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Reimagining the Responsibility of the Security Council to Maintain International Peace and Security: The Contributions of *Jus Post Bellum*, Positive Peace, and Human Security

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This article considers the philosophical concepts of *jus post bellum*, positive peace, and human security. It focuses on the role of the Security Council, which is primarily responsible for the maintenance of international peace and security and whose resolutions are, for the most part, the genesis of peace support operations in post-conflict reconstruction. The article considers if and how the Council can include the notions of positive peace and human security in its task of maintaining peace and security. While acknowledging some of the Security Council's steps to engage with post-conflict obligations, the article contends that the Council, as a collective of UN Member States, ought to incorporate post-conflict obligations into its peace support mandates more deliberately and consistently. It identifies existing mechanisms that can assist the Council in this task, and concludes that *jus post bellum* theory, positive peace, and human security bring added value to the Security Council's post-conflict reconstruction endeavours.

INTRODUCTION

The importance of civil and political, as well as economic and social, reconstruction aimed at addressing the root causes of war and building a sustainable peace is well recognised.[1] One view is that "peacebuilding represents the operational manifestation of the abstract concept of *jus post bellum*."[2]

However, such reconstruction and peacebuilding have "raised many questions regarding the applicable legal framework, in terms of both the rights and obligations of the actors involved in the post-conflict phase and the content of reconstruction and reform."[3] In an attempt to answer some of these questions, this article draws upon the concepts of jus post bellum, positive peace, and human security. Jus post bellum theory signals that the rights and responsibilities of parties to a conflict do not end at the conflict's termination but that such rights and obligations continue through the post-conflict phase. The re-emergence of jus post bellum theory serves to highlight the rules and principles that currently underpin post-conflict activities which themselves continue to evolve, especially regarding the extraterritorial application of human rights law. The concept of positive peace calls for the establishment of a peace that is more than the absence of armed conflict but which also ends structural and cultural violence. The notion of human security seeks to put the security of the individual on an equal footing with that of the State, so that the former is protected from severe and pervasive threats and is empowered to act on his or her own behalf. This article focuses on the potential impact of these three concepts upon the workings of the Security Council, which is primarily responsible for the maintenance of international peace and security and whose resolutions are, for the most part, the genesis of peace support operations. While acknowledging some of the Council's steps to engage with broader concepts of peace and security as well as post-conflict obligations, the article considers the Council's potential obligation to incorporate broader post-conflict obligations into its peace support mandates more deliberately and consistently.

Part 2 of this article considers the recent re-emergence of jus post bellum discourse and its potential impact upon international peace and security. Part 3 examines the extent to which current policy governing matters of international peace and security incorporates the concepts of positive peace and human security. Part 4 identifies some of the current legal bases for post-conflict obligations and notes that human rights law is increasingly influencing the range and depth of post-conflict obligations. Part 5 acknowledges that the Security Council has taken steps to incorporate post-conflict obligations when establishing peace support operations, particularly regarding human rights obligations and economic and social reconstruction. It can and must, however, do more to secure a more effective and sustainable peace, and it can use pre-existing mechanisms to achieve a broader version

of its mandate. The article concludes with the call for a more nuanced approach to international peace and security by the Security Council, one that reflects the UN Charter's call to advance economic and social development and protect human rights.

JUS POST BELLUM AS A PHILOSOPHICAL CONSTRUCT

Jus post bellum theory signals that the rights and responsibilities of parties to a conflict do not end at the conflict's termination but that such rights and obligations continue through the post-conflict phase. Jus post bellum can be understood as a largely philosophical concept which, like many philosophical concepts, may ultimately guide the role of international law in post-conflict societies. Historically, references to jus post bellum can be identified in the evolution of just war theory.[4]

The discourse on jus post bellum and post-conflict reconstruction has also been elaborated upon more recently by theorists and theologians. In terms of recent Christian theology, it has been observed that jus post bellum should be guided by the notions of repentance and remorse for the fallen of both victors and vanquished as well as an honourable surrender that allows former adversaries to overcome prior sources of strife and build upon a more harmonious future. Perhaps most significant, in the current context, is the principle of restoration, which is intertwined with the principle of repentance. Under the principle of restoration, the victors must not only "return to the fields of battle and help remove the instruments of war," they must also assist in rebuilding the social infrastructure of the vanquished nation.[5] Such activities are premised on the notion that "most often it is those who are least able to fend for themselves who are affected the greatest in the aftermath of war—the children, the sick and the elderly."[6]

Recent moral and ethical considerations of just war theory also underpin theories of jus post bellum.[7] Philosophically, linkages between *jus ad bellum* and jus post bellum have been made[8] so that the "declared ends that justify a war impose obligations on belligerent powers to try, even after the conclusion of the war, to bring about the desired outcome."[9] Similar philosophical linkages have been made between jus post bellum and *jus in bello* as the latter's requirement of proportionality calls for restraint in combat so that both total war and total conquest are to be regarded, at the very least, as suspect.[10] The tripartite nature of just war theory is further elaborated with the view that if a war has a just cause, and is fought justly, the war still must

lead to a just postwar settlement[11] because "the way a war is fought and the deeds done in ending it live on in the historical memory of societies and may or may not set the stage for future war. It is always the duty of statesmanship to take this longer view."[12]

Although jus post bellum has been regarded as "the least developed part of just war theory,"[13] a number of general themes that underpin jus post bellum theory can be identified. First, the notion of just cause for termination permits the State(s) that resorted to armed force to seek "termination of the just war in question if there has been a reasonable vindication of those rights whose violation grounded the resort to war in the first place."[14] Second, acceptance of the terms of surrender means not only the cessation of hostilities; it also means renouncing the gains of aggression and submitting to reasonable principles of punishment, including compensation, war crimes trials, and perhaps rehabilitation.[15] Third, the object in war is a better state of peace,[16] meaning greater territorial security as well as a greater degree of safety for ordinary men and women and their domestic self-determination. Simply returning to the *status quo ante bellum* would be morally and legally problematic since such circumstances may have been the justification for the initiation of the war.[17] As such, jus post bellum gives rise to a series of obligations ranging from the simple to the complex. At its simplest, a "minimalist" view of jus post bellum permits a victorious State to choose merely to settle for the restoration of the status quo.[18] In contrast, the more complex or "maximalist" interpretation of jus post bellum advances the view that

> victors have a moral and legal obligation to do more than merely satisfy their own rights afterwards. They must also remove the seeds of potential future war by punishing those guilty of initiating aggressive war and positively assisting the civilian population in the building of legitimate and peaceful government institutions and in the rebuilding of the domestic economy.[19]

The requirement of a specialised jus post bellum is, therefore, based on the consideration that "there are so many issues—of surrender, official apologies for aggression, possible compensation and sanctions, institutional reconstruction, jump-starting the economy, dealing with insurgents—that there is not a sufficiently compelling reason to believe that the entire scope of post-war justice is exhausted by war crimes trials."[20]

Attempts to respond to such complexity allow the identification of

further principles. First, as noted above, the principle of rights vindication has been expanded to mean that the post-conflict settlement should secure those basic rights the violation of which triggered the war, such as the human rights to life and liberty and community entitlements to territory and sovereignty.[21] Second, according to the principle of proportionality, the terms of any peace settlement should be measured,[22] reasonable, and proportional to the end of rights vindication so that "the people of the defeated Aggressor never forfeit their human rights."[23] The related principle of publicity requires that such a reasoned settlement must then be publicly proclaimed.[24] Third, the principle of discrimination dictates that a distinction must be made between the defeated leaders, soldiers, and civilians. Not only should civilians be entitled to reasonable immunity from punitive post-war measures but sweeping socio-economic sanctions, as part of post-war punishment, should also be prohibited.[25] Fourth, according to the principle of punishment, the leaders of the aggressor regime, in particular, should face fair and public international trials for war crimes for reasons of deterrence, atonement and rehabilitation, and recognition of the aggressor's victims.[26] Proper punishment also includes the requirement that an aggressor State provides restitution to the victim State for "at least some of the costs incurred during the fight for its rights."[27] In this way, punishment reflects the concept of right intention, which is an aspect of the existing just war framework, so that "a state must intend to carry out the process of war termination only in terms of those principles contained in the other jus post bellum rules. Revenge is strictly ruled out as an animating force."[28] Fifth, the principle of compensation also allows for the mandating of financial restitution as an aspect of punishment. This principle too is subject to the tenets of proportionality and discrimination so that enough resources must be left to allow the defeated country to begin its own reconstruction as "respect for discrimination entails taking a reasonable amount of compensation only from those sources that can afford it and that were materially linked to the aggression in a morally culpable way."[29] Similarly, the payment of reparations must be "compensatory not vindictive."[30]

