Ethics: An Overview of Work in Progress' in Hubert L Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, 2nd edition, 1983, 229, at 231-2. Foucault there suggests:

I am not looking for an alternative .... You see, what I want to do is not the history of solutions, and that's the reason why I don't accept the word "alternative". I would like to do a genealogy of problems, of *problematiques*. My point is not that everything is bad, but that everything is dangerous, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to a hyper- and pessimistic activism. I think that the ethico-political choice we have to make every day is to determine which is the main danger.

<sup>26</sup> Catharine A MacKinnon, 'Turning Rape into Pornography: Postmodern Genocide', (July/August 1993) 4 *Ms.* 24.

that I was engaged in something similar. I needed to find a way to write about security as a feminist scholar without being seduced by the desire to provide neat liberal solutions to the problems I raised, or to tell stories about other women that ignored my own personal and political investment in their construction as objects of knowledge.

### **III. 'THEORETICAL REFLECTION': RETHINKING POWER AND KNOWLEDGE**

For the reasons described above, my goal in analysing intervention stories began to shift from that of attempting to produce more accurate knowledge in order to persuade elites or policy-makers of the justice of a different approach to these issues. That approach to writing critically about international law makes a number of assumptions. It is premised upon the notion that the value or effectiveness of these stories is a function of their accuracy in describing the real world, that objective knowledge offers an accurate representation of the world, and that it is possible to persuade people to change their views on the basis of rational argument. Such an approach assumes that knowledge operates outside of power and emotion, and that ignorance can be remedied by providing further information. Instead, the conclusion I came to from writing this thesis is that responses to intervention stories, and thus their productivity, are a consequence of the operation of power, emotion, will, imagination and identification. Rather than attempt to uncover hidden facts about the causes and effects of military intervention, the later chapters of the thesis were concerned to investigate those aspects of the productivity of international law's stories.

Underpinning my analysis in those later chapters was a different approach to questions of knowledge, ignorance, truth and reason. Those chapters adopt an approach to knowledge that is reflexive and that recognises the desire for power involved in the production of both mainstream and critical knowledges. Accepting that knowledge is an effect of power allows that power to be

exercised more responsibly. Jane Flax argues compellingly that Westerners (including, of course, Western feminists) must face 'the end of innocence',<sup>27</sup> or of faith in the belief that reason and knowledge alone will found the creation of just, progressive and enlightened societies.<sup>28</sup> Flax draws attention to the dangers associated with the 'wishes that animate Enlightenment beliefs', in particular the desire for innocent, neutral justifications for particular social arrangements and subject positions.

I am wary of the capacity of reason to rationalise and to find persuasive ways to justify its harm to others. I can see the power of the wish to believe in some suprahuman force, whatever form it may take: reason, law, history ... I have ... become profoundly frightened by the consequences of appeals to non-contingent beliefs and the refusal to see oneself as necessarily and deeply embedded in various relations of power. Rather than abandon such grandiose beliefs, we are tempted to find others whom we can absolutely control and onto whom we can project our finite and flawed humanity.<sup>29</sup>

The move from a focus on reason and truth to a focus on strategy and power is of particular relevance when engaging with reasoned arguments about the need for military intervention. Security discourse is a particularly strange field of supposed rationality, precisely because it involves rationalisation of the killing and injuring of enormous numbers of soldiers and civilians. We can better avoid the danger of reproducing such domination by 'taking responsibility for locating our contingent selves as the producers of knowledge and truth claims'.<sup>30</sup> The outcome of refusing to see the ways in which we exercise power is that we construct others as aggressors and

---

<sup>27</sup> Jane Flax, above n1, 31.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, 32.

<sup>30</sup> *Ibid.*, 145.

ourselves as victims, repeating cycles of violence and exclusion. The challenge posed by this model of knowledge is that it calls on us to acknowledge the ways in which we are all 'necessarily and deeply embedded in various relations of power'.<sup>31</sup> That approach to knowledge leads to the most reflexive understanding of the way human beings are invited to act as agents of capitalism, militarism, imperialism, racism and heterosexism.

In addition, acknowledging that knowledge is an effect of power is not only ethically necessary, but also strategically useful. Flax notes that '(p)art of the purpose of claiming truth seems to be to compel agreement with our claim (if it is true, then you as a "rational person" must agree with me and change your beliefs and behaviour accordingly)'. Accordingly, if what we are seeking through attempting to make claims about truthfulness is 'a change in behaviour or a win for our side', there may be better ways to achieve those goals than through debates about truth.<sup>32</sup> As Flax argues:

Since we cannot fall back on any universal trump, we must take responsibility for our beliefs and try to persuade others of their utility .... The persuasiveness of our claims will depend on struggles for power, the qualities of our social relations, and the utility of such claims to our practices, not their truth content.<sup>33</sup>

Not only is the knowledge produced by security discourse an effect of power, but so too is the ignorance produced by that discourse. Wilful ignorance about the violence and brutality of intervention is a central feature of the operation of power in this new world order. It takes a lot of work not to see the sacrifices that are demanded of other human beings in the interests of the efficiency, democracy, development and progress of the new internationalism. Ignorance about the suffering and brutalisation inflicted in the name of the

---

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, 144.

<sup>33</sup> *Ibid.*, 32.

new world order, or the histories of violence and exploitation that mark the spread of European-derived ideas of democracy or rights or property, are an effect of power, and is just as much a product of human will as is knowledge.<sup>34</sup> In attempting to engage with writing about intervention, what must be addressed is not the capacity of intervention stories to hide the truth. Rather, it is more useful to address the capacity of those reading and writing security stories to ignore 'facts' or 'evidence' that do not fit the plot of those stories. As Terry Threadgold writes, the tendency to neglect evidence when it does not fit a lived reality or 'a public or commonsense story ... demonstrates the interconnections between evidence, narrative, and habit (lived and embodied subjectivity).<sup>35</sup> Intervention stories, like stories about rape and domestic violence, involve 'the rewriting of a horrific violence into the normality and neutrality of the stereotyped narratives of public and private discourse', narratives which have the power to 'conceal and silence even the forensic evidence'.<sup>36</sup> Such processes render talk of truth, fact, rationality and evidence far more complicated than would at first appear.<sup>37</sup>

In addition, ignorance about international intervention and its effects is accompanied by an apparent increase in knowledge. The presence of

---

<sup>34</sup> See Eve Kosofsky Sedgwick, *Tendencies*, 1993, 25 (suggesting that, just as we have learned to question 'both the ethical/political disengagement and, beyond that, the ethical/political simplicity of the category of "knowledge"' so we need to ask a different set of questions about 'ignorance'. Ignorance is equally a 'human production'.) Such ignorance is supported by an approach to government in states like the United States and Australia, where politicians speak more and more about transparency and openness, at the same time as hiding more and more in the interests of security or economic efficiency. See Michael Rogin, "'Make My Day!': Spectacle as Amnesia in Imperial Politics' in Amy Kaplan and Donald E Pease (eds), Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, 1993, 499 ('going public, the shift from institutionalised, pluralist bargaining among stable, elite coalitions to appeals to the mass public, coexists with going private, the spread of hidden, unaccountable decision-making').

<sup>35</sup> Terry Threadgold, above n20, 305.

<sup>36</sup> *Ibid*, 310.

<sup>37</sup> See also Jonathon Morrow, 'Soft Times: The "Literary Imagination" as Poetic Injustice' (1998) 10 *Australian Feminist Law Journal* 35, 42-4 (arguing that the ethical task of lawyers today is 'to learn to read non-literary texts', including 'disciplined and docile bodies' and 'the social and political environment of extreme exploitation'. Morrow argues that lawyers should not focus on telling outsider stories or learning from literature, but rather should 'reclaim the facts from the clutches of the economists, to reread those facts as discursive products, and put those facts to ethical use').

television cameras in war zones, for example, allowed television viewers to feel that they knew the relevant details about conflicts in the Balkans, the Gulf, Somalia or Rwanda.<sup>38</sup> Yet the belief that increased information equals increased knowledge involves what David Halperin refers to as 'illusory knowingness'.<sup>39</sup> Halperin argues that 'illusory knowingness' is 'not only distinct from "knowledge" but is actually a form of ignorance, insofar as it serves to conceal from the supposedly knowledgeable the nature of their own personal and political investments in the systematic misrecognition and abjection' of the object of knowledge.<sup>40</sup> The sense of 'knowingness' produced by modern knowledge practices involves a concurrent ignorance about the relationship between the subject and the object of knowledge.<sup>41</sup>

The 'illusory knowingness' to which Halperin refers is apparent in the relationship between interveners and those subject to intervention. Stories about intervention serve to produce knowledge about the 'Third World': presented variously as chaotic, failed, ungovernable, premodern and tribal (in security texts); as abject, pitiable and victimised (in humanitarian texts), or as corrupt, immature and undeveloped (in development and economic discourse). Missing is any awareness of how such representations construct 'us', the audience invited to identify with the interveners: as ordered, democratic, decent, developed and mature. The effect is therefore the production of ignorance about the relationship between the subjects and objects of knowledge. The systematic invitation to misrecognise the Third World (as objects of pity or charity, for example, rather than the agents of

---

<sup>38</sup> Grace Paley points out that academic studies of media reporting of the Gulf War revealed a negative correlation between information and opposition to the war. 'The longer people looked at television – the less they knew'. Grace Paley, 'Something About the Peace Movement: Something About the People's Right *Not* to Know' in Victoria Brittain, *The Gulf Between Us: The Gulf War and Beyond*, 1991, 61, at 73.

<sup>39</sup> David M Halperin, *Saint Foucault: Towards a Gay Hagiography*, 1995, 150.

<sup>40</sup> *Ibid.*

<sup>41</sup> Halperin makes the argument in the context of homophobia: homophobes generally purport to 'know' a great deal about the object of knowledge, here homosexuals, but are systematically ignorant about the extent of their own personal and political investment in the misrecognition and abjection of homosexuality.

industrialised lifestyles) conceals 'from the supposedly knowledgeable the nature of their own personal and political investments' in the misrecognition of the 'Third World'. For example, those who believe they 'know' about the victimised inhabitants of states like the former Yugoslavia or Rwanda fail to recognise the ways in which they benefit from understanding the world in those terms, in particular through the perpetuation of a system that delivers to wealthy inhabitants of industrialised states some measure of security, privilege and prosperity.

To give an example, belief in the story that the conflict in the former Yugoslavia was about ethnic or religious tension involves repressing questions such as: what kind of political and historical processes have given rise to this conflict? How am I a beneficiary of the knowledge that is being produced about the lives of these people? What identity am I being invited to construct for myself and my community while these people are portrayed to me as fanatics, religious bigots, premodern or racists? What role has my government played, either acting on its own or through international institutions, in affecting that conflict? Do I have any power to influence what those who supposedly represent me do in Bosnia? How does the rise of populist racist parties throughout the industrialised world relate to what is happening in Bosnia? Why do commentators on Bosnia believe that these people are a 'problem' that 'we' can solve? What political and personal stake do I have in this narrative? Each of those questions, and many more, must be avoided in order to create faith in a narrative that tells us that intervention is necessary. Such narratives serve to legitimise the increased violence conducted in the name of the international community.

The difficulty critics of collective security face is, therefore, not how to uncover the truth or how to include different perspectives within law's stories, but rather how to deal with the refusal of lawyers and their audiences to face 'facts'. Treating the rational discourses of law and security as fictions helps to make the contested, discursive nature of what counts as facts and rationality



more apparent. The frameworks of law are the product of imagination and of struggle, based on ideas that are historically contingent and born of a long history of violence. The appeal of intervention stories is premised upon learned assumptions about value based on old stories of gender, race and class - assumptions that inform the way those who live inside such stories experience the world. The assumptions which are necessary to enable the kinds of intervention I have analysed are part of the everyday lives of those who 'act and are inside *this* world, not some other'.<sup>42</sup> Intervention stories 'work by interpellation, by calling an audience into the story'.<sup>43</sup> They are successful to the extent that people find themselves living inside those stories. The 'militarization of the mind',<sup>44</sup> the belief in investment and progress as measures of worth, the justification of desperation and suffering in the name of the gods of efficiency and order, and assumptions about value based on gender, race and class are all necessary in order to see the world in the terms required to accept intervention stories. Post-Cold War internationalism requires and is conditioned upon these private, domestic acts of imagination.

#### IV. AFTER INNOCENCE: RETHINKING THE ROLE OF ACADEMICS

In this final section, I want to consider some of the strategies and political projects that may be useful in engaging with the appeal of intervention stories, and to consider briefly how academic writing can play a part in the broader politics of producing knowledge more ethically in order to avoid playing a role in brutalisation. This section then raises two distinct and difficult questions: first, what do I see as the political project raised by my analysis of intervention stories, and second, given the role of knowledge production in contributing to the brutalisation I have described, is knowledge production a site where resistance is possible or useful?

---

<sup>42</sup> Donna J Haraway, above n18, 97.

<sup>43</sup> *Ibid*, 169.

<sup>44</sup> Carol Cohn, above n14, 714.

### *A. Academics and the work of community*

What are we left with after innocence and faith in the power of knowledge to lighten the darkness of ignorance? My conclusion is that we are left with a set of stories that explain why a European-derived set of ideas about property and value should be globalised, and why 'the financialization of the globe' should continue.<sup>45</sup> Such stories do not simply 'capture the imagination' but are accepted as knowledge as an effect of struggle and unequal power relations. The reader or listener is invited to identify with particular, human and non-human, characters in that story, and discouraged from identifying with others. 'Westerners' can assume that believing these stories is natural or even rational, because the use of force or violence makes it possible never to have to engage as equals with people who do not see the world in these terms. The most useful thing that academics working with this material can do is to recover the sense that these stories are human products, deeply invested with hidden metaphors and based on stereotypes about race and gender. These stories produce in their audience a capacity to identify strongly with particular characters, and not to identify with others. That identification is as much a determinant of the knowledge that is accepted about a particular situation as is the claim to truth of that knowledge. Remembering the constructed nature of these stories is perhaps the most useful way to counter the speed and power with which such stories are disseminated. A model of knowledge based upon the process of story-telling, interpellation and identification provides a better means for understanding how these stories work to appeal to their audience than do notions of rationality and argument.

How might we assess the utility of engaging in the activity of exploring the imaginative frameworks of the stories of security, and remembering the history of the struggles by which those frameworks have become part of the

---

<sup>45</sup> Gayatri Chakravorty Spivak and David Plotke, 'A Dialogue on Democracy' in David Trend (ed), *Radical Democracy: Identity, Citizenship, and the State*, 1996, 209, at 221.

'reality of everyday life'?<sup>46</sup> How might these stories about intervention be addressed and their operation resisted, and what role can academic work play in that process? A number of strategies have been attempted in this thesis. One strategy has been to explore the images of internationalism that fuel intervention stories and the ways in which those images shape the subjectivity of amateur or professional internationalists. The international is presented either as a realm free of politics, where progressive and humanitarian motives underpin the multilateral use of force, or alternatively as a realm where a certain vision of power politics dominates, with the self-interest of all powerful states and institutions determining the capacity to constrain aggressive uses of force. In each case, the image of the international produced in intervention texts can be studied to see the way it shapes the sense of self of those who identify with the heroes of those narratives.

A related strategy is to write about the history of the ideas, assumptions and beliefs underpinning intervention narratives. Such an approach serves to make these ways of imagining the world appear strange, and is a first step in addressing the argument that understanding the world in this way is somehow normal and natural. It is useful, for example, to write about the emergence of humanitarianism as an idea that makes intervention appear as a 'solution' to an already existing problem, or to remember that notions like development or democracy have a history. For my work on the internationalism of the post-Soviet era, that meant writing about the relationship of those who profit from the new world order to those women in 'the South' who continue to be the 'agents' or source of that wealth.<sup>47</sup> It also meant writing about the way in which the audience for intervention stories, including international lawyers themselves, are invited to identify with particular actors or characters in that story, and encouraged not to identify with others. Being able to see these

---

<sup>46</sup> Judith E Grbich, 'Writing Histories of Revenue Law: The New Productivity Research' (1993) 11 *Law in Context* 57, 68.

<sup>47</sup> Gayatri Chakravorty Spivak and David Plotke, above n45, 217 (suggesting that the women in the South who are represented as "'victims" of exploitation in the name of economic development' are in fact 'the agents of the preservation of the Northern lifestyle').

stories and characters as inventions requires giving up a stake in the power offered to those who do take up a place in that story.

A third strategy adopted in the thesis is to argue for an increased self-reflexivity by those engaging with or performing the narratives of intervention. While a sense of reflexivity has emerged in some areas of writing about international law,<sup>48</sup> it has been markedly absent from the pragmatic, realistic areas of security or trade. Such a strategy involves articulating forms of knowledge that do not further the opposition between destructive and self-forgetting forms of nationalism and internationalism. International lawyers who present arguments in favour of universalism, while paying little if any attention to the extent to which the history of imperialism was dependent upon such uses of the language of democracy, freedom and the civilising mission, fuel that destructive opposition. Similarly, international lawyers who celebrate the globalisation of human rights while avoiding any analysis of the ways in which human rights are used to justify highly inhumane and violent acts of intervention legitimise brutal acts of exploitation and violence. It is necessary for those supporting muscular humanitarianism, or even celebratory accounts of the globalisation of democracy and human rights, to consider the ways in which the knowledge they produce is located in global networks of power. Lawyers in those states that promote military and monetary intervention using the symbolism of human rights and democracy generally have the intellectual freedom to reflect upon the ways in which the

---

<sup>48</sup> That sense of reflexivity has developed in three major bodies of international legal scholarship: feminist approaches to international law, the 'New Stream' or 'New Approaches to International Law' (NAIL) project, and the postcolonial or 'Third World Approaches to International Law' (TWAIL) school. For one of the earliest and most influential feminist analyses of international law, see Hilary Charlesworth, Christine Chinkin and Shelley Wright, above n4 and for an overview of relevant feminist literature in the field of international human rights law, see Anne Orford, 'Contesting Globalization: A Feminist Perspective on the Future of Human Rights' (1998) 8(2) *Transnational Law and Contemporary Problems* 171. For an overview of anti-colonial international legal scholarship, see James Thuo Gathii, 'International Law and Eurocentricity: A Review' (1998) 9 *European Journal of International Law* 184, and for a critical analysis of the 'New Stream' school, see Deborah Z Cass, 'Navigating the New Stream: Recent Critical Scholarship in International Law' (1996) 65 *Nordic Journal of International Law* 341. Some of the key United States and European

ideal of democracy or of humanitarianism is used to further neoimperialist projects. International lawyers, however, have tended not to reflect on the meaning of support for human rights and democracy in such a situation. As a result, muscular humanitarianism has been exempted from dealing with its own violent history.<sup>49</sup> The appeal of intervention is dependent upon a motivated forgetting of the history of internationalism and its relationship to imperialism, and the continued exploitation, atrocities and dispossession carried out in the name of freedom and democracy.

Such strategies can mean that academic work is of utility in the process of resisting economic globalisation and the new humanitarianism criticised in this thesis. International legal discourse about security tries to tie those who engage with it to a narrow range of identities. To become 'internationalists' we are asked to abandon many identifications and alliances.<sup>50</sup> We are asked to make 'sacrifices' of others in order to produce a valuable self. The challenge facing critical international legal scholars is how to escape that process. Eve Sedgwick, in an extraordinary meditation on identification, writes of her 'thirst for knowledges and identifications that might cross the barriers of what seemed my identity'.<sup>51</sup> This is what a transgressive approach to international law can promise critical scholars: the possibility of working with others to create new and more inclusive forms of identification, identity and

---

literature in these fields is compiled in David Kennedy and Chris Tennant, 'New Approaches to International Law: A Bibliography' (1994) 35 *Harvard International Law Journal* 417.

<sup>49</sup> Rey Chow, above n10, 86, makes a similar argument in the context of China:

[T]he polarization between "traditionalism" or what I have called cultural isolationism (represented by the Party official line), on the one hand, and "democracy", on the other, means that extraterritoriality - the exemption from local jurisdiction - becomes itself exempted from the history of its own role, not in the promotion of freedom and rights but in the subjugation of other peoples in the course of colonial conquests.

<sup>50</sup> For a similar argument about the capacity of the media to 'create mainstream icons whose struggles and achievements we can identify with' while excluding identification with those people who are 'othered' by the media, see Roseanne Kennedy, 'Global Mourning, Local Politics' in Re:Public (ed), *Planet Diana: Cultural Studies and Global Mourning*, 1997, 49, at 52.

<sup>51</sup> Eve Kosofsky Sedgwick, above n34, 253.

community. Jacques Derrida calls the potential result, 'the friendship of an alliance without institution'.<sup>52</sup>

In order to be effective in achieving change, critical scholars must recognise that there are also limits to the extent to which the appeal of such stories can be addressed at a 'textual' level alone. Certainly, at this point in the history of industrialised states, a lot of energy is directed into anti-intellectualism. That energy reveals how fundamental these stories, and the forms of community they engender or prevent, are to the governance of the 'West' and the 'Third World', and how dangerous it is to think about the ways in which these stories engage us. The particular kind of anti-intellectualism flourishing in the US and Australia at present has as its principal effect the discrediting of attempts to think about how important thinking, knowledge, representation and imagination are to the operation of power in our cultures. Nevertheless, feminists have cautioned about the limits of analyses that focus only on shifts in language or texts such as legislation as symbols of change.<sup>53</sup>

Particular ideas come to dominate public discourse, not because they are accurate or logical, but as a result of struggle. The recognition that knowledge is an effect of power involves a realisation that the interesting thing about knowledge is precisely its connection to power and to historical specificity.<sup>54</sup> Judith Grbich shows that critical theorists have often made the mistake of suggesting that imaginative frameworks change over time, somehow outside

---

<sup>52</sup> Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International*, 1994, 86.

<sup>53</sup> Nina Puren, 'Bodies/Ethics/Violence: A Review of *Heroines of Fortitude: The Experiences of Women as Victims of Sexual Assault* and *The Crimes (Rape) Act 1991 (NSW): An Evaluation Report*' (1997) 9 *Australian Feminist Law Journal* 134, 140 (arguing that there are limits to the ways in which a textual change at the level of legislation can change the conduct of rape trials, given the powerful myths and stereotypes upon which such trials draw).

<sup>54</sup> Donna Haraway, above n18, 104 (arguing that for her and her fellow graduate students biology 'was interesting not because it transcended historical practice in some positivist epistemological liftoff from Earth but because natural science was part of the lively action on the ground').

of the history of contest and struggle over ways of explaining the world.<sup>55</sup> Grbich argues that '(s)ome dreams do capture the imagination, but not of their own accord'.<sup>56</sup> She suggest we investigate the histories of 'different usages of imaginative structures of belief, how these usages compete and conflict, and what daily routines invested some usages of imaginative structures with the constraints which made them into the reality of everyday life'.<sup>57</sup> Her argument reminds us that we cannot expect our own work simply to capture the imagination by virtue only of its reasonableness, creativity or apparent capacity to achieve justice. Faith in reason alone as a means of persuading others of our claims is misplaced.<sup>58</sup> In order for an academic attempt at understanding and perhaps resisting the appeal of intervention narratives to be of use, it must be developed in combination with the work of building communities, engaging in political action and sustaining relationships that subvert hierarchies and resist domination.<sup>59</sup> The work of community is of particular difficulty at this time given the policing of any communities and bonds that have the potential to subvert the established heterosexual, masculinist, capitalist social order.<sup>60</sup> Yet, despite those attacks, that work of community is flourishing.

Rather than imagine academics as experts and leaders, the approach to power adopted in this thesis relocates academics in a relationship of solidarity with all those seeking to renegotiate the myths that animate our militarised cultures. Foucault reminds us that resistance is possible at each of the sites at which power takes effect. Famously, Foucault argues that 'where there is power, there is resistance, and yet, or rather consequently, this resistance is

---

<sup>55</sup> Judith E Grbich, above n46.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> Jane Flax, above n1.