The above principles are indicative of the victor's rights and the limits upon those rights. However, it is the principle of rehabilitation, encompassing the concept of post-conflict reconstruction, which throws into sharp relief a core issue of just war theory: the extent to which the victors are obliged to go beyond a restoration of the *status quo ante*. The principle of

rehabilitation permits, or even requires, the aggressor State to engage in some demilitarisation and political rehabilitation, depending on the nature and severity of the aggression it committed and the threat that it would continue to pose in the absence of such measures.[31] Similarly, a restrictive view of rehabilitation, such as one that is merely pedagogical or reformist, allows for sweeping internal political reconstruction only in the most severe cases, such as genocide.[32] In cases involving the latter, political reconstruction can be regarded as being a jus post bellum duty:[33] "When the victorious State fails to assist in reconstruction in such post-genocidal cases, it calls into question its claim to have waged a just war of humanitarian intervention, for it has failed to finish what it began in waging the war."[34]

At its broadest, post-conflict reconstruction, as informed by jus post bellum, permits total regime change which links the concept of punishment to the criterion of just cause for termination. On the basis of this connection, jus post bellum theory contends that forcible regime change is permitted provided that, first, the war itself was just and conducted properly; second, the target regime was illegitimate and thus had forfeited its State rights; third, the goal of the reconstruction is to be a minimally just regime; and fourth, respect for jus in bello and human rights is to be integral to the transformation process itself. In such situations, the moral basis for permitting forcible regime change is thus fulfilled because (1) the transformation violates neither State nor human rights; (2) its expected consequences are very desirable, namely, satisfied human rights for the local population and increased international peace and security for everyone; and (3) the post-war moment is especially promising regarding the possibilities for reform.[35]

The issues of rehabilitation and restoration are not confined to political matters. The question of economic restoration raises issues around the obligations of the victors to assist in the restoration of a shattered economy and society to its pre-war status.[36] The failure to provide some small measure of economic rehabilitation to war-torn economies may make it difficult to secure basic subsistence rights. Occupying powers have a certain responsibility for the welfare of the people of that State,[37] as "not even those who were responsible for the war should be allowed to starve to death."[38] The issue of economic reconstruction may also draw from the jus post bellum principles of compensation, restitution, and reparations.[39] The requirements around rehabilitation and restoration, both political and economic, must be balanced with the duty to respect, as far as possible, the sovereignty of the defeated

State and to seek the consent of the latter in any reconstruction project.[40] The end of war must entail the restoration of national sovereignty[41] with sovereignty meaning not just territorial sovereignty but also the sovereignty of a justly governed people. A successful outcome of such an approach would see a post-conflict situation in which "all aspects of political, economic, and social life are returned to the control of the indigenous population. Interim political authorities are eventually replaced by elected officials, and these political figures assume full responsibility for security, critical infrastructure, and nation building."[42] As such, jus post bellum theory emphasises a preference for the end to war "with governments in power in the defeated states that are chosen by the people they rule—or at least recognised by them as legitimate—and that are visibly committed to the welfare of those same people (all of them)."[43]

Responsibility for reconstruction falls on a number of parties. The establishment of a more just social and political order is ultimately a political decision, which may take into account the best advice of the military[44] and other actors including NGOs and private agencies.[45] Such political decision-making must adhere to legal standards. These standards are, unfortunately, rather erratic; the contribution of jus post bellum could, therefore, be advantageous for a number of reasons. First, a discussion of justice during the termination phase of war would mirror the conception of war having a beginning, a middle, and an end. Second, it would facilitate the consideration of war in a deep and comprehensive way. In addition, greater consideration of jus post bellum could help ensure that war termination avoids annihilation of the enemy and unduly punitive means. It could help curtail fighting on the ground and help avoid future bloodshed by underscoring the need for a just peace settlement. It could help provide firm and objective guidelines to measure achievements, and help create timelines for both progress and eventual withdrawal, which is advantageous to victors.[46] The overall benefit of jus post bellum theory is that it

> forces just-war theory and international law to confront deeper and longer-term issues of international justice at the conclusion of conflict, and refuses to treat wars as isolated, atomic units to be each evaluated using rules and laws but then considered "closed" after that—as if wars do not have profound rippling effects, through both time and space, into the future and into other countries and regions.[47]

Jus post bellum theory highlights the need for a normative framework to minimise even potential violations of international law and to increase accountability when violations do occur. It emphasises the importance of principles of justice and legitimacy in post-conflict efforts. Jus post bellum theory also highlights the need to reconsider matters of international peace and security, which would necessarily impact upon peace support operations established, or occasionally merely legitimised, by the Security Council and undertaken by State Actors and/or Non-State Actors.

Nonetheless, as reflected in the overall practice of the Security Council to date, the contents of just war theory generally, and of jus post bellum in particular, do not fit comfortably into current international law with its emphasis on *jus contra bellum* as enshrined in Articles 2(4) and 51 of the UN Charter and jus in bello enshrined in international humanitarian law, although the peripheries of both bodies of law are increasingly being challenged by international human rights law. Consequently, any legal basis for the incorporation of such considerations remains largely lacking, and jus post bellum theory remains an ethical and moral tool that may inform post-conflict obligations despite the fact that, in the context of collective security, such a framework could enhance the legitimacy of the UN and of international law as a system.[48]

POSITIVE PEACE AND HUMAN SECURITY AS COLLECTIVE SECURITY

As the previous section indicates, the extent of post-conflict obligations is a matter of some concern from the theoretical perspective of what ought to be achieved. This section seeks to indicate why views of peace and security more generally need realignment so as to provide for a further understanding of what is entailed in a post-conflict reconstruction that contributes more effectively to the maintenance of international peace and security.

The concept of peace can go further than the attainment of negative peace, which stops physical or personal violence (direct violence) to include positive peace, whose goal is to end structural and cultural violence (indirect violence) that threatens the economic, social, and cultural well-being and identity of individual human beings and groups. Positive peace is aimed at creating political, economic, and social conditions that support sustainable justice and security and in which individuals can realise their full potential.[49] Thus, the attainment of peace is no longer to be defined by the absence

of armed conflict and the presence of a peace treaty, as between States or otherwise. It requires consolidation, such as actual compliance with peace agreements, monitoring ceasefires, demilitarisation of former combatants, repatriation of refugees, mine clearance, economic development, and the reform of police forces.[50]

The need to formulate the concept of peace more broadly has translated into policy endeavours with the recognition that "what is required is a comprehensive strategy that incorporates but is broader than coercive measures."[51] The interrelationship between security and economic and social issues was identified by UN Secretary-General Boutros-Ghali in *An Agenda for Peace* (1992), where he noted that "the concept of peace is easy to grasp; that of international security is more complex."[52] The aim of the UN had to be "in the largest sense, to address the deepest causes of conflict: economic despair, social injustice and political oppression."[53] A continuation of this theme is to be found in the 1994 Report of the Secretary-General entitled *An Agenda for Development*, in which he noted that "unless there is reconstruction and development in the aftermath of conflict, there can be little expectation that peace will endure."[54] In a final report, Boutros-Ghali elaborated upon the evolving role of the UN, which included peacebuilding as a new approach and emphasised "that in order to achieve lasting peace, the effort to prevent, control and resolve conflicts must include action to address the underlying economic, social, cultural, humanitarian and political roots of conflict and to strengthen the foundations for development."[55]

The issue was also considered in two further reports. In the 2000 *Brahimi Report*, economics (including issues of poverty, distribution, discrimination, or corruption) was identified as one source of conflict and also as a further variable that affected the difficulty of peace implementation.[56] Moreover, the Report considered that the path towards peace involved tasking peacekeepers to maintain a secure local environment for peacebuilding, and peacebuilders to support the political, social, and economic changes needed to create a secure environment that would be self-sustaining.[57] The 2001 Report of the International Convention on Intervention and State Security (ICISS), the *Responsibility to Protect*, advanced the view that the UN has a subsidiary responsibility to prevent, protect, and rebuild a State so that the latter can counter those circumstances which necessitated the intervention.[58] The Report also stated that modern interventions could not end after the cessation of military activities, but would require ongoing engagement

to prevent conflict. Peacebuilding responsibility ought, therefore, to include as far as possible economic growth, the recreation of markets, and sustainable development. These issues were regarded as extremely important, as economic growth not only had law and order implications but also was vital to the overall recovery of the country concerned.[59] In his 2005 Report, *In Larger Freedom*, UN Secretary-General Annan stated that conflict prevention had to be a central effort of the UN, including "combating poverty and promoting sustainable development; through strengthening national capacities to manage conflict, promoting democracy and the rule of law."[60] Similarly, the 2004 *Report of the High-level Panel on Threats, Challenges and Change* noted, in relation to the resolutions of both the Security Council and the General Assembly that established the Peacekeeping Commission,[61] that "today, in an era when dozens of States are under stress or recovering from conflict, there is a clear international obligation to assist States in developing their capacity to perform their sovereign functions effectively and responsibly."[62]

The Report details UN obligations as well as recommendations on how to meet them. Some of these obligations devolve to the Security Council on the basis that "even if peace and security institutions played no part in initiating, or intervening, in the war,"[63] "those charged with global responsibilities for international peace and security ought to acquire a responsibility to help rebuild after war, thus helping to remove the seeds of future conflict."[64] The Council has in particular undertaken to ensure "that the mandated tasks of peacekeeping operations are appropriate."[65]

However, inasmuch as the understanding of peace may need to be adjusted, so too should the understanding of security. The predominance of intra-state conflict,[66] as well as the overall upward trend in the numbers of peace support operations,[67] indicates that the maintenance of security ought no longer to be measured solely in terms of inter-state security. The complexity of the issue is also compounded as "intrastate civil wars are still fought in what we might call a state-laden context: they are fought either over which group gets to control the existing state or over which group gets to have a new state. Thus, there are always state-to-state issues involved in contemporary armed conflict."[68]

Post-conflict endeavours ought to facilitate an understanding of security that is broader than state security with its emphasis on the military defence of state interests and territory,[69] and place greater stress on people's

security, including "safety from chronic threats such as hunger, disease, and repression, as well as protection from sudden and harmful disruptions in the patterns of daily life"[70] because "the security of people must be regarded as a goal as important as the security of states."[71] Human security has been described as an approach that encompasses the protection of people "from severe and pervasive threats, both natural and societal, and empowering individuals and communities to develop the capabilities for making informed choices and acting on their own behalf."[72] The concept was given further recognition by the 2005 *World Summit Outcome Document* which stressed "the right of people to live in freedom and dignity, free from poverty and despair. . . . All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential."[73]

> Three general versions of human security have been identified: a narrow approach that relies on natural rights and the rule of law anchored in basic human rights; a humanitarian approach that understands human security as a tool for deepening and strengthening efforts to tackle issues such as war crimes or genocide and finally preparing the ground for humanitarian intervention; and a broad approach that links human security with the state of the global economy, development, and globalization.[74]

These categories are also more generally refined into broad approaches and narrow approaches to human security. The broad version draws upon the UN Development Program's (UNDP) vision of human security, which focuses not only on situations of conflict but also aims to ensure protection against extreme poverty and the provision of human basic needs in economic, health, food, social, and environmental terms.[75] The narrow version focuses on removing the use or threat of force and violence from people's everyday lives through campaigns to ban anti-personnel landmines, to regulate small arms and light weapons, and to promote the International Criminal Court (ICC).[76] In a manner reflective of the later doctrine of the Responsibility to Protect, this narrow version of human security allows the international community to intervene to protect people in crisis situations when their own States cannot or will not do so. It advances the view that the international community should have stronger enforcement mechanisms to remedy gross human rights violations occurring within a State, one that is

not confined by the political machinations of the Security Council. This view is based on the premise that insecure citizens make for insecure states and that these insecure citizens need not be the citizens of the State itself. Consequently, the protection of citizens in other States may be a matter of concern for foreign governments.[77]

We may note the correlations between the broad and narrow approaches to human security and Franklin Roosevelt's freedom from want and freedom from fear respectively, as precursors to international peace and security.[78] Such correlations are also reflective of the interrelationship between international peace and security and the promotion and protection of human rights enshrined in the UN Charter. These efforts can be seen in the work of the Organisation in its peacekeeping operations and its management of refugees and environmental issues. Accordingly, it has been asserted by a former UN High Commissioner for Human Rights that "the commitment to human security underlines much of the United Nations action in the areas of peace and security, humanitarian assistance, crime prevention and development, among others."[79] As such, there is ample evidence to support the view that the human security approach "is well entrenched in the *raison d'être* of the UN work."[80]

In addition, there is greater recognition of the impact of armed conflict upon civilians as evidenced in the *Report of the High-Level Panel* calling for the Security Council to implement fully its resolution on the protection of civilians in armed conflict.[81] Despite the debate as to whether conflict deaths have been increasing or decreasing in recent decades, and the accuracy of estimates of indirect deaths and excess mortality, civilians still suffer as a consequence of intra-state conflict in those areas directly affected by violence, which exacerbates preventable deaths from disease and malnutrition.[82] Thus, what is required is a further recalibration of the meaning of security towards that of human security whereby security (and peace) can be viewed in strategic and humanistic terms. Under this concept of security, the focus lies upon the individual and his or her community, rather than upon the State. It affords a greater consideration of threats posed to humankind and to individual and basic rights like liberty, subsistence, and security.[83] A human security approach reinforces the need for protection from threats of physical and structural violence as well as the promotion of sustainable human development and the freedom from want that ought to ensue.[84] Thus, positive peace and human security, as informed by jus post bellum analysis,

reveals three goals in particular: "(1) physical security for the general population that exceeds the *status quo ante bellum*; (2) just ordering of society via 'positive assistance,' restoration, and rehabilitation that makes life 'fully human' and emphasizes human capabilities; and (3) the vindication and securing of rights."[85]

Although the Charter provisions relating to use of force and collective security remain largely definitive, the evolving discourse allows for a reconsideration of the legal content of the norms of peace and security[86] by emphasising that sovereignty implies a responsibility of the State to protect its citizens from human rights violations. Thus, where a State does not live up to this sovereign responsibility, the international community assumes responsibility to act in its place. Consequently, human rights and human security become intrinsic to sovereignty. If sovereignty is viewed as something more than a territorial matter and the interaction of States in the international community, but rather is imbued with the notion of protection of citizens, such protection should not end after the cessation of hostilities; it should extend to support the sustainable development of a stable and safe society[87] to prevent future conflict and thereby to protect civilians.[88] Such views are encompassed in the responsibility to protect and, particularly, in the concept of the responsibility to rebuild, which resonates with the jus post bellum principle of restoration.

As the nature of armed conflict has changed since the establishment of the UN, so has the understanding of peace and security. Jus post bellum theory and the concepts of positive peace and human security complement these changed notions as various State Actors and Non-State Actors are encouraged to move "beyond measures designed to help belligerents reach compromise and [include] building political structures that respect human rights, permit self-determination, punish wrongdoers and promote social, economic and legal reconstruction."[89]

PEACE SUPPORT OPERATIONS AND POST-CONFLICT OBLIGATIONS IN INTERNATIONAL LAW

The previous sections outlined theoretical principles and policy initiatives which elaborate upon an evolving understanding of what is necessary, and why it is necessary, to secure peace in a more enduring fashion. Post-conflict obligations can also be identified in international law and must be viewed against the UN Charter's prohibition on the use of force[90] unless a State

is acting in self-defence.[91] The Security Council has primary responsibility for maintaining international peace and security.[92] Pacific means of dispute settlement are accorded to the Council under Chapter VI, and the Council may authorise use of force under the powers accorded to it by Chapter VII. This regime of collective security manifests itself in peace support operations, which are themselves governed by a range of international principles and rules that reflect the dual nature of such operations and give rise to rights and obligations, derived from both custom and treaty, both on the part of the sending State and the international organisation leading the operation. In relation to the former (Chapter VI), peace support operations give rise to legal obligations arising from jus in bello, domestic and international human rights law, and the rules of State Responsibility.[93] The actions of the latter (Chapter VII) are subject to the rules of responsibility of international organisations, and to a more limited extent, jus in bello[94] and international human rights law.[95] Many of these rights and obligations also extend to the peacemaking process. In essence, therefore, the current legal framework of post-conflict obligations must be looked at through the lens of peace support, which offers a somewhat fractured view.