<sup>59</sup> For discussions of the subversive and political 'work of community', see Eve Kosofsky Sedgwick, above n34, 254; David M Halperin, above n39, 98-9.

<sup>60</sup> Eve Kosofsky Sedgwick, above n34, 15-20; Mark Davis, *Gangland: Cultural Elites and the New Generationalism*, 1997, 45-74; bell hooks, *Teaching to Transgress: Education as the Practice of Freedom*, 1994, 201-7.

never in a position of exteriority in relation to power'.<sup>61</sup> This has been interpreted by liberal theorists as a profoundly disempowering conceptualisation of power and resistance. Yet this reformulation opens up a sense of creativity in our opposition to power. To go back to the example of intervention in the name of globalisation, humanitarianism or democracy, resistance to that exercise of power is *possible* at all the local levels at which this strategy takes effect, from the most private realms where identities are formed, to the public stage of peace negotiations or military strategising. As Foucault argues, 'points of resistance are present everywhere in the power network'.<sup>62</sup> While on occasion 'great radical ruptures' occur, it is 'the strategic codification of these points of resistance that makes a revolution possible, somewhat similar to the way in which the state relies on the institutional integration of power relationships'.<sup>63</sup> Foucault redirects our attention, in other words, towards these local points of resistance, and argues that rather than wait for the revolution, we can plan strategically for a revolution through strategically codifying 'mobile and transitory points of resistance', that produce 'cleavages in a society that shift about, fracturing unities and effecting regroupings, furrowing across individuals themselves, cutting them up and remolding them'.<sup>64</sup>

My understanding of the role of academic work such as this thesis is shaped by these ideas about what it takes to effect change. As I have argued, change is not achieved through the power of reason alone, but rather through the effects of power relations, the quality of relationships, the work of community and the building of alliances. This text exists in these relations and its meaning and effects are functions of such networks. As Jane Flax recognises, it is only the vestigial attachment to Enlightenment ideals of the achievement

---

<sup>61</sup> Michel Foucault, above n68, 95.

<sup>62</sup> *Ibid*, 95.

<sup>63</sup> *Ibid*.

<sup>64</sup> *Ibid*.



of progress through the acquisition of a knowledge innocent of politics that gives this recognition any semblance of melancholy.

### **B. Experts, power and authority**

The more self-reflexive approach to knowledge I have advocated in this chapter and throughout the thesis, however, has had little impact to date on security discourse.<sup>65</sup> While philosophising about the relationship between political struggle, knowledge production and academic work has been of concern in many disciplines, the barriers to rethinking that relationship are particularly formidable in the context of engaging with current forms of international law and international relations. One reason for this may be that liberal legalism allows academics working in the field of international law to feel that they are the source of knowledge and authority about the 'Third World', thus increasing their status. The imperial desire to know and penetrate described by feminist and postcolonial scholars is transformed under the conditions of globalisation into a new sense of expertise and authorisation to speak about others who can be constructed as needing 'our' help.

There are also more personal reasons that might be posited for the inability of liberal legal scholars to respond with enthusiasm to such a shift in the analysis of power. As David Halperin points out, the arguments made by critical theorists like Foucault threaten the authority, status and 'epistemological and political privileges'<sup>66</sup> of liberal scholars, as authorised knowers and also as heterosexual men.

[P]olitical resistance to Foucault's interventions has come ... from old-style liberal authorities whose power to define the political *on behalf of everyone* is threatened with delegitimation by Foucault's critique of

---

<sup>65</sup> For a similar argument in the field of foreign policy, see Graeme Cheeseman and Robert Bruce (eds), *Discourses of Danger & Dread Frontiers: Australian Defence and Security Thinking after the Cold War*, 1996.

the various forms of expertise to which they customarily appeal in order to ground their claims to authority.<sup>67</sup>

Foucault prefigures this response when he suggests that one reason why the old legalistic model of power has retained its analytical centrality is what he terms the 'speaker's benefit'.<sup>68</sup> The role of the 'universal intellectual who speaks for humanity'<sup>69</sup> allows the speaker to 'place himself to a certain extent outside the reach of power; he upsets established law; he somehow anticipates the coming freedom'.<sup>70</sup> The opportunity to occupy the privileged position of 'spokesman for conscience and consciousness ... outside of power, within truth'<sup>71</sup> motivates us to continue to refuse to see our own implication in power relations and to continue to describe power in juridical terms. What 'sustains our eagerness' to speak in these terms about power, according to Foucault, 'is doubtless this opportunity to speak out against the powers that be, to utter truths and promise bliss, to link together enlightenment, liberation, and manifold pleasures'.<sup>72</sup>

A final barrier to rethinking the ways in which knowledge and power operate in the field of international law may lie in the focus of international lawyers on state and economic systems or structures. The use of cultural and critical theory to study issues of capitalism, globalisation, neoimperialism and militarism remains controversial, both for international lawyers and within the social sciences more generally. Slavoj Žižek, for example, provides an illustration of the type of scathing response that is made to scholarship that

---

<sup>66</sup> David M Halperin, above n39, 123.

<sup>67</sup> *Ibid*, 123.

<sup>68</sup> Michel Foucault, *The History of Sexuality, Volume 1: An Introduction* (trans Robert Hurley), 1981, 6.

<sup>69</sup> Hubert L Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, Chicago: University of Chicago Press, 1983, 130.

<sup>70</sup> Michel Foucault, above n68, 6.

<sup>71</sup> Hubert L Dreyfus and Paul Rabinow, above n69, 130.

<sup>72</sup> Michel Foucault, above n68, 7.

links the private issues of gender, race, identity or identification with traditional public questions of power and its effects.<sup>73</sup>

[W]e are fighting our PC battles for the rights of ethnic minorities, of gays and lesbians, of different life-styles, and so on, while capitalism pursues its triumphant march - and today's critical theory, in the guise of 'cultural studies', is doing the ultimate service to the unrestrained development of capitalism by actively participating in the ideological effort to render its massive presence invisible: in a typical postmodern 'cultural criticism', the very mention of capitalism as world system tends to give rise to the accusation of 'essentialism', 'fundamentalism' and other crimes.<sup>74</sup>

Zizek's critique is representative of a tradition that opposes 'real' political action and irresponsible cultural and critical theory. Writing in 1990, Terry Threadgold criticised a similar tendency emerging in feminist theory to support forms of feminist writing that privileged "'real" political action' imagined as non-theoretical over theoretical work seen as 'a kind of intellectual game'.<sup>75</sup> I have argued throughout the thesis that it does not make sense to talk about separating representation from reality, or intellectual games from real political action.<sup>76</sup> Cultural criticism is necessary to understanding the appeal of militarism and economic fundamentalism. In fact, much cultural criticism is already deeply engaged in attempting to make sense of these phenomena. Much of the scholarship that has most influenced this thesis does the hard work of subjecting the products and processes of militarism<sup>77</sup>, imperialism<sup>78</sup> and monetarism<sup>79</sup> to feminist and critical readings.

---

<sup>73</sup> Slavoj Zizek, 'Multiculturalism, Or, the Cultural Logic of Multinational Capitalism' (1997) 225 *New Left Review* 28, 48. For an interpretation of the 'left's suspicion' of analyses of pleasure or desire, see Jane Gallop, above n6, 100-5.

<sup>74</sup> Slavoj Zizek, *ibid.*, 46.

<sup>75</sup> Terry Threadgold, above n7, 11, 13.

<sup>76</sup> *Ibid.*, 13, 18.

<sup>77</sup> See, for example, David Campbell, *Writing security: United States foreign policy and the politics of identity*, 1992; William Chaloupka, *Knowing Nukes: The Politics and Culture of*

Critics of cultural and critical theory reproduce a gendered division and privileging of labour, where the real work of dealing with power and its effects involves an exclusive focus on a public sphere of states, corporations and capitalists, while the soft option of dealing with shopping, fantasy, desire and pleasure is done in a pink ghetto of devalued scholarship.<sup>80</sup> The arguments of those like Žižek suggest that focusing on representation makes it impossible to think about these issues of the effects of power in the 'real' world. Such critiques set up false dichotomies between politics and the private, and between reality and theory. As Trinh T Minh-ha argues:

Although much has been said and done concerning the 'apolitical' character of the narrow 'political', is it still interesting to observe the endlessly varying ways the boundaries of 'the political' are being obsessively guarded and reassigned to the exclusive realm of politics-by-politicians. Thus, despite the effectiveness and persistence of the women's movement in deconstructing the opposition between nature (female) and culture (male) or between the private (personal) and the public (political); despite the growing visibility of numerous Third Worldist activities in de-commodifying ethnicity, displacing thereby

---

*the Atom*, 1992; Graeme Cheeseman and Robert Bruce (eds), above n65; Carol Cohn, above n14; Miriam Cooke and Angela Woollacott, *Gendering War Talk*, 1993; Cynthia Weber, above n11.

<sup>78</sup> See, for example, Rey Chow, above n10; Amy Kaplan and Donald E Pease (eds), *Cultures of US Imperialism*, 1993; Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Conquest*, 1995; Kristin Ross, *Fast Cars, Clean Bodies: Decolonization and the Reordering of French Culture*, 1996; Edward W Said, *Culture and Imperialism*, 1993.

<sup>79</sup> See Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World*, 1995; J K Gibson-Graham, *The End of Capitalism (as we knew it): A Feminist Critique of Political Economy*, 1996; Judith Grbich, 'Taxation Narratives of Economic Gain: Reading Bodies Transgressively' (1997) *V Feminist Legal Studies* 131; Meaghan Morris, *Ecstasy and Economics*, 1992; Gayatri Chakravorty Spivak, *Outside in the Teaching Machine*, 1993; Patricia Stamp, 'Pastoral Power: Foucault and the New Imperial Order' (1994) *3 Arena Journal* 11.

<sup>80</sup> V Spike Peterson, 'The Politics of Identity and Gendered Nationalism' in Laura Neack, Patrick J Haney and Jeanne A K Hey (eds), *Foreign Policy Analysis in its Second Generation: Continuity and Change*, 1995, 167, at 183 (arguing that the 'gendered dichotomy of public-private structures the study and practice of international relations and foreign policy' and that one result is the 'discipline's neglect of activities associated with the private sphere').

all divisions of Self and Other or of margin and center based on geographical arbitrations and racial essences; despite all these attacks on pre-defined territories, a 'political' work continues unvaryingly for many to be one which opposes (hence remains particularly dependent upon) institutions and personalities from the body politic, and mechanically 'barks at all the after-effects of past inhumanity' - in other words, which safely counteracts within the limits of pre-formulated, codified forms of resistance.<sup>81</sup>

My advocacy of models of knowledge and political engagement that include a focus on the private life of intervention is not due to a lack of interest in the effects of intervention. Rather, such an approach makes possible a more useful account of the effects of intervention than other versions. The intervention literature that I have studied throughout this thesis impoverishes public debate and limits the extent to which it is possible to imagine and create other ways of being. The readers of intervention stories are told that those in states targeted by intervention have no choice but to follow the dictates of international institutions if those states want to survive and prosper. The populist media marketing of both military and monetary interventions makes the privileging of the economic interests of a narrow elite appear somehow normal and natural.

Contrary to Zizek's contentions, I have argued that it is necessary to consider intervention stories as the result of ongoing cultural processes in order to understand how it is that these stories do the work of making brutality and exploitation appear legitimate and useful. The worlds that are made possible and that are lived in as a result of intervention stories are worlds for which those who are subject to such stories have some responsibility. Thus the power effects of intervention shape the lives of those who are targeted directly by intervention, as well as shaping the worlds of those who benefit materially

---

<sup>81</sup> Trinh T Minh-ha, *When the Moon Waxes Red: Representation, Gender and Cultural Politics*, 1991, 95.

from such interventions. Imagining states like Iraq, Yugoslavia or Rwanda as disordered, archaic or chaotic, and choosing to solve the 'problem' of the 'Third World' with military solutions serves to make high-violence intervention palatable to citizens of intervening states.