The starting point for consideration of post-conflict obligations is the recognition of the sovereign equality and territorial integrity of States and the principle of self-determination as enshrined in the Charter,[96] principles that have been reaffirmed by the International Court of Justice (ICJ).[97] Similarly, the actions of the UN itself are limited by Article 2(7), which prohibits the Organisation from intervening "in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter." However, this prohibition itself and thus the primacy of State sovereignty are subject to the proviso contained in Article 2(7) that the principle of non-intervention "shall not prejudice the application of enforcement measures under Chapter VII."[98] At the institutional level, the Security Council's ability to interfere with a State's territory is limited by its own powers under Article 24. It has been asserted that

> Even when acting under Chapter VII of the Charter itself, the Security Council has no power to abrogate or alter territorial rights, whether of sovereignty or administration. Even a war time occupation of a country or territory cannot operate to do that. It must await the peace settlement. This is a principle

of international law that is as well established as any there can be, and the Security Council is as much subject to it (for the United Nations is itself a subject of international law) as any of its individual members are. . . . It was to keep the peace, not to change the world order, that the Security Council was set up.[99]

Despite these limitations, the Charter has made room for broader provisions with regard to peace and security. Article 55, when read together with the principles and purposes of the UN in Article 1, offers a positive definition of peace that the Organisation has advocated since its foundation: the promotion and encouragement of self-determination and the economic and social advancement of all peoples.[100] Chapter IX of the Charter deals with international economic and social co-operation. It is against this background aim that Article 55(c) states, in relation to the establishment of the Economic and Social Council (ECOSOC),

> *With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations* based on respect for the principle of equal rights and self-determination of peoples, the UN shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. (emphasis added)

The provisions of Article 56 elaborate on the effect of this aim upon the UN Member States: Member States pledge to take "joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in Article 55." More generally, this broader approach reflects the interrelationship between peace, security, economic and social development, and the promotion of human rights encompassed in the Charter. This not only affords, but also requires, roles for the General Assembly and the ECOSOC in the maintenance of a broader conception of peace. Thus, under the UN Charter, peace is no longer limited to a minimalist negative core but increasingly contains positive duties linked to the conditions that make peace practicable.[101] This view was encapsulated by the President of the Security Council who stated, "peace is not only the absence of conflict, but . . . it requires a positive, dynamic, participatory process."[102]

That peace and security are to be informed by human rights and economic and social development can be seen in the preambular paragraphs to the International Bill of Rights,[103] which note that "recognition of the

inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Article 28 of the Universal Declaration of Human Rights also states that "everyone is entitled to a *social and international order* in which the rights and freedoms set forth in this Declaration can be fully realized." (emphasis added) Thus, the Declaration supports the view that the obligations of the UN and its Member States encompass broader notions of peace and security.

With regard to international humanitarian law, although the laws of occupation may be inadequate to deal with the realities of modern occupation and the particular demands of peacebuilding and post-conflict reconstruction,[104] their provisions are still pertinent to establishing a peace and security that encompasses more than the absence of armed conflict. Thus, Article 43 of the Hague Regulations 1907 states,

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore and ensure, as far as possible, public order and [civil life], while respecting, unless absolutely prevented, the laws in force in the country.[105]

In essence, the Occupying Powers are only entitled to assume the role of *de facto* administrators of the occupied State, whose sovereignty is regarded to merely have gone into abeyance. Section III of Geneva Convention IV provides greater clarity on the rights and responsibilities of Occupying Powers towards the civilian population.[106] The aim of the law of occupation has been described as "to balance the security needs of the occupant against desired protections for the civilian population of the territory in an overall framework meant to preserve the status quo ante until ultimate sovereignty of the territory [can] be decided."[107]

The socio-economic nature of the obligations of Occupiers can be seen in provisions such as Article 55 of Geneva Convention IV which states, "to the fullest extent of the means available to it the Occupying Power has the duty of ensuring the food and medical supplies of the population," and Article 56 which similarly obliges the Occupying Power to ensure the provision of medical services and sanitation.[108] Consequently, Occupiers are under a responsibility to guarantee the civilian population's human security[109] and lend further credence to the assertion that "today many of us would no longer distinguish between 'security' and economic and social

issues, arguing that human security is as critical as state security and that the two are inextricably intertwined."[110]

Occupiers are also subject to the limitations and responsibilities increasingly imposed by international human rights standards,[111] although the laws of occupation remain *lex specialis*.[112] According to the ICJ, the obligations of the International Covenant on Economic, Social and Cultural Rights (ICESCR) can also have extraterritorial effect with obligations extending "to territories over which a State party has sovereignty and to those in which that State exercises territorial jurisdiction."[113] This view permits extraterritorial application to occur in exceptional situations whereby persons fall within the jurisdiction of the State Party, such as military occupation.

Ultimately, however, the laws of occupation are of limited assistance in the majority of current post-conflict situations as they generally only apply to armed conflicts of an international character.[114] Conflicts not of an international character are governed by Common Article 3 of the Geneva Conventions which merely requires States to maintain minimum humane standards of treatment, and, for those ratifying States, by Part VI of Additional Protocol II.[115] A further limitation of the laws of occupation is that the current collective security regime means that peace support operations need not be established in response to armed conflict, and Chapter VII peace enforcement operations may not necessarily constitute an occupation of territory by a foreign power and thus may not trigger the laws of occupation. Nonetheless, the judgment in the *Congo* case suggests that the extraterritorial application of human rights law could also extend to peace support operations.[116] In such post-conflict situations, States' obligations under international human rights law take on an added significance as a wide range of human rights can now be said to colour the obligations of ratifying States in a post-conflict environment. In the context of this article's emphasis on economic and social rights, States' obligations can be framed as obligations to respect, to protect, and to fulfill ICESCR rights.[117] The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social, and cultural rights. The obligation to protect requires States to prevent violations of such rights by third parties. Failure to perform any one of these three obligations constitutes a violation of such rights.[118]

The extent of such obligations can found in the analyses of the nature of States' obligations with regards to particular rights. For example, the

obligation to respect, as an aspect of the right to water, means that States must refrain from engaging in any activity that denies or limits equal access to adequate water; arbitrarily interferes with customary or traditional arrangements for water allocation; unlawfully diminishes or pollutes water; or limits access to, or destroys, water services and infrastructure as a punitive measure.[119] Violations of this obligation arise from actions such as arbitrary or unjustified disconnection or exclusion from water services or facilities, discriminatory or unaffordable increases in the price of water, and the pollution and diminution of water resources affecting human health.[120] As a further example of the nature of States Parties' obligations under the IC-ESCR, the obligation to protect the right to education, for example, means that States are under the positive obligation to ensure that third parties, including parents and employers, do not stop girls from going to school.[121] A violation of the obligation to protect the right to education includes the failure to take measures which address *de facto* educational discrimination.[122] Furthermore, the obligation to fulfil the right to health requires States to ensure the provision of health care, including immunisation programmes against major infectious diseases, and to ensure equal access for all to the underlying determinants of health, such as nutritiously safe food and potable water, basic sanitation, and adequate housing and living conditions.[123] Violations of this obligation occur when States Parties fail to adopt or implement a national health policy designed to ensure the right to health for everyone; to monitor the realisation of the right to health at the national level, for example by identifying right to health indicators and benchmarks; to take measures to reduce the inequitable distribution of health facilities, goods, and services; to adopt a gender-sensitive approach to health; or to reduce infant and maternal mortality rates.[124]

In short, post-conflict obligations do exist within international law. But given the Charter's recognition of the link between peace and security, economic and social development, and human rights; the increasing relevance of human rights law; and the widening gap between the laws of occupation and the reality of societies transitioning towards peace; efforts towards a clearer enunciation of post-conflict obligations are an ongoing concern. The respect for state sovereignty and territorial integrity is inherent in the balance that States strike when responding to a post-conflict environment. On the one hand, respect for State sovereignty suggests that only the narrowest range of post-conflict obligations are to be undertaken so as to restore

simply the status quo ante. On the other hand, evolving views on the laws of occupation and the impact of human rights law indicate that broader post-conflict obligations are increasingly likely. Related to this point is the recognition that, in theory if not in law, a return to the status quo ante may be problematic especially where the circumstances of the status quo ante constituted a threat to or a breach of the peace.[125] Consequently, a broader notion of jus post bellum allows for state sovereignty to be compromised so that less significance is attached to consent (or otherwise) of the target state as regards post-conflict reconstruction. As suggested by jus post bellum theory, this broader approach may reflect evolving views that sovereignty implies not only territorial sovereignty but also a justly governed people. However, many of these initiatives only come into play when States seek to respond to post-conflict environments. More could be done at the institutional level to lay down clear directions to States, both sending and target, for post-conflict reconstruction. Here the focus must fall on the Security Council as the originator of peace operations.

REIMAGINING THE SECURITY COUNCIL'S RESPONSIBILITY TO MAINTAIN INTERNATIONAL PEACE AND SECURITY

The weight of theory, policy, and law identified above reaffirms the need more consistently to interpret international peace and security to include notions of positive peace and human security in a post-conflict environment. However, the Security Council is only required to respond preventatively to problems that could lead to the outbreak or recurrence of violent conflict. To date, Security Council resolutions tend toward reactive, *ad hoc* engagement with post-conflict endeavours that arguably fails to "address potential crises holistically and at their origin before violence breaks out."[126] This approach suggests that the Council tends to prioritise strategic security and respect for territorial integrity. With this comes the failure to adopt a more comprehensive view of peace informed by positive obligations and a view of security that is both human and strategic. Related to this is the Council's somewhat inconsistent approach to human rights and economic and social redevelopment, despite the interrelationship between peace and security and human rights.[127] That these decisions are taken by a political body which itself has been heavily criticised makes for a more complicated situation, especially since moves toward reform remain stymied.[128] In spite of these criticisms, there is evidence that the Council has recognised human

rights protection and promotion as being key to peace processes.[129] Human rights mandates have been included in peace support resolutions in which the Council has reaffirmed "the need for both parties to fulfil their obligations under international law, including international humanitarian, refugee and human rights law."[130]

Economic stability and development are equally central to the creation and maintenance of a successful social order.[131] The Council has emphasised its commitment to the promotion of sustainable development and a democratic society based on a strong rule of law, civic institutions, and adherence to civil, political, economic, social, and cultural rights. Such strategies are aimed at conflict prevention and the willingness to deploy such missions actively. The importance of economic reconstruction to the Council's vision of collective security and the UN's emerging role as a legislator in fragile and post-conflict states is evidenced in numerous resolutions.[132]

For example, in relation to the situation in Kosovo, the Council, acting under its Chapter VII mandate, encouraged all Member States and international organisations to contribute to economic and social reconstruction.[133] Regarding the situation in Iraq, the Security Council went further than the basic requirements of the laws of occupation in terms of the maintenance of law and order. Resolution 1483 provided for the "creation of conditions in which the Iraqi people can freely determine their own political future"[134] as well as the establishment of "national and local institutions for representative governance."[135] In exercising its peace enforcement powers in Iraq, the Council called for the appointment of a Special Representative of the Secretary-General (SRSG) whose responsibilities would include "promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions."[136] In renewing and expanding the mandate of the United Nations Assistance Mission for Iraq (UNAMI), the Security Council decided that, in conjunction with the Iraqi Government, the SRSG and UNAMI would "promote, support, and facilitate, economic reform, capacity-building and the conditions for sustainable development."[137] The situation in Iraq also provides an example of the Council's recognition of the benefits of reparations. In 1991, Resolution 687 established a reparations system to compensate victims that was financed from Iraqi oil exports. In addition, humanitarian assistance and reconstruction efforts in Iraq and Afghanistan

were funded by the Commander's Emergency Response Program, which was financed initially by seized Iraqi Ba'athist funds and Iraqi oil sales proceeds and, subsequently, by funds from the US Treasury Department.[138] The Security Council has also called upon Member States to provide long-term assistance for the social and economic reconstruction and rehabilitation of Afghanistan[139] and, in establishing the United Nations Assistance Mission for Afghanistan, it stressed the contribution of recovery and reconstruction assistance.[140]

Some of the clearest examples of reconstruction as an element of collective security can be seen in Council resolutions regarding the situation in Timor-Leste. Acting under its Chapter VII mandate, the Council called for reconstruction assistance in Timor-Leste.[141] When renewing the mandate of the United Nations Mission of Support in East Timor, the Council called on the international community "to continue providing essential resources and assistance for the implementation of projects towards sustainable and long-term development in Timor-Leste."[142] Similarly, it called upon the United Nations Integrated Mission in Timor-Leste (UNMIT) to continue to cooperate and coordinate with UN agencies, funds, and programmes, and for all relevant partners to support the government of Timor-Leste and relevant institutions in designing poverty reduction and economic growth policies.[143] More recently, the Council has recognised

> the importance of the development plans devised by the Government of Timor-Leste, especially the attention paid to infrastructure, rural development and human resources capacity development, and in this regard, calls upon UNMIT to continue to cooperate and coordinate with the United Nations agencies, funds and programmes, as well as all relevant partners, to support the Government of Timor-Leste and relevant institutions in designing poverty reduction, improving education, promotion of sustainable livelihood and economic growth policies.[144]

The Council has also encouraged "the Government of Timor-Leste to strengthen peacebuilding perspectives in such areas as employment and empowerment, especially focusing on rural areas and youth, as well as local socio-economic development in particular in the agricultural sector."[145]

Although such recognition is to be welcomed and such initiatives are to be encouraged, there is room for even further change in the Council's approach to the maintenance of international peace and security. Arguably

such a change is even required with the increasing recognition that the actions of the UN, and thus the Security Council, are not unfettered and that the UN Charter provides the basis for a broader consideration of what constitutes peace and security, a view that is increasingly being informed by human rights law. According to Article 24(2), the Council, when exercising its duties, must respect the Purposes and Principles of the UN, which leads to the contention that the Security Council is bound by Articles 1(3), 55, and 56 of the Charter. Further support for the proposition that the UN, as an international organisation dedicated to supervising peace and security, human rights, and economic and social development, must itself comply with these obligations can be found in the *Reparations* case where the ICJ stated that the UN was an international person, meaning that it is a subject of international law and is capable of possessing international rights and duties.[146] These rights and duties are dependent upon "its purposes and functions as specified or implied in its constituent documents and developed in practice."[147] In making its determination in the *Effect of Awards* Advisory Opinion, the ICJ drew upon "the expressed aim of the Charter to promote freedom and justice for individuals and . . . the constant preoccupation of the United Nations Organization to promote this aim."[148] In its *Namibia* Advisory Opinion, the ICJ stated that its interpretation of the law could not remain unaffected by the subsequent development of law through the Charter and by way of customary law. Moreover, it held that an international instrument must be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation.[149] With regard to the Security Council in particular, the ICJ affirmed that the powers conferred upon the Council to maintain international peace and security are limited by the "fundamental principles and purposes found in Chapter I of the Charter."[150] However, given that Article 1 is concerned with the peaceful settlement of disputes in conformity with the principles of justice and international law, the enforcement powers conferred upon the Council under Chapter VII appear to fall outside of this restriction, leaving the Council with wide discretion to respond to a threat to international peace and security once the threshold of Article 39 has been achieved.[151]

The powers of the Council must also be considered in light of Article 103, which provides that Member States' obligations under the Charter prevail over those arising from any other international agreement. In determining whether it had to indicate provisional measures in the *Lockerbie* case,

the ICJ held that Security Council resolutions, on the basis of Article 103 of the Charter, preceded all other obligations.[152] In a dissenting opinion, however, Judge Weeramantry noted that "the history of the United Nations Charter . . . corroborates the view that a clear limitation on the plenitude of the Security Council's powers is that those powers must be exercised in accordance with the well established principles of international law."[153]