This is not to say, however, that intervention can never be legitimate, nor that non-intervention arguments are not equally the product of politics, greed, exploitation and competitiveness. My argument is not that 'intervention' in the abstract is necessarily always destructive or an abuse of power, nor that 'non-intervention' will always be the humane or emancipatory option. My claim is more limited – that within the current historical period, shaped by high-violence military strategies, information technology and economic restructuring, the new politics of intervention is destructive and abusive. Some or all of the conditions that I have described throughout the thesis would need to change in order for international intervention to be seen in a more positive light. I have argued that international intervention is not legitimate when it takes the form of aerial bombardment or military actions involving high risks to civilians, conducted in a secretive and highly undemocratic manner, nor when it is used as an ad hoc measure to avoid the development of a just international economic order. The way in which intervention is represented is damaging: rather than considering the responsibility of the 'international community' for creating the conditions that appear to justify the use of force, intervention literature systematically falls back upon images of crisis and disorder to make it appear that local tensions and problems are the cause of insecurity. Intervention narratives produce the response that intervention is necessary to help those who need saving: to do nothing is understood as a sign of moral failure. The military actions I have focused on in this thesis, however, have not increased security nor resolved humanitarian issues. Thus in the militarised world of multilateral actions conducted within a framework of economic relations that perpetuate inequality and insecurity, I have argued that intervention is dangerous and destructive.

## V. CONCLUSION

International law operates in a strange new environment in the post-Cold War period. Law continues to be extremely productive in that new environment, although it is often presented as powerless in the face of forces of globalisation or disorder. Law is productive in the old sovereign sense, operating through mechanisms of international trade law and through institutions such as the WTO and the Security Council to entrench unequal power relations and enforce particular conceptions of property, possession and order. Law is also productive in the Foucauldian sense, creating an alibi for new world order exploitation and brutalisation through stories about heroes, saviours and humanitarians. Critical and reflexive thinking is necessary for those engaging with the dominant discourses of economic rationalism and militarism, and requires a renewed focus on the operation of imagination, representation, culture and fantasy in international law and politics.

This thesis has contested representations of security in order to provide a point of entry into the stories told by foreign policy-makers, by international lawyers, and by the media. I have argued that the kind of 'inspirational prose'<sup>82</sup> found in human rights, security and development discourses facilitates exploitation. To the extent that international law operates within a neoimperialist economy, even less overtly exploitative areas of international law, such as human rights law, *can* operate to enable exploitation. I am not suggesting that the economic nature of intervention is 'the real', nor that the protection of human rights is a mere fiction. Rather, I am interested in why we experience such interventions as humane, and how the potential for that experience is built on colonial power relations.<sup>83</sup> Our role as liberators

---

<sup>82</sup> Gayatri Chakravorty Spivak, 'Culture Alive' (1995) 5 *Australian Feminist Law Journal* 3, 10 ('The Grand Old Universities want to hear inspirational prose').

<sup>83</sup> Like many other people, it seems, I am still wrestling with the relationship between 'ideology' and 'the real'. See, for example, Slavoj Žižek's exploration of the role of a critique of ideology in late capitalist politics: Slavoj Žižek, 'The Spectre of Ideology' in Slavoj Žižek

depends on 'a network of demands, negotiations, and coercions that are themselves bound by historical determinants constructed on slaughter and bloodshed'.<sup>84</sup>

In the late twentieth century, the 'techniques of knowledge'<sup>85</sup> involved in the production of discourses of danger and salvation make the disciplining of whole populations imaginable. Human rights, security and development discourses operate to constitute and discipline peoples of the South.<sup>86</sup> Knowledge about the actions of institutions like the Security Council, the World Bank and the IMF aids the development of new forms of intervention 'to the extent that it has been able to penetrate, integrate, manage and control countries and populations'.<sup>87</sup> In that light, international law can be understood as 'a series of political technologies intended to manage and give shape to the reality of the Third World'.<sup>88</sup>

By focussing on the ways in which particular forms of inspirational prose facilitate neoimperialism, I have tried to show that we need to move from understanding international law as repressive and regulative, to understanding

---

(ed), *Mapping Ideology*, 1994, 1. One exploration of that relationship which I have found extremely useful, although written in a very different context, can be found in Kim Humphery's analysis of representations of the future in retailing texts. Humphery sums up the problematic of ideology as it plays out in her field in these terms. 'Now, it seems, you either write about the resistant and powerful consumer, and run the danger of being called a populist, or you write about the power of the retailer and run the danger of being dubbed a mass culture theorist or, worse still, a neo-Marxist'. One way in which she resolves that dilemma is to argue that while 'in one sense the talk of exciting presents and magic futures was advertising hype', in another sense '[i]t conveyed something of the manner in which the gleaming, integrated and complete modernity of the shopping centre, like the supermarket, embodied the commercial and masculine ideal of what *was* pleasurable, of what *was* excitement, of what *was* progress'. Kim Humphery, 'Talking Shop' (1995) 19 *Arena Magazine* 30, 31-2. Similarly, I see these descriptions of Security Council interventions as providing an insight into what elite white (male) policy makers experience as humanitarianism, goodness or salvation.

<sup>84</sup> Rey Chow, above n10, 85.

<sup>85</sup> Michel Foucault, above n68, 98.

<sup>86</sup> Patricia Stamp, above n79, 16-20.

<sup>87</sup> Arturo Escobar, 'Discourse and Power in Development: Michel Foucault and the Relevance of his Work to the Third World' (1984-5) X *Alternatives* 377, 388.

<sup>88</sup> *Ibid.*



international law as productive - of selves and of stories.<sup>89</sup> Globalisation is not about something going on 'out there', but about changes in the stories by which we understand ourselves and the world. This thesis has tried to make space for other ways of imagining the terms of our engagement with the processes of globalisation, so that we may begin to challenge the uses of intervention in the new imperial order.

---

<sup>89</sup> Michel Foucault, above n68, 86, suggests that the construction of power as a repressive force involves 'the neglect of everything that makes for its productive effectiveness, its strategic resourcefulness, its positivity'. Foucault offers a 'general and tactical reason' to explain that neglect. '[P]ower is tolerable only on condition that it mask a substantial part of itself. Its success is proportional to its ability to hide its own mechanism.'

## BIBLIOGRAPHY

- Acevedo, Domingo E, 'The Haitian Crisis and the OAS Response: A Test of Effectiveness in Protecting Democracy' in Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts*, New York: Council on Foreign Relations Press, 1993, 119
- Adler, Matthew H, 'International Law's Contribution to Security in the Post-Cold War Era: From Functional to Political and Beyond' (1996) 19 *Fordham International Law Journal* 1955
- af Jochnick, Chris and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49
- Albright, Ambassador Madeleine K, 'International Law Approaches the Twenty-First Century: A US Perspective on Enforcement' (1995) 18 *Fordham International Law Journal* 1595
- Alston, Philip, 'The Myopia of the Handmaidens: International Lawyers and Globalization' (1997) 8 *European Journal of International Law* 435
- Alston, Philip, 'Reform of Treaty-Making Processes: Form over Substance?' in Philip Alston and Madelaine Chiam (eds), *Treaty-Making and Australia. Globalisation versus Sovereignty?*, Sydney: Federation Press, 1995, 1
- Alston, Philip, 'The Security Council and Human Rights: Lessons to be Learned from the Iraq-Kuwait Crisis and its Aftermath' (1992) 13 *Australian Year Book of International Law* 107
- Althusser, Louis, 'Ideology and Ideological State Apparatuses (Notes Towards an Investigation)' in *Lenin and Philosophy and other essays*, (trans Ben Brewster), London: Monthly Review Press, 1971, 127
- Alvarez, Jose E, 'Judging the Security Council' (1996) 90 *American Journal of International Law* 1
- Anderson, Benedict, *Imagined Communities*, London: Verso, 1991
- Anghie, Antony, 'Francisco de Vitoria and the Colonial Origins of International Law' (1996) 5 *Social and Legal Studies* 321
- Arendt, Hannah, *Eichmann in Jerusalem: A Report on the Banality of Evil*, New York: Penguin Books, 1994
- Ashworth, Georgina, *Of Violence and Violation: Women and Human Rights*, London: Change, 1985

- Baudrillard, Jean, *The Gulf War did not take place*, (trans Paul Patton), Sydney: Power Publications, 1995
- Bellamy, Christopher, *Knights in White Armour: The New Art of War and Peace*, London: Pimlico, 1997
- Bello, Walden, *Dark Victory: the United States, Structural Adjustment and Global Poverty*, London: Pluto Press, 1994
- Bello, Walden, *Development Debacle: The World Bank in the Philippines*, San Francisco: Institute for Food and Development Policy, 1982
- Bello, Walden, *People and Power in the Pacific: The Struggle for the Post-Cold War Order*, London: Pluto Press, 1992
- Benjamin, Walter, 'The Critique of Violence' in Peter Demetz (ed), *Reflections, Essays, Aphorisms, Autobiographical Writings*, New York: Schocken, 1986, 277
- Bensaid, Daniel, 'Neo-Liberal Reform and Popular Rebellion' (1996) 215 *New Left Review* 109
- Berger, John, *About Looking*, London: Writers and Readers Publishing Cooperative Ltd, 1980
- Berman, Nathaniel, 'Beyond Colonialism and Nationalism? Ethiopia, Czechoslovakia, and "Peaceful Change"' (1996) 65 *Nordic Journal of International Law* 421
- Berman, Nathaniel, 'Book Reviews' (1991) 32 *Harvard International Law Journal* 583
- Bhabha, Homi, *The Location of Culture*, London and New York: Routledge, 1994
- Bills, David, 'International Human Rights and Humanitarian Intervention: The Ramifications of Reform on the United Nations' Security Council' (1996) 31 *Texas International Law Journal* 107
- Blackburn, Robin, 'The break-up of Yugoslavia' (1993) 45 *Labour Focus on Eastern Europe* 3
- Boose, Lynda, 'Techno-Muscularity and the "Boy Eternal": From the Quagmire to the Gulf' in Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, Durham and London: Duke University Press, 1993, 581

- Bottomley, Stephen, Neil Gunningham and Stephen Parker, *Law in Context*, Sydney: Federation Press, Revised Edition, 1994
- Boutros-Ghali, Boutros, *An Agenda for Peace*, New York: United Nations, 1992
- Boutros-Ghali, Boutros, 'Beyond Peacekeeping' (1992) 25 *New York University Journal of International Law and Politics* 113
- Braidotti, Rosi, *Patterns of Dissonance*, Cambridge: Polity Press, 1991
- Braidotti, Rosi, Ewa Charkiewicz, Sabine Hausler and Saskia Wieringa, *Women, The Environment And Sustainable Development: Towards A Theoretical Synthesis*, London: Zed Books, 1994
- Brecher, Jeremy and Tim Costello, *Global Village or Global Pillage: Economic Reconstruction From the Bottom Up*, Boston: South End Press, 1994
- Brownlie, Ian, 'The Rights of Peoples in Modern International Law' in James Crawford (ed), *The Rights of Peoples*, Oxford: Clarendon Press, 1992, 1
- Budhoo, Davison L, *Enough is Enough: Dear Mr Camdessus ... Open Letter of Resignation to the Managing Director of the International Monetary Fund*, New York: New Horizons Press, 1990
- Bunce, Valerie, 'The Elusive Peace in the Former Yugoslavia' (1995) 28 *Cornell International Law Journal* 709
- Campbell, David, *Writing security: United States foreign policy and the politics of identity*, Manchester: Manchester University Press, 1992
- Campbell, Tom D, 'Democracy, Human Rights, and Positive Law' (1994) 16 *Sydney Law Review* 195
- Caron, David D, 'Iraq and the Force of Law: Why Give a Shield of Immunity?' (1991) 85 *American Journal of International Law* 89
- Caron, David D, 'The Legitimacy of the Collective Authority of the Security Council' (1993) 87 *American Journal of International Law* 552
- Carty, Anthony, 'Why Theory? - The Implications for International Law Teaching' in Philip Allott, Anthony Carty, Martti Koskenniemi and Colin Warbrick, *Theory and International Law: An Introduction*, London: British Institute of International and Comparative Law, 1991, 75
- Cass, Deborah Z, 'Navigating the New Stream: Recent Critical Scholarship in International Law' (1996) 65 *Nordic Journal of International Law* 341

- Chaloupka, William, *Knowing Nukes: The Politics and Culture of the Atom*, Minneapolis: University of Minnesota Press, 1992
- Chamberlain, Greg, 'Up by the Roots: Haitian History Through 1987' in North American Congress on Latin America, *Haiti: Dangerous Crossroads*, Boston: South End Press, 1995, 13
- Charlesworth, Hilary, 'The Australian Reluctance About Rights' in Philip Alston (ed), *Towards an Australian Bill of Rights*, Canberra: Centre for International and Public Law, 1994, 21
- Charlesworth, Hilary, 'Cries and Whispers: Responses to Feminist Scholarship in International Law' (1996) 65 *Nordic Journal of International Law* 557
- Charlesworth, Hilary, 'Feminist Critiques of International Law and Their Critics' (1994-5) *Third World Legal Studies* 1
- Charlesworth, Hilary, 'The Sex of the State in International Law' in Ngaire Naffine and Rosemary J Owens (eds), *Sexing the Subject of Law*, Sydney: LBC Information Services, 1997, 251
- Charlesworth, Hilary, 'The Silences of the Blue Book' in Stephanie Lawson (ed), *The New Agenda for Global Security: Cooperating for Peace and Beyond*, Sydney: Allen and Unwin, 1995, 133
- Charlesworth, Hilary, 'Transforming the United Men's Club' (1994) 4 *Transnational Law & Contemporary Problems* 421
- Charlesworth, Hilary, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613
- Chayes, Abram, 'The Use of Force in the Persian Gulf' in Lori F Damrosch and David J Scheffer (eds), *Law and Force in the New International Order*, Boulder: Westview Press, 1991, 3
- Cheeseman, Graeme and Robert Bruce (eds), *Discourses of Danger & Dread Frontiers: Australian Defence and Security Thinking after the Cold War*, St Leonards: Allen & Unwin, 1996
- Chinkin, Christine, 'Feminist Interventions into International Law' (1997) 19 *Adelaide Law Review* 13
- Chinkin, Christine, 'A Gendered Perspective to the International Use of Force' (1992) 12 *Australian Year Book of International Law* 279

- Chinkin, Christine, 'Rape and Sexual Abuse of Women in International Law' (1994) 5 *European Journal International Law* 326
- Chinkin, Christine, 'Strategies to Combat Discrimination Against Women' in M O'Flaherty and G Gisvold (eds), *Post-War Protection of Human Rights in Bosnia and Herzegovina*, Great Britain: Kluwer Law International, 1998, 173
- Chomsky, Noam, *Deterring Democracy*, London: Vintage Books, 1992
- Chomsky, Noam, *World Orders, Old and New*, London: Pluto Press, 1994
- Chossudovsky, Michel, 'Dismantling Former Yugoslavia; Recolonising Bosnia', *Economic and Political Weekly*, 2 March 1996, 521
- Chow, Rey, 'Violence in the Other Country: China as Crisis, Spectacle, and Woman' in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres (eds), *Third World Women and the Politics of Feminism*, Bloomington: Indiana University Press, 1991, 81
- Clark, Jeffrey, 'Debate in Somalia: Failure of the Collective Response' in Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts*, New York: Council on Foreign Relations Press, 1993, 231
- Cline, William R, *International Debt: Systemic Risk and Policy Response*, Washington DC: Institute for International Economics, 1984
- Cline, William R, *International Debt Reexamined*, Washington DC: Institute for International Economics, 1995
- Cohen, Marjorie Griffin, 'The Return of the Robber Barons' (1995) 49 *Refractory Girl* 40
- Cohn, Carol, 'Sex and Death in the Rational World of Defense Intellectuals' (1987) 12 *Signs* 687
- Cooke, Miriam and Angela Woollacott, *Gendering War Talk*, Princeton: Princeton University Press, 1993
- Coronel, Sheila and Ninotchka Rosca, 'Philippines: For the Boys' (November/December 1993) 4 *Ms.* 10
- D'Amato, Anthony, 'Book Review: Rebecca Cook (ed), *Human Rights of Women: National and International Perspectives*' (1995) 89 *American Journal of International Law* 840
- D'Amato, Anthony, 'Is International Law Really "Law"?' (1985) 79 *Northwestern University Law Review* 1293

- Davies, Margaret, *Asking the Law Question*, Sydney: Law Book Company, 1994
- Davis, Mark, *Gangland: Cultural Elites and the New Generationalism*, St Leonards: Allen & Unwin, 1997
- de Lauretis, Teresa, *Technologies of Gender: Essays on Theory, Film and Fiction*, Hampshire: Macmillan, 1987
- de Lauretis, Teresa, 'Upping the anti [sic] in feminist theory' in Simon During (ed), *The Cultural Studies Reader*, London: Routledge, 1993, 74
- Der Derian, James, *Antidiplomacy: Spies, Terror, Speed, and War*, Cambridge: Blackwell, 1992
- Derrida, Jacques, 'Force of Law: The "Mystical Foundation of Authority"' in Drucilla Cornell, Michael Rosenfeld and David Gray Carlson (eds), *Deconstruction and the Possibility of Justice*, New York: Routledge, 1992, 3
- Derrida, Jacques, *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International*, New York and London: Routledge, 1994
- Dhaliwal, Amarपाल K, 'Can the Subaltern Vote? Radical Democracy, Discourses of Representation and Rights, and Questions of Race' in David Trend (ed), *Radical Democracy: Identity, Citizenship, and the State*, New York: Routledge, 1996
- Diprose, Rosalyn, 'A "genethics" that makes sense' in Rosalyn Diprose and Robyn Ferrell (eds), *Cartographies: Poststructuralism and the mapping of bodies and spaces*, Sydney: Allen & Unwin, 1991, 65
- Dolgopol, Ustinia, 'A Feminist Appraisal of the Dayton Peace Accords' (1997) 19 *Adelaide Law Review* 59
- Drahos, Peter, 'Global Property Rights in Information: The Story of TRIPS at the GATT' (1995) 13 *Prometheus* 6
- Dreyfus, Hubert L and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, Chicago: University of Chicago Press, 1983
- Duncanson, Ian, 'Broadening the Discipline of Law' (1994) 19 *Melbourne University Law Review* 1075
- Duncanson, Ian, 'Close Your Eyes and Think of England: Stories About Law and Constitutional Change in Australia' (1996) 3 *Canberra Law Review* 123

- Duncanson, Ian, 'Legal Education and the Possibility of Critique: An Australian Perspective' (1993) 8 *Canadian Journal of Law and Society* 59
- Duncanson, Ian, 'Unchartered Lands in an Age of "Accountability"' (1997) 3 *Res Publica* 3
- Dupuy, Alex, *Haiti in the New World Order*, Colorado: Westview Press, 1997
- Eckstaedt, Anita, 'Two Complementary Cases of Identification Involving "Third Reich" Fathers' (1986) 67 *International Journal of Psycho-Analysis* 317
- Elliott, Anthony M, 'Symptoms of Globalization: or, Mapping Reflexivity in the Postmodern Age' in Joseph E Camilleri, Anthony P Jarvis and Albert J Paolini (eds), *The State in Transition: Reimagining Political Space*, Boulder: Lynne Rienner Publishers, 1995, 157
- Enloe, Cynthia, *The Morning After: Sexual Politics At The End Of The Cold War*, Berkeley: University of California Press, 1993
- Enloe, Cynthia, 'The Right to Fight: A Feminist Catch-22' (1993) 4 *Ms.* 84
- Escobar, Arturo, 'Discourse and Power in Development: Michel Foucault and the Relevance of his Work to the Third World' (1984-5) X *Alternatives* 377
- Escobar, Arturo, *Encountering Development: The Making and Unmaking of the Third World*, Princeton: Princeton University Press, 1995
- Evans, Gareth, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, St Leonards: Allen and Unwin, 1993
- Evans, Gareth, 'The New World Order and The United Nations' in Mara R Bustelo and Philip Alston (eds), *Whose New World Order? What Role for the United Nations?*, Leichhardt: Federation Press, 1991
- Evans, Gareth and Bruce Grant, *Australia's Foreign Relations In the World of the 1990s*, Melbourne: Melbourne University Press, Second edition, 1995
- Falk, Richard, 'The Complexities of Humanitarian Intervention: A New World Order Challenge' (1996) 17 *Michigan Journal of International Law* 491
- Falk, Richard, 'The Haiti Intervention: A Dangerous World Order Precedent for the United Nations' (1995) 36 *Harvard International Law Journal* 341
- Faludi, Susan, 'The Citadel', *The New Yorker*, 5 September 1994, 62
- Fanon, Frantz, *Black Skin, White Masks*, New York: Grove Press, 1967



- Farer, Tom J, 'Intervention in Unnatural Humanitarian Emergencies: Lessons of the First Phase' (1996) 18 *Human Rights Quarterly* 1
- Farer, Tom, 'A Paradigm of Legitimate Intervention' in Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts*, New York: Council on Foreign Relations Press, 1993, 316
- Flax, Jane, *Disputed Subjects: Essays on Psychoanalysis, Politics and Philosophy*, New York and London: Routledge, 1993
- Foucault, Michel, 'The History of Sexuality' in Colin Gordon (ed), *Michel Foucault Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, (trans Colin Gordon, Leo Marshall, John Mepham and Kate Soper), Brighton: The Harvester Press, 1980, 183
- Foucault, Michel, *The History of Sexuality, Volume 1: An Introduction* (trans Robert Hurley), London: Penguin Books, 1981
- Foucault, Michel, *Madness And Civilization: A History of Insanity in the Age of Reason*, New York: Vintage Books, 1988
- Foucault, Michel, 'On the Genealogy of Ethics: An Overview of Work in Progress' in Hubert L Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, Chicago: University of Chicago Press, Second edition, 1983, 229
- Foucault, Michel, *The Order of Things: An Archaeology of the Human Sciences*, New York: Vintage Books, 1994
- Foucault, Michel, 'What is an Author?' in Donald F Bouchard (ed), *Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault*, (trans Donald F Bouchard and Sherry Simon), Ithaca: Cornell University Press, 1977, 113
- Franck, Thomas M, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46
- Franck, Thomas M, 'The "Powers of Appreciation": Who Is the Ultimate Guardian of UN Legality?' (1992) 86 *American Journal of International Law* 519
- Franck, Thomas M, 'United Nations Prospects for a New Global Order' (1989-90) 22 *New York University Journal of International Law and Politics* 601
- Franck, Thomas M & Faiza Patel, 'UN Police Action in Lieu of War: "The Old Order Changeth"' (1991) 85 *American Journal of International Law* 63