The International Criminal Tribunal for the Former Yugoslavia (ICTY) Appeals Chamber, in *Tadic*, reviewed the legality of the establishment of the Tribunal. It noted not only that the Security Council was not *legibus solutus* (unbound by law),[154] but that the Council's judgment regarding the existence of a threat to peace and security "is not a totally unfettered discretion, as it has to remain, at the very least, within the limits of the Purposes and Principles of the Charter."[155]

Similarly, at the European level, where tensions or conflicts arise, judicial views have recognised the primacy of Council resolutions. It has been observed that both Member States and the organs of the UN are bound by *jus cogens* norms that are peremptory,[156] and that obligations arising from membership of international bodies are to be adhered to only on provision of equivalent human rights protection.[157] Further, participation in international organisations does not exempt Member States from responsibility for violations of the European Convention on Human Rights (ECHR) as a consequence of compliance with other international commitments.[158] Nonetheless, in *Al Jedda*, the European Court of Human Rights held that where the text of a Security Council resolution is ambiguous, the resolution must be interpreted in a manner that is most harmonious with the ECHR and which avoids any conflict of obligations.[159] According to the Court,

> In the light of the United Nations' important role in promoting and encouraging respect for human rights, it is to be expected that clear and explicit language would be used were the Security Council to intend States to take particular measures which would conflict with their obligations under international human rights law.[160]

Such views suggest that Article 103 can neither be interpreted so as to allow the Council to violate customary international law nor to allow Council resolutions to prevail over inconsistent treaty obligations.[161] Perhaps more bluntly, it has been observed that States are precluded from authorising an international organisation to do what they are prohibited from doing,[162] and

if a Security Council act is found to be unlawful and in contravention of international law and particularly of peremptory norms, such acts are void *ab initio* and States have the right to refuse compliance with the resolution in question.[163] Such views are merely indicative of how the Council should behave given the lack of consensus on whether the ICJ can review decisions of the Council.[164] However, they strengthen the assertion that because the UN was created under the umbrella of international law, the latter is integral to the Organisation and it influences the evolution and development of the UN's rules and principles. Such assertions extend to the role of the Security Council which must take into account the purposes and principles of the UN, including the promotion and protection of human rights and the advancement of economic and social progress, as it carries out its responsibility for the maintenance of international peace and security.

Moreover, if one regards the Security Council not merely as an institutional entity but rather as a body made up of Member States, it can be seen that there is another source of legal obligation and limitation stemming from States' own customary and treaty-based obligations. Such obligations cannot be left at the door of the Council Chamber. Within this framework it can be argued that the Council is also bound by those norms of international humanitarian law and international human rights law enshrined, at a minimum, in customary international law.[165] The Security Council ought to be mindful of the negative obligation to respect the rights of the population. In other words, it has an obligation to refrain from acts that deny or limit equal access to rights or constitute arbitrary or unlawful conduct, the former being an obligation which has been found to constitute *jus cogens*.[166] In addition, according to the Committee on Economic, Social and Cultural Rights (CESCR), most Permanent and Non-Permanent Members of the Security Council have ratified the ICESCR and therefore it is incumbent upon them to respect and take account of their treaty obligations.[167] The CESCR emphasised that States Parties to the ICESCR have a duty (1) to take human rights considerations into account when deciding and implementing sanctions and (2) to establish effective monitoring mechanisms. It also stressed that

> although the Committee has no role to play in relation to decisions to impose or not to impose sanctions, it does, however, have a responsibility to monitor compliance by all States parties to the Covenant. When measures are taken which inhibit

the ability of a State party to meet its obligations under the Covenant, the terms of sanctions and the manner in which they are implemented become appropriate matters for concern for the Committee.[168]

On this basis, the Security Council is obliged to protect the civilian population who must not be deprived of essential means for survival.

The preceding paragraphs demonstrate that the Council can and, in some instances, may be required to look at peace and security in broader terms by factoring human rights and economic and social development into its work as it sets mandates for an increased number of more complex peace operations. The question that remains is whether current legal and policy provisions spanning general international law, international humanitarian law, and international human rights law are sufficient or whether a new body of laws, jus post bellum, confined largely by the provisions of Article 2(7)'s principle of collective security, is necessary. Calls for a new body of legal rules are not without merit, for there is no coherent legal framework setting out the rights and obligations of those involved in the post-conflict phase as they engage in reconstruction and reform efforts. However, such an endeavour would doubtless be time consuming and fraught with difficulties. In the interim, a close examination of the workings of the Council might yield more positive results. As the ensuing paragraphs indicate, improvement can be achieved without a radical overhaul of the workings of the Council.

One improvement could be a more consistent relationship between the Security Council and the ECOSOC, whose mandate is to promote social and economic progress. The ECOSOC is the UN body from which many of the Organisation's human rights standards have emanated.[169] According to the *World Summit Outcome Document*, the ECOSOC is the UN's principal body for coordination, policy review, policy dialogue, and recommendations on issues of economic and social development, as well as for implementation of the international development goals.[170] Article 65 of the Charter provides the basis for the relationship between the two Councils with its provision that "the Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request." This provision, in addition to the Rules of Procedure of both Councils, allows the ECOSOC to act as an independent advisor to the Security Council, should the latter so require.[171] Article 39 of the Security Council's Rules of

Procedure have also been used to allow the President of the ECOSOC to attend and to have input into Security Council deliberations, particularly on the interrelationship between peace and security and economic and social development in conflict and post-conflict situations in Africa.[172] The valuable nature of the inter-Council dialogue was encapsulated by the President of the Security Council as follows:

> The Security Council reaffirmed its commitment to the purposes and principles enshrined in the Charter of the United Nations and recalled its primary responsibility for the maintenance of international peace and security. The Security Council considered post-conflict peace building closely linked to its primary responsibilities. The Security Council underlined that for countries emerging from conflict significant international assistance for economic and social rehabilitation and reconstruction is indispensable. In this regard the Security Council acknowledged the role the ECOSOC played, including in sustainable development, and reiterated its willingness to improve co-operation with United Nations bodies and organs directly concerned with peacebuilding.[173]

The stronger role that the ECOSOC could play is based in the fact that its body of information regarding economic and social development is unequalled and it is sourced in its Charter-mandated functions such as the coordination of information flowing from UN specialised agencies and from functional commissions set up by the ECOSOC itself. The ECOSOC also coordinates material delivered to the Council by way of treaty-monitoring bodies and Special Procedures mechanisms, not to mention the information received from NGOs. The nexus of deteriorating economic and social conditions coupled with an increase in human rights abuses could act as a mechanism by which to filter the ECOSOC's information. It could also act as an early warning that conflict is about to break out or resume. The Security Council has acknowledged the significant role of the ECOSOC in this regard.[174]

A second improvement could be the Special Procedures mechanism which also has its basis in the UN Charter. The Special Procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the

UN human rights machinery and covers civil, cultural, economic, political, and social rights. With the support of the Office of the High Commissioner on Human Rights, Special Procedures (1) undertake country visits (fact-finding missions); (2) act on individual cases and concerns of a broader, structural nature by sending communications to States in which they bring alleged violations to their attention; and (3) conduct thematic studies and convene expert consultations, develop international human rights standards, engage in advocacy, raise public awareness, and provide advice and support for technical cooperation.[175] Special Procedures report annually to the Human Rights Council. The majority of the mandates also report to the General Assembly and some have reported to the Security Council on both a formal and informal basis. The Security Council has utilised Rule 39 of its Rules of Procedure to invite Special Rapporteurs to brief it on human rights situations that may threaten the peace.[176] It has also utilised a more informal process known as the Arria Formula to meet with Special Rapporteurs.[177] One of the functions of the Special Procedures mechanism has been to act as an early warning system in relation to situations of serious human rights abuses. This role can be and has been utilised to alert the Security Council of situations that may amount to a breach of or a threat to the peace and to call for the convening of a special session of the Council.[178] Thus, effective mechanisms for reporting gross human rights abuses and poor socio-economic outcomes, particularly those that have the potential to descend into conflict, currently operate within the UN. Increased and more effective usage of such mechanisms by the Security Council can only be to the advantage to both the Council and to the mechanisms themselves, particularly in societies emerging from conflict.