- Frow, John, 'Information as Gift and Commodity' (1996) 219 *New Left Review* 89
- Fukuyama, Francis, *The End of History and The Last Man*, New York: The Free Press, 1992
- Fuss, Diana, *Identification Papers*, New York: Routledge, 1995
- Gaines, Richard Lee, 'On the Road to a Pax U.N.: Using the Peace Tools at our Disposal in a Post-Cold War World' (1993) 25 *New York University Journal of International Law and Policy* 543
- Gallop, Jane, *The Daughter's Seduction: Feminism and Psychoanalysis*, Ithaca: Cornell University Press, 1982
- Gallop, Jane, *Thinking Through the Body*, New York: Columbia University Press, 1988
- Gardam, Judith, 'A Feminist Analysis of Certain Aspects of International Humanitarian Law' (1992) 12 *Australian Year Book of International Law* 265
- Gardam, Judith, 'Gender and Non-Combatant Immunity' (1993) 3 *Transnational Law and Contemporary Problems* 345
- Gardam, Judith, 'Legal Restraints on Security Council Military Enforcement Action' (1996) 17 *Michigan Journal of International Law* 285
- Gardam, Judith Gail, 'Proportionality and Force in International Law' (1993) 87 *American Journal of International Law* 391
- Gardam, Judith, 'Women and International Humanitarian Law' in William Maley (ed), *Shelters from the Storm: Developments in International Humanitarian Law*, Canberra: Australian Defence Studies Centre, 1995, 205
- Gatens, Moira, 'Corporeal Representations in/and the body politic' in Rosalyn Diprose and Robyn Ferrell (eds), *Cartographies: Poststructuralism and the mapping of bodies and spaces*, Sydney: Allen & Unwin, 1991, 79
- Gathii, James Thuo, 'International Law and Eurocentricity: A Review Essay' (1998) 9 *European Journal of International Law* 184
- Gavlak, Dale, 'Still Suffering Nonsuffrage in "Liberated" Kuwait' (January/February 1993) 3 *Ms.* 14
- George, Jim, 'Quo Vadis Australia? Framing the Defence and Security Debate Beyond the Cold War' in Graeme Cheeseman & Robert Bruce (eds), *Discourses of Danger & Dread Frontiers: Australian Defence and Security Thinking after the Cold War*, St Leonards: Allen & Unwin, 1996, 10

- George, Susan, *The Debt Boomerang: How Third World Debt Harms Us All*, London: Pluto Press, 1992
- George, Susan, *A Fate Worse than Debt*, Harmondsworth: Penguin, 1988
- George, Susan and Fabrizio Sabelli, *Faith and Credit: The World Bank's Secular Empire*, London: Penguin Books, 1994
- Gibson-Graham, J K, *The End of Capitalism (As We Knew It): A Feminist Critique of Political Economy*, Cambridge: Blackwell, 1996
- Giroux, Henry A, 'Pedagogy and Radical Democracy in the Age of "Political Correctness"' in David Trend (ed), *Radical Democracy: Identity, Citizenship, and the State*, New York: Routledge, 1996, 179
- Glennon, Michael J, 'Sovereignty and Community after Haiti: Rethinking the Collective Use of Force' (1995) 89 *American Journal of International Law* 70
- Glenny, Misha, *The Fall of Yugoslavia*, London: Penguin, 1992
- Gordenker, Leon and Thomas G Weiss, 'The Collective Security Idea and Changing World Politics' in Thomas G Weiss (ed), *Collective Security in a Changing World*, Boulder and London: Lynne Reinner Publishers, 1993, 3
- Gordon, Colin (ed), *Michel Foucault Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, (trans Colin Gordon, Leo Marshall, John Mepham and Kate Soper), Brighton: The Harvester Press, 1980
- Gordon, Ruth E, 'Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti' (1996) 31 *Texas International Law Journal* 43
- Gordon, Ruth, 'United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond' (1994) 5 *Michigan Journal of International Law* 519
- Gowan, Peter, 'Neo-Liberal Theory and Practice for Eastern Europe' (1995) 213 *New Left Review* 3
- Graefrath, Bernhard, 'Leave to the Court What Belongs to the Court: The Libyan Case' (1993) 4 *European Journal of International Law* 184
- Grbich, Judith E, 'The Body in Legal Theory' in Martha Albertson Fineman and Nancy Sweet Thomadsen (eds), *At the Boundaries of Law: Feminism and Legal Theory*, New York: Routledge, 1991, 61
- Grbich, Judith, 'Reading the Phantom: Taxation Law, Psychoanalysis and Apparitions' (1997) 8 *Australian Feminist Law Journal* 81

- Grbich, Judith, 'Taxation Narratives of Economic Gain: Reading Bodies Transgressively' (1997) V *Feminist Legal Studies* 131
- Grbich, Judith, 'The taxpayers's body: genealogies of exertion' in Pheng Cheah, David Fraser and Judith Grbich (eds), *Thinking Through the Body of the Law*, Sydney: Allen & Unwin, 1996, 136
- Grbich, Judith E, 'Writing Histories of Revenue Law: The New Productivity Research' (1993) 11 *Law in Context* 57
- Griffin, Susan, *A Chorus of Stones: The Private Life of War*, New York: Doubleday, 1992
- Grosz, Elizabeth, *Volatile Bodies*, St Leonards: Allen & Unwin, 1994
- Guest, Krysti Justine, 'Exploitation under Erasure: Economic, Social and Cultural Rights Engage Economic Globalisation' (1997) 19 *Adelaide Law Review* 73
- Guinier, Lani, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy*, 1994
- Halperin, David M, *Saint Foucault: Towards a Gay Hagiography*, Oxford: Oxford University Press, 1995
- Hansen, Hugh C, 'International Copyright: An Unorthodox Analysis' (1996) 29 *Vanderbilt Journal of Transnational Law* 579
- Haraway, Donna J, *Modest\_Witness@Second\_Millennium*, New York: Routledge, 1997
- Haraway, Donna, *Primate Visions: Gender, Race and Nature in the World of Modern Science*, New York: Routledge, 1989
- Haraway, Donna J, *Simians, Cyborgs, and Women: The Reinvention of Nature*, London: Free Association Books, 1991
- Harrington, Mona, 'What Exactly is Wrong with the Liberal State as an Agent of Change?' in V Spike Peterson (ed), *Gendered States: Feminist (Re)Visions of International Relations Theory*, Boulder and London: Lynne Reinner Publishers, 1992, 65
- Hart, H L A, *Essays in Jurisprudence and Philosophy*, Oxford: Clarendon Press, 1983
- Henkin, Louis, 'Use of Force: Law and US Policy' in Louis Henkin et al, *Right v. Might: International Law and the Use of Force*, New York: Council on Foreign Relations Press, 1991, 37

- Henwood, Doug, *Wall Street: How it Works and for Whom*, London: Verso, 1997
- Herman, Edward S and Noam Chomsky, *Manufacturing Consent*, New York: Pantheon Books, 1988
- Higgins, Rosalyn, *Problems and Process: International Law and How We Use It*, Oxford: Oxford University Press, 1994
- Hippler, Jochen, 'Democratisation of the Third World After the End of the Cold War' in Jochen Hippler (ed), *The Democratisation of Disempowerment: The Problem of Democracy in the Third World*, London: Pluto Press, 1995, 1
- hooks, bell, *Teaching to Transgress*, New York: Routledge, 1994
- hooks, bell, *Yearning: Race, Gender and Cultural Politics*, Boston: South End Press, 1990
- Howe, Adrian, *Punish and Critique: Towards a Feminist Analysis of Penalty*, London: Routledge, 1994
- Humphery, Kim, 'Talking Shop' (1995) 19 *Arena Magazine* 30
- Hunt, Alan and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance*, London: Pluto Press, 1994
- Hutchinson, Mark R, 'Restoring Hope: U.N. Security Council Resolutions for Somalia and an Expanded Doctrine of Humanitarian Intervention' (1993) 34 *Harvard International Law Journal* 624
- Hutton, Will, *The State We're In*, London: Vintage Books, 1996
- Jaising, Indira and C Sathyamala, 'Legal Rights ... and Wrongs: Internationalising Bhopal' in Vandana Shiva (ed), *Close to Home: Women Reconnect Ecology, Health and Development Worldwide*, Philadelphia: New Society Publishers, 1994, 88
- Jeffords, Susan, *Hard Bodies: Hollywood Masculinity in the Reagan Era*, New Brunswick: Rutgers University Press, 1994
- Jeffords, Susan, 'The Patriot System, or Managerial Heroism' in Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, Durham: Duke University Press, 1993, 535
- Johansen, Robert, 'The Future of United Nations Peacekeeping and Enforcement: A Framework for Policymaking (1996) 2 *Global Governance* 299

- Kampelman, Max M, 'Foreword' in Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts*, New York: Council on Foreign Relations Press, 1993, vii
- Kaplan, Amy and Donald E Pease (eds), *Cultures of United States Imperialism*, Durham: Duke University Press, 1993
- Kaplan, E Ann, *Looking for the Other: Feminism, Film, and the Imperial Gaze*, New York: Routledge, 1997
- Kappeler, Susanne, *The Pornography of Representation*, Minneapolis: University of Minneapolis Press, 1986
- Keesing's Contemporary Archives: Record of World Events* Vol. 30, June 1984, 32932-3
- Keesing's Contemporary Archives: Record of World Events*, Vol 31, August 1985, 33808
- Kelsen, Hans, 'The Conception of the State and Social Psychology with Special Reference to Freud's Group Theory' (1924) 5 *International Journal of Psycho-analysis* 1
- Kelsey, Jane, *Economic Fundamentalism: The New Zealand Experiment - A World Model For Structural Adjustment?*, London: Pluto Press, 1995
- Kennedy, David, 'Autumn Weekends: An Essay on Law and Everyday Life' in Austin Sarat and Thomas R Kearns (eds), *Law in Everyday Life*, Ann Arbor: The University of Michigan Press, 1993, 191
- Kennedy, David, 'Law's Literature' in Majorie Garber, Rebecca L Walkowitz and Paul B Franklin (eds), *Field Work: Sites in Literary and Cultural Studies*, New York and London: Routledge, 1996, 207
- Kennedy, David W, 'A New World Order: Yesterday, Today and Tomorrow' (1994) 4 *Transnational Law and Contemporary Problems* 329
- Kennedy, David, 'Receiving the International? What's the Public/Private Distinction Got to do With It?', paper presented at the New York University Institute for Law and Society, 3 March 1995
- Kennedy, David, 'Spring Break' (1985) 63 *Texas Law Review* 1377
- Kennedy, David and Chris Tennant, 'New Approaches to International Law: A Bibliography' (1994) 35 *Harvard International Law Journal* 417

- Kennedy, Duncan, 'Legal Education and the Reproduction of Hierarchy' (1982) 32 *Journal of Legal Education* 591
- Kennedy, Roseanne, 'Global Mourning, Local Politics' in Re:Public (ed), *Planet Diana: Cultural Studies and Global Mourning*, Nepean: Research Centre in Intercommunal Studies, University of Western Sydney, 1997, 49
- Kirshenbaum, Gayle, 'Who's Watching the Peacekeepers?' (May/June 1994) 4 *Ms.* 10
- Klare, Michael, *Rogue States and Nuclear Outlaws: America's Search for a New Foreign Policy*, New York: Hill and Wang, 1994
- Koskenniemi, Martti, *From Apology to Utopia: The Structure of International Legal Argument*, Helsinki: Finnish Lawyers Publishing Company, 1989
- Koskenniemi, Martti, 'National Self-Determination Today: Problems of Legal Theory and Practice' (1994) 43 *International Comparative Law Quarterly* 241
- Koskenniemi, Martti, 'The Place of Law in Collective Security' (1996) 17 *Michigan Journal of International Law* 455
- Koskenniemi, Martti, 'The Police in the Temple. Order, Justice and the United Nations: A Dialectical View' (1995) 6 *European Journal of International Law* 325
- Langton, Marcia, 'Pauline as the thin edge of the wedge' in Phillip Adams (ed), *The Retreat from Tolerance: A Snapshot of Australian Society*, Sydney: ABC Books, 1997, 86
- Leonard, Jerry, 'Introduction: (Post)Modern Legal Studies as (Critical) Cultural Studies' in Jerry D Leonard (ed), *Legal Studies as Cultural Studies: A Reader in (Post)Modern Critical Theory*, Albany: State University of New York Press, 1995, 1
- Lindsay, Bruce, 'GATT, Development and Intellectual Property' (1994) 3 *Arena Journal* 33
- Luke, Carmen (ed), *Feminisms and Pedagogies of Everyday Life*, Albany: State University of New York Press, 1996
- McClintock, Anne, *Imperial Leather: Race, Gender and Sexuality in the Colonial Conquest*, New York: Routledge, 1995
- MacCormick, Neil, 'Beyond the Sovereign State' (1993) 56 *Modern Law Review* 1

- MacKinnon, Catharine A, 'Turning Rape into Pornography: Postmodern Genocide', (July/August 1993) 4 *Ms.* 24
- Mackie, Fiona, 'Chaos' (1994) 13 *Arena Magazine* 41
- Malcolm, Noel, *Bosnia: A Short History*, London: Papermac, 1996
- Mamdani, Mahmood, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton: Princeton University Press, 1996
- Martin, Adrian, *Phantasms*, Victoria: McPhee Gribble Publishers, 1994
- Martin, Luther H, Huck Gutman and Patrick H Hutton (ed), *Technologies of the Self: A Seminar with Michel Foucault*, Amherst: The University of Massachusetts Press, 1988
- Marx, Karl, 'On the Jewish Question' in Jeremy Waldron (ed), *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man*, London and New York: Methuen, 1987, 137
- Maynes, Charles William, 'America Without the Cold War' (1990) 78 *Foreign Policy* 3
- Mearsheimer, John J, 'Why We Will Soon Miss the Cold War' in Phil Williams, Donald M Goldstein and Jay M Shafritz (eds), *Classic Readings of International Relations*, California: Wadsworth Publishing Company, 1994
- Meron, Theodor, 'Rape as a Crime under International Humanitarian Law' (1993) 87 *American Journal Of International Law* 424
- Meron, Theodor, 'War Crimes in Yugoslavia and the Development of International Law' (1994) 88 *American Journal Of International Law* 78
- Michel, Andrée, 'Militarisation of Contemporary Societies and Feminism in the North' in Georgina Ashworth (ed), *A Diplomacy of the Oppressed: New Directions in International Feminism*, London: Zed Books, 1995, 33
- Middle East Watch, *Needless Deaths in the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War*, New York: Human Rights Watch, 1991
- Mikesell, Raymond F, 'Appraising IMF Conditionality: Too Loose, Too Tight, Or Just Right?' in John Williamson (ed), *IMF Conditionality*, Washington DC: Institute for International Economics, 1983, 47
- Milivojevic, Marko, *The Debt Rescheduling Process*, London: Frances Pinter, 1985



- Minear, Larry and Philippe Guillot, *Soldiers to the Rescue: Humanitarian Lessons from Rwanda*, Paris: Development Centre of the Organisation for Economic Co-operation and Development, 1996
- Minh-ha, Trinh T, *When the Moon Waxes Red: Representation, Gender and Cultural Politics*, Routledge: New York, 1991
- Minh-ha, Trinh T, *Woman, Native, Other: Writing Postcoloniality and Feminism*, Bloomington and Indianapolis: Indiana University Press, 1989, 80.
- Moi, Toril, *Simone de Beauvoir: The making of an intellectual woman*, Oxford: Blackwell, 1994
- Morris, Meaghan, *Ecstasy and Economics: American Essays for John Forbes*, Sydney: Empress Publishing, 1992
- Morrison, Toni, 'Introduction: Friday on the Potomac' in Toni Morrison (ed), *Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality*, New York: Pantheon Books, 1992, vii
- Morrison, Toni, *Playing in the Dark: Whiteness and the Literary Imagination*, London: Picador, 1992
- Morrow, Jonathon, 'Soft Times: The "Literary Imagination" as Poetic Injustice' (1998) 10 *Australian Feminist Law Journal* 35
- Morse, Bradford and Thomas R Berger, *Sardar Sarovar: Report of the Independent Review*, Ottawa: Resource Futures International, 1992
- Moser, Yeshua, 'UN Peacekeeping in Cambodia' (1993) 26 *Arena Magazine* 26
- Mouffe, Chantal, 'Feminism, Citizenship, and Radical Democratic Politics' in Judith Butler and Joan W Scott (eds), *Feminists Theorize The Political*, New York: Routledge, 1992, 369
- Mowlana, Hamid, George Gerbner and Herbert Schiller (eds), *Triumph Of The Image: The Media's War In The Persian Gulf*, Boulder: Westview Press 1992
- Mulvey, Laura, *Visual and Other Pleasures*, Bloomington: Indiana University Press, 1989
- Naffine, Ngaire and Rosemary J Owens (eds), *Sexing the Subject of Law*, Sydney: LBC Information Services, 1997
- Nanda, Ved P, 'Tragedies in Northern Iraq, Liberia, Yugoslavia, and Haiti - Revisiting the Validity of Humanitarian Intervention Under International law - Part 1' (1992) 20 *Denver Journal of International Law and Policy* 305

Nardin, Terry and David R Mapel, *Traditions of International Ethics*, Cambridge: Cambridge University Press, 1992

'Naval Maneuvers' (January/February 1994) 4 *Ms.* 17

Neuhaus, Matthew, 'International Law at the United Nations', *Proceedings of the Second Annual Meeting of the Australian and New Zealand Society of International Law*, 1994, 253

Nordstrom, Carolyn, 'Rape: Politics and Theory in War and ~~Peace~~' (1996) 11 *Australian Feminist Studies* 147

Normand, Roger and Chris af Jochnick, 'The Legitimation of Violence: A Critical Analysis of the Gulf War' (1994) 35 *Harvard International Law Journal* 387

O'Hagan, Jacinta, 'Civilisational Conflict? Looking for Cultural Enemies' (1995) 16 *Third World Quarterly* 19

Onimode, Bade, *The IMF, The World Bank and African Debt: The Social and Political Impact*, London: Zed Books and the Institute for African Alternatives, 1989

Orford, Anne, 'Citizenship, Sovereignty and Globalisation: Teaching International Law in the Post-Soviet Era' (1995) 6 *Legal Education Review* 251

Orford, Anne, 'Contesting Globalization: A Feminist Perspective on the Future of Human Rights' (1998) 8(2) *Transnational Law and Contemporary Problems* 171

Orford, Anne, 'Liberty, Equality, Pornography: The Bodies of Women and Human Rights Discourse' (1994) 3 *Australian Feminist Law Journal* 72

Orford, Anne, 'The Uses of Sovereignty in the New Imperial Order' (1996) 6 *Australian Feminist Law Journal* 63

Orford, Anne and Jennifer Beard, 'Making the State Safe for the Market: The World Bank's *World Development Report 1997*' (1998) 22 *Melbourne University Law Review* 195

Osman, Hibaaq I, 'Somalia: Will Reconstruction Threaten Women's Progress?' (March/April 1993) 3 *Ms.* 12

Otto, Dianne, 'Of Messiahs and a Better World: Critiquing and Embracing New Approaches to International Law', *Supplement to Proceedings of the*

*Fifth Annual Conference of the Australian and New Zealand Society of International Law*, 1997, 1, 7

Paley, Grace, 'Something About the Peace Movement: Something About the People's Right *Not* to Know' in Victoria Brittain, *The Gulf Between Us: The Gulf War and Beyond*, London: Virago Press, 1991, 61

Pateman, Carole, *The Sexual Contract*, Cambridge: Polity Press, 1988

Pease, Donald E, 'Hiroshima, the Vietnam Veterans War Memorial, and the Gulf War: Post-National Spectacles' in Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, Durham: Duke University Press, 1993, 557

Peng, Khor Kok, 'Intellectual Property: Tightening TNC Monopoly on Technology' (1990) 3 *Third World Resurgence* 22

Perera, Suvendrini and Joseph Pugliese, 'Subject Positions' (1994) 12 *Arena Magazine* 38

Peterson, V Spike, 'The Politics of Identity and Gendered Nationalism' in Laura Neack, Patrick J Haney and Jeanne A K Hey (eds), *Foreign Policy Analysis in its Second Generation: Continuity and Change*, New Jersey: Prentice Hall, 1995, 167

Peterson, V Spike, 'Security and Sovereign States: What Is At Stake in Taking Feminism Seriously?' in V Spike Peterson (ed), *Gendered States: Feminist (Re)Visions of International Relations Theory*, Boulder: Lynne Rienner Publishers, 1992, 31

Petras, J and S Vieux, 'Bosnia and the Revival of US Hegemony' (1996) 218 *New Left Review* 3

Pettman, Jan, *Living in the Margins: Racism, Sexism and Feminism in Australia*, Sydney: Allen & Unwin, 1992

Piven, Frances Fox, 'Is It Global Economics or Neo-Laissez Faire?' (1995) 213 *New Left Review* 107

Provost, René, 'Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait' (1992) 30 *Columbia Journal of Transnational Law* 577

Puren, Nina, 'Bodies/Ethics/Violence: A Review of *Heroines of Fortitude: The Experiences of Women as Victims of Sexual Assault and The Crimes (Rape) Act 1991 (NSW): An Evaluation Report*' (1997) 9 *Australian Feminist Law Journal* 134

Pusey, Michael, *Economic Rationalism in Canberra: A Nation Building State Changes Its Mind*, Cambridge: Cambridge University Press, 1991

Rafael, Vicente L, 'White Love: Surveillance and Nationalist Resistance in the US Colonization of the Philippines' in Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, Durham: Duke University Press, 1993, 211

Raghavan, Chakravarthi, 'The Real Issues in Uruguay Round' (1991) 7 *Third World Resurgence* 6

Raghavan, Chakravarthi, *Recolonization: GATT, the Uruguay Round and the Third World*, London: Zed Books, 1990

Reisman, W Michael, 'The Constitutional Crisis in the United Nations' (1993) 87 *American Journal of International Law* 83

Reisman, W Michael, 'Preparing to Wage Peace: Toward the Creation of an International Peacemaking Command and Staff College' (1994) 88 *American Journal of International Law* 76

Reisman, W Michael, 'Some Lessons from Iraq: International Law and Democratic Politics' (1991) 16 *Yale Journal of International Law* 203

Renner, Michael, *Critical Juncture: The Future of Peacekeeping*, Washington DC: Worldwatch Institute, 1993

Rhodes-Little, Andrea, 'Review Essay: Who Do We Think "We" Are?' (1997) 8 *Australian Feminist Law Journal* 149

Rhodes-Little, Andrea, *Sovereign/Body: Towards a Theory of Deviant Writing as a Domain of Constraint on the Performativity of Civil Subjects*, 1996, Phd Thesis, La Trobe University

Rhodes-Little, Andrea, Julia Gillard and Sylvi Cerepinko, 'In Search of the Ethics of Company Law' (1994) 2 *Australian Feminist Law Journal* 180

Rich, Bruce, *Mortgaging the Earth: The World Bank, Environmental Impoverishment and the Crisis of Development*, London: Earthscan, 1994

Richardson III, Henry J, 'The Gulf Crisis and African-American Interests under International Law' (1993) 87 *American Journal of International Law* 42

Rogin, Michael, "'Make My Day!": Spectacle as Amnesia in Imperial Politics [and] The Sequel' in Amy Kaplan and Donald E Pease (eds), *Cultures of United States Imperialism*, Durham: Duke University Press, 1993, 499

Rose, Jacqueline, *The Haunting of Sylvia Plath*, London: Virago Press, 1992

- Rose, Jacqueline, *Sexuality in the Field of Vision*, London: Verso, 1986
- Ross, Kristin, *Fast Cars, Clean Bodies: Decolonization and the Reordering of French Culture*, Cambridge: MIT, 1996
- Rostow, Eugene V, 'Until What? Enforcement Action, or Collective Self-Defence?' (1991) 85 *American Journal of International Law* 506
- Roth, Brad, 'Evaluating Democratic Progress: A Normative Theoretical Perspective' (1995) 9 *Ethics and International Affairs* 55
- Runyan, Anne Sisson, 'The "State" of Nature: A Garden Unfit for Women and Other Living Things' in V Spike Peterson (ed), *Gendered States: Feminist (Re)Visions Of International Relations Theory*, Boulder: Lynne Reinner Publishers, 1992, 123
- Sachs, Jeffrey, 'What is to be done?', *The Economist*, 13 January 1990, 19
- Said, Edward W, *Culture and Imperialism*, London: Chatto & Windus, 1993
- Said, Edward W, *Orientalism*, London: Penguin Books, 1978
- Said, Edward W, *The Question Of Palestine*, London: Vintage Books, 1992
- Said, Edward W, *Representations of the Intellectual*, London: Vintage Books, 1994
- Salecl, Renata, *The Spoils of Freedom: Psychoanalysis and Feminism after the Fall of Socialism*, London and New York: Routledge, 1994
- Samary, Catherine, 'Behind the breakup of Yugoslavia' (1993) 45 *Labour Focus on Eastern Europe* 27
- Santner, Eric L, *My Own Private Germany: Daniel Paul Schreber's Secret History of Modernity*, Princeton: Princeton University Press, 1996
- Scarry, Elaine, *The Body in Pain: The Making and Unmaking of the World*, New York: Oxford University Press, 1985
- Schachter, Oscar, 'The Invisible College of International Lawyers' (1977) 72 *Northwestern University Law Review* 217
- Schachter, Oscar, 'United Nations Law in the Gulf Conflict' (1991) 85 *American Journal of International Law* 452