In addition to the above suggestions must come the added value that stems from incorporating jus ad bellum theory and the concepts of positive peace and human security, especially given the recognition given to the latter within UN policy. In essence, jus post bellum theory calls for post-conflict measures that are commensurate with a better state of peace that is equitable and locally owned, comprising deeper and longer-term resolutions of and responses to conflict. Positive peace calls for more than an overall absence of violence; it stresses the need for economic growth and sustainable development which are central to a successful transition to a more secure peace. Human security allows a focus on individuals and communities and reinforces the need for protection from threats of physical and structural

violence as well as the promotion of sustainable human development.[179]

The added value of jus post bellum, positive peace, and human security is that they provide a template of interrelated post-conflict objectives to be attained by the Security Council as it operates as a UN entity that must be mindful of the UN Charter's Purposes and Principles and as a collective of States bearing international legal obligations. Such a template clarifies that the Council must continue to strive towards a post-conflict environment that, at a minimum, goes further than restoring the pre-intervention level of security. Such security must also encompass physical security at the level of the individual, the community, and the State. In addition, this template re-emphasises the need for the Council to focus on individuals, both socially and economically, as it facilitates the restoration and rehabilitation of a society. The template, in conjunction with the increasing assertions that the Council has certain legal obligations, highlights the significance of the protection and promotion of human rights. Overall it provides the basis of a more nuanced approach on the part of the Security Council as it struggles to deal more effectively with the challenges to peace and security that are posed by post-conflict societies. These principles may be particularly pertinent in Chapter VII mandates where the consent of the target State is not required. For the Security Council, such a proactive and holistic approach would indeed be challenging: it would be expected that collective security responses would not only encompass more clear and specific obligations but would also be flexible enough to respond to different post-conflict situations. As failed peacebuilding poses one of the worst risk factors for new wars, with one-quarter to one-third of post-civil-war peace agreements collapsing within five years, and with "backlash violence" after a failed peace agreement often worse than it was before an accord was reached, the necessity for this kind of framework appears to be all the more important.[180]

CONCLUSION

The importance of civil and political, as well as economic and social, reconstruction aimed at addressing the root causes of war and building a sustainable peace is well recognised in theory, policy, and law. Jus post bellum theory neatly summarises the various considerations that inform the immediate post-conflict environment and attempts to build a better state of peace. At the policy level, attempts to reconfigure peace and security to include positive peace and human security are evident. Equally evident is

the ability of law to create binding rights and obligations.

To date, the work of the Security Council can be characterised by its preventative responses to specific situations aimed at forestalling deterioration in conditions that would further escalate conflict. The response of the Security Council does not remain static for very long as it responds to environments that change for better and for worse. This ability to respond dynamically to conflict and post-conflict situations provides the room for an approach to peace and security that is informed by the needs of individuals and communities, as well as by the rights of individuals and the obligations of States and the international community. A more coherent approach drawing from jus post bellum theory, the Organisation's own policy documents, and the range of legal standards drawn from international law, human rights provisions, and jus in bello would be beneficial because, despite its imperfections, the Council facilitates an insistence "on collective oversight [which] reduces the likelihood of abuse and self-interested restructuring whilst increasing that likelihood that the 'will of the people' and needs of international order will be taken into consideration."[181]

Imbuing the notions of peace and security with the notion of peace as more than merely the absence of conflict, and focusing on the individual as the party who stands to lose the most in conflict, allow for a more effective implementation of peace and security. In this regard, the Security Council has a responsibility to build positive peace, a peace that takes effect with the significance that is attached to economic and social development and human rights standards throughout the UN Charter.

ENDNOTES

1. UN Secretary-General (UNSG), *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, para. 4.

2. Melissa Labonte, "Jus Post Bellum, Peacebuilding, and Non-State Actors: Lessons from Afghanistan," in *Ethics, Authority, and War: Non-State Actors and the Just War Tradition*, ed. Eric A. Heinze and Brent J. Steele (New York: Palgrave Macmillan, 2009), 215.

3. Eric de Brandendere, "The Responsibility for Post-Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept," Vanderbilt *Journal of Transnational Law* 43, no. 1 (2010): 120.

4.   See, for example, Aristotle, *The Politics*, trans. Carnes Lord (Chicago: Chicago University Press, 1984), 25[1256b]; Cicero, *On Duties*, ed. Elizabeth Atkins, trans. Miriam Griffin (Cambridge: Cambridge University Press, 1991). Christian theologians predominately have been identified in the emergence of just war theory and jus post bellum in particular: Augustine of Hippo, *Concerning the City of God Against Pagans* (1467), trans. Henry Bettenson (London: Penguin, 1984); Francisco de Vitoria, *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremey Lawrence (Cambridge: Cambridge University Press, 1991), 303; and Francisco Suarez, *The Three Theological Virtues* (1621), ed. James Brown Scott, trans. Gwladys L. Williams et al. (Oxford: Clarendon, 1944). Just War theory has also been considered in other religious traditions. See Paul Robinson, ed., *Just War in Comparative Perspective* (Surrey: Ashgate, 2003); Peggy Morgan and Clive Lawton, eds., *Ethical Issues in Six Religious Traditions* (Edinburgh: Edinburgh University Press, 1996), 44-47, 88-90, 123-125, 165-167, 255-256. In terms of international law, see Hugo Grotius, *On The Law of War and Peace* (1625), ed. James Brown Scott, trans. Francis W. Kelsey (Washington, DC: Carnegie Institution of Washington, 1925); Emmerich de Vattel, *The Law of Nations or the Principles of Natural Law Applied to the Conduct and the Affairs of Nations and of Sovereigns*, Charles G. Fenwick trans. (Washington DC: Carnegie Institution of Washington, 1916), 3: 344; Immanuel Kant, *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*, trans. William Hastie (Edinburgh: Clark, 1887), 218-22. Jus post bellum has equally been considered in military strategy: according to General William Tecumseh Sherman, in a speech delivered in St. Louis in 1865, "The legitimate object of war is a more perfect peace," quoted in Basil Henry Liddell-Hart, *Sherman: Soldier, Realist, American* (Boston: Mead & Dodd, 1929), 425. Echoing this tradition, Liddell-Hart wrote, "The object in war is a better state of peace"; see Basil Henry Liddell-Hart, *Strategy* (London: Faber & Faber, 1954), 338.

5.   Michael J. Schuck, "When the Shooting Stops: Missing Elements in Just War Theory," *Christian Century* 3 (1994): 982-83.

6.   Anthony DiMeglio, "Just War Tradition and Just Post Bellum," *Military Law Review* 186 (2005): 137.

7. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000).

8. Brian Orend, "Jus Post Bellum," *Journal of Social Philosophy* 33, no. 1 (2000): 117; Gary Bass, "Jus Post Bellum," *Philosophy and Public Affairs* 32, no. 4 (2004): 384.

9. Bass, "Jus Post Bellum," 386.

10. Bass, "Jus Post Bellum," 390-92.

11. Bass, "Jus Post Bellum," 389.

12. John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 96.

13. Michael Walzer, *Arguing about War* (New Haven, NJ: Yale University Press, 2004), 161.

14. Brian Orend, *War and International Justice: A Kantian Perspective* (Waterloo, ON: Wilfrid Laurier University Press, 2000), 232; Brian Orend, "Jus Post Bellum: The Perspective of a Just-War Theorist," *Leiden Journal of International Law* 20 (2007): 573; Alex Bellamy, "The Responsibilities of Victory: Jus Post Bellum and the Just War," *Review of International Studies* 34 (2008): 605.

15. Orend, *War and International Justice*, 232; Bellamy, "Responsibilities of Victory," 605.

16. Liddell-Hart, *Strategy*, 338.

17. DiMeglio, "Just War Tradition," 138.

18. Bellamy, "Responsibilities of Victory," 606, citing Emmerich de Vattel, *The Law of Nations*, 344.

19. Bellamy, "Responsibilities of Victory," 618.

20. Orend, "Jus Post Bellum," 574.

21. Orend, "Jus Post Bellum," 576-577. See also Rawls' just war theory emphasising the restoration of the sovereignty of the aggressor nations in Rawls, *The Law of Peoples*, 98. Regarding jus post bellum, see the call for restraint in conquest in Bass, "Jus Post Bellum," 390; Bellamy, "The Responsibilities of Victory," 602-5.