- Schachter, Oscar, Stephen M Schwebel, Thomas M Franck and Sudhir K Chopra, 'In Memoriam: Judge Manfred Lachs (1914-1993)' (1993) 87 *American Journal of International Law* 414
- Scheffer, David J, 'Use of Force after the Cold War: Panama, Iraq, and the New World Order' in Louis Henkin et al, *Right v. Might: International Law and the Use of Force*, New York: Council on Foreign Relations Press, 1991, 109
- Schwebel, Stephen M, 'Hersch Lauterpacht: Fragments for a Portrait' (1997) 2 *European Journal of International Law* 305
- Sedgwick, Eve Kosofsky, *Tendencies*, Durham: Duke University Press, 1993
- Shihata, Ibrahim, *The World Bank in a Changing World*, Dordrecht: Martinus Nijhoff, 1991
- Shiva, Vandana, 'The Greening of the Global Reach' in Wolfgang Sachs (ed), *Global Ecology: A New Arena of Political Conflict*, London: Zed Books, 1993, 149
- Silverman, Kaja, *The Subject of Semiotics*, New York: Oxford University Press, 1993
- Skogly, Sigrun I, 'The Position of the World Bank and the International Monetary Fund in the Human Rights Field' in Markku Suski and Raija Hanski (eds), *An Introduction to the International Protection of Human Rights: A Textbook*, Turku/Åbo: Institute for Human Rights, Åbo Akademi University, 1997, 193
- Spivak, Gayatri Chakravorty, 'Culture Alive' (1995) 5 *Australian Feminist Law Journal* 3
- Spivak, Gayatri Chakravorty, *Outside in the Teaching Machine*, New York: Routledge, 1993
- Spivak, Gayatri Chakravorty and David Plotke, 'A Dialogue on Democracy' in David Trend (ed), *Radical Democracy: Identity, Citizenship, and the State*, New York: Routledge, 1996, 209
- Stamp, Patricia, 'Pastoral Power: Foucault and the New Imperial Order' (1994) 3 *Arena Journal* 11
- Steinberg, James B, 'International Involvement in the Yugoslavia Conflict' in Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts*, New York: Council on Foreign Relations Press, 1993, 27

Stephanson, Anders, 'Rethinking International Relations' (1996) 220 *New Left Review* 137

Stephens, Julie, 'Running Interference: An Interview with Gayatri Chakravorty Spivak' (1995) 7 *Australian Women's Book Review* 19

Stopford, Michael, 'Locating the Balance: The United Nations and the New World Disorder' (1994) 34 *Virginia Journal of International Law* 685

Stromseth, Jane E, 'Iraq's Repression of Its Civilian Population: Collective Responses and Continuing Challenges' in Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts*, New York: Council on Foreign Relations Press, 1993, 77

Swing, John Temple, 'Foreword' in Louis Henkin et al, *Right v. Might: International Law and the Use of Force*, New York: Council on Foreign Relations Press, 1991, vii

Sylvester, Christine, 'The White Paper Trailing' in Graeme Cheeseman and Robert Bruce (eds), *Discourses of Danger & Dread Frontiers: Australian Defence and Security Thinking After the Cold War*, St Leonards: Allen & Unwin, 1996, 134

Szasz, Paul C, 'The Protection of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia' (1996) 90 *American Journal of International Law* 301

Tanzi, Vito, *The Changing Role of Fiscal Policy in Fund Policy Advice*, paper presented at an IMF Seminar on 'Asia and the IMF', Hong Kong, China, September 19, 1997, 9, <<http://www.imf.org/external/np/apd/Asia/TANZI.HTM>>

Taylor, Diana, 'Spectacular Bodies: Gender, Terror and Argentina's "Dirty War"' in Miriam Cooke and Angela Woollacott (eds), *Gendering War Talk*, Princeton: Princeton University Press, 1993, 20

Tesón, Fernando R, 'Collective Humanitarian Intervention' (1996) 17 *Michigan Journal of International Law* 323

Tesón, Fernando R, 'International Obligation and the Theory of Hypothetical Consent' (1990) 15 *Yale Journal of International Law* 84

Tharoor, Shashi, 'The Changing Face of Peace-Keeping and Peace-Enforcement' (1995) 19 *Fordham International Law Journal* 408

Thornton, Margaret, 'Discord in the Legal Academy: The Case of the Feminist Scholar' (1994) 3 *Australian Feminist Law Journal* 53

- Thornton, Margaret, *The Liberal Promise*, Melbourne: Oxford University Press, 1990
- Thornton, Margaret, 'Portia Lost in the Groves of Academe Wondering What to Do About Legal Education' (1991) 9 *Law in Context* 12
- Threadgold, Terry, 'Critical Theory, Feminisms, The Judiciary and Rape' (1993) 1 *Australian Feminist Law Journal* 7
- Threadgold, Terry, 'Everyday Life in the Academy: Postmodernist Feminisms, Generic Seductions, Rewriting and Being Heard' in Carmen Luke (ed), *Feminisms and Pedagogies of Everyday Life*, Albany: State University of New York Press, 1996, 280
- Threadgold, Terry, 'Introduction' in Terry Threadgold and Anne Cranny-Francis (eds), *Feminine, Masculine and Representation*, Sydney: Allen & Unwin, 1990, 1
- Tickner, J Ann, 'Inadequate Providers? A Gendered Analysis of States and Security' in Joseph E Camilleri, Anthony P Jarvis and Albert J Paolini (eds), *The State in Transition: Reimagining Political Space*, Boulder: Lynne Rienner Publishers, 1995, 125
- Tyson, Laura, Sherman Robinson and Leyla Woods, 'Conditionality and Adjustment in Hungary and Yugoslavia' in Josef C Brada, Ed A Hewett and Thomas A Wolf (eds), *Economic Adjustment and Reform in Eastern Europe and the Soviet Union*, Durham: Duke University Press, 1988, 72
- 'U.N. Treachery' (January/February 1994) 4 *Ms.* 16
- United Nations High Commissioner For Refugees, *The State Of The World's Refugees*, New York: Penguin Books, 1993
- Urquhart, Brian, 'Learning from the Gulf' in Mara R Bustelo and Philip Alston (eds), *Whose New World Order? What Role for the United Nations?*, Leichhardt: Federation Press, 1991, 11
- Vidovic, Hermine, 'Yugoslavia's Successors' in Gabor Hunya (ed), *Economic Transformation in East-Central Europe and in the Newly Independent States*, Boulder: Westview Press, 1994, 209
- Virilio, Paul, *Open Sky*, (trans Julie Rose), London: Verso, 1997
- Walker, R B J, 'From International Relations to World Politics' in Joseph E Camilleri, Anthony P Jarvis and Albert J Paolini (eds), *The State in Transition: Reimagining Political Space*, Boulder: Lynne Rienner Publishers, 1995, 21



- Walker, R B J, 'Security, Sovereignty and the Challenge of World Politics' (1990) 15 *Alternatives* 3
- Weber, Cynthia, 'Good Girls, Little Girls, and Bad Girls: Male Paranoia in Robert Keohane's Critique of Feminist International Relations' (1994) 23 *Millenium* 337
- Weber, Cynthia, *Simulating Sovereignty: Intervention, the State and Symbolic Exchange*, Cambridge: Cambridge University Press, 1995
- Wedgwood, Ruth, 'The Evolution of United Nations Peacekeeping' (1995) 28 *Cornell International Law Journal* 631
- Weedon, Chris, *Feminist Practice and Poststructuralist Theory*, Cambridge: Blackwell, 1987
- Weiler, J H H, 'The Transformation of Europe' (1991) 100 *The Yale Law Journal* 2403
- Weisburd, A Mark, 'The Emptiness of the Concept of *Jus Cogens*, as Illustrated by the War in Bosnia-Herzegovina' (1995) 17 *Michigan Journal of International Law* 1
- Weiss, Thomas G, 'On the Brink of a New Era? Humanitarian Interventions, 1991-94' in Donald C F Daniel and Bradd C Hayes (eds), *Beyond Traditional Peacekeeping*, New York: St Martin's Press, 1995, 3
- Weston, Burns H, 'Security Council Resolution 678 and Persian Gulf Decision Making' (1991) 85 *American Journal of International Law* 516
- Wheelwright, Ted, 'Futures, Markets' (1994) 9 *Arena Magazine* 24
- Wheelwright, Ted, *Oil & World Politics: From Rockefeller to the Gulf War*, Sydney: Left Book Club Co-operative Ltd, 1991
- White, James Boyd, *Justice As Translation: An Essay in Cultural and Legal Criticism*, Chicago and London: The University of Chicago Press, 1990
- Wilenski, Peter, 'Reforming the United Nations for the Post-Cold War Era' in Mara R Bustelo and Philip Alston (eds), *Whose New World Order? What Role for the United Nations?*, Leichhardt: Federation Press, 1991, 122
- Williams, Andrew, 'Economic Intervention by International Economic Organizations in Central and Eastern Europe: Will it Lead to More or Less "Security" for the Region?' in Pal Dunay, Gabor Kardos and Andrew J. Williams (eds), *New Forms of Security, Views From Central, Eastern and Western Europe*, Aldershot: Dartmouth, 1995, 103

- Williams, Patricia J, *The Alchemy of Race and Rights*, London: Virago Press, 1993
- Williams, Patricia J, *The Rooster's Egg: On the Persistence of Prejudice*, Cambridge: Harvard University Press, 1995
- Wolf, Christa, *Cassandra*, London: Virago Press, 1984
- Woodward, David, Anthony Costello and Fiona Watson, *Human Face or Human Facade? Adjustment and the Health of Mothers and Children*, London: Institute of Child Health, 1994
- Woodward, Susan L, *Balkan Tragedy: Chaos and Dissolution After the Cold War*, Washington DC: The Brookings Institution, 1995
- Woolcott, Richard, 'The Perils of Freedom', *The Weekend Australian*, 22-23 April 1995, 24
- The World Bank, *World Development Report 1995: Workers in an Integrating World*, Oxford: Oxford University Press, 1995
- The World Bank, *World Development Report 1996: From Plan to Market*, Oxford: Oxford University Press, 1996
- The World Bank, *World Development Report 1997: The State in a Changing World*, Oxford: Oxford University Press, 1997
- Yeatman, Anna, *Postmodern Revisionings Of The Political*, New York: Routledge, 1994
- Young, Alison, *Femininity in Dissent*, London: Routledge, 1990
- Young, Iris Marion, *Justice And The Politics Of Difference*, Princeton: Princeton University Press, 1990
- Zaidi, Sarah, 'War, Sanctions, and Humanitarian Assistance: The Case of Iraq 1990-1993' (1994) 1 *Medicine And Global Survival* 147
- Zizek, Slavoj, 'Multiculturalism, Or, the Cultural Logic of Multinational Capitalism' (1997) 225 *New Left Review* 28
- Zizek, Slavoj, 'The Spectre of Ideology' in Slavoj Zizek (ed), *Mapping Ideology*, London: Verso, 1994, 1
- Zizek, Slavoj, *Tarrying With The Negative: Kant, Hegel and the Critique of Ideology*, Durham: Duke University Press, 1993