22. Orend, "Jus Post Bellum," 579; Brian Orend, "Justice after War," *Ethics*

and International Affairs 16, no. 1 (2002): 47.

23. Orend, *War and International Justice*, 232. See also Rawls' view that "the enemy's people are not to be held as slaves or serfs after surrender, or denied in due time their full liberties." Rawls, *The Law of Peoples*, 98.

24. Orend, "Jus Post Bellum," 579.

25. See also Orend, *War and International Justice*, 50.

26. Orend, "Jus Post Bellum," 579; Orend, *War and International Justice*, 49; DiMeglio, "Just War Tradition," 154-55; Bass, "Jus Post Bellum," 404-6.

27. Orend, "Justice after War," 47.

28. See Orend, *War and International Justice*, 232.

29. Orend, "Justice After War," 48.

30. Bass, "Jus Post Bellum," 409.

31. Orend, "Jus Post Bellum," 580-81; Orend, "Jus Post Bellum," 128-29. Similarly, Bass, "Jus Post Bellum," 390-92. See also Manuela Melandri, "The State, Human Rights and the Ethics of War Termination: What Should a Just Peace Look Like? A Critical Appraisal," *Journal of Global Ethics* 7, no. 3 (2011): 241-49.

32. Bass, "Jus Post Bellum," 394; Orend, "Justice After War," 47; DiMeglio, "Just War Tradition," 148-49.

33. Bass, "Jus Post Bellum," 396-98.

34. Bass, "Jus Post Bellum," 401.

35. Orend, "Jus Post Bellum," 583.

36. Bass, "Jus Post Bellum," 406-7, where he compares the question to the principle of restoration identified by Schuck, "When the Shooting Stops."

37. Robert E. Williams and Dan Caldwell, "Just War Theory and the Principles of Just Peace," *International Studies Perspectives* 7 (2006): 318.

38. Williams and Caldwell, "Just War Theory," 318.

39. Bass, "Jus Post Bellum," 409.

40. Bass, "Jus Post Bellum," 392.

41. Bass, "Jus Post Bellum," 395.

42. Louis V. Iasiello, "Jus Post Bellum: The Moral Responsibilities of Victors in War," *Naval War College Review* 16, no. 1 (2004): 44.

43. Walzer, *Arguing about War*, 37–41.

44. Doug McCready, "Ending the War Right: Jus Post Bellum and the Just War Tradition," *Journal of Military Ethics* 8, no. 1 (2009): 68.

45. DiMeglio, "Just War Tradition," 150-51.

46. Orend, "Jus Post Bellum," 576-77; Orend, *War and International Justice*, 226.

47. Orend, "Jus Post Bellum," 574. However, the concept of jus post bellum has itself been criticised as not actually adding to a complete ethics of war because the normative principles that govern the termination of war remain omitted. *Jus terminatio* governs the transition from a state of war back into a state of peace and its central concerns are when it is obligatory to terminate a state of war and how this can be done in the morally best way. Jus post bellum is distinguished as governing conduct in the subsequent post-war state. See David Rodin, "First View: Ending War," *Ethics and International Affairs* 25, no. 3 (2011): 59-69; David Rodin, "Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression," in *Jus Post Bellum: Towards a Law of Transition from Conflict to Peace*, ed. Carsten Stahn and Jann K. Kleffner (The Hague: T. M. C. Asser, 2008), 53-75. See also Darrell Mollendorf, "Jus ex Bello," *Journal of Political Philosophy* 16, no. 2 (2008): 123-36.

48. Bellamy, "Responsibilities of Victory," 615-16; Liliana Lyra Jubilut, "Towards a New Jus Post Bellum: The United Nations Peacebuilding Commission and the Improvement of Post-Conflict Efforts and Accountability," *Minnesota Journal of International Law* 20, no. 1 (2011): 51-52.

49. Johan Galtung, "Violence, Peace and Peace Research," *Journal of Peace Research* 6, no. 3 (1969): 183.

50. Claire Breen, "Law, Policy and Practice: The United Nations Collective Security Regime and the Contribution of the New Zealand Defence Force," in *New Zealand Yearbook of International Law* (2009)7: 21-50.

51. UNSG, *A More Secure World: Our Shared Responsibility; High Level Panel on Threats, Challenges and Change*, A/59/565 (2004), para. 148.

52. UNSG, Boutros Boutros-Ghali, *An Agenda for Peace*, A/47/277 - S/24111 (1992), para. 12.

53. UNSG, *An Agenda for Peace*, para. 15.

54. UNSG, *An Agenda for Development*, A/48/935, para. 22.

55. UNSG, *An Agenda for Democratisation*, A/51/761, para. 46.

56. UN General Assembly (UNGA), *Report of the Panel on United Nations Peace Operations*, A/55/305, S/2000/80 (2000), para. 24.

57. UNGA, *Report of the Panel on United Nations Peace Operations*, para. 28. See also UNSG, Kofi Annan, *We the Peoples: The Role of the United Nations in the 21st Century* (New York: UN Department of Public Information, 2000), 19.

58. International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: ICISS, 2001), 39-44.

59. ICISS, *The Responsibility to Protect*, para. 5.19.

60. UNSG, *In Larger Freedom: Towards Development, Security and Human Rights For All*, A/Rres/60/180 (2005), para. 106.

61. UN Security Council (UNSC), Res. 1645 and UNGA, A-RES-60-180.

62. UNSG, *A More Secure World*, paras. 201-3.

63. Bellamy, "Responsibilities of Victory," 616.

64. Bellamy, "Responsibilities of Victory," 623.

65. UNSC, Res. 1387, Annex II, para.1.

66. Lotta Themnér and Peter Wallensteen, "Armed Conflict, 1946–2010," *Journal of Peace Research* 48, no. 4 (2011): 525-36.

67. Sigrún Andrésdóttir, "Appendix 3A. Multilateral Peace Operations, 2010," in *SIPRI Yearbook 2011: Armaments, Disarmament and International Security* (Stockholm: SIPRI, 2011), 110-23.

68. Orend, "War and International Justice," 9.

69. UN Development Programme (UNDP), *Human Development Report 1994* (New York: UNDP, 1994), 22, 24; Roland Paris, "Human Security: Paradigm Shift or Hot Air?," *International Security* 26, no. 2 (2001): 87.

70. UNDP, *Human Development Report 1994*, 23.

71. Commission on Global Governance, *Our Global Neighbourhood* (Oxford: Oxford University Press, 1995), 81.

72. Sadako Ogata and Johann Cels, "Human Security: Protecting and Empowering the People," *Global Governance* 9, no. 3 (2003): 274. See also *Commission on Human Security, Human Security Now: Protecting and Empowering the People* (New York: Commission on Human Security, 2003). Unsurprisingly, the concept has proven controversial. Advocates regard human security as as a timely, necessary, and helpful expansion of traditional security concerns, and either a paradigm shift and dramatic departure from traditional security concepts or a useful tool for shaping foreign policy. Its critics regard it as too universalistic, conceptually flawed, impracticable, and contrary to national interests with the potential of being captured by ideology. See Gerard Oberleitner, "Human Security: A Challenge to International Law," *Global Governance* 11, no. 2 (2005): 187.

73. UNGA, *World Summit Outcome*, A/60/L.1 (15 September 2005), para 143.

74. Oberleitner, "Human Security," 187-88, citing Fen Osler Hampson and John Hay, "Human Security: A Review of the Scholarly Literature," *Human Security Bulletin* 1, no. 2 (2002): 4.

75. Commission on Human Security, *Human Security Now* (New York: Commission on Human Security, 2003), 6-7.

76. Keith Krause, *Towards a Practical Human Security Agenda* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2007), 3-4.

77. Rhoda Howard Hassmann, "Human Security: Undermining Human Rights?" *Human Rights Quarterly* 34, no. 1 (2012): 90.

78. Franklin D. Roosevelt, *State of the Union Address*, Washington, DC, 6

January 1941.

79. Oberleitner, "Human Security," 192, citing Mary Robinson, in a statement at the fifty-eighth session of the UN Commission on Human Rights, March 2000.

80. Noëlle Quénivet, "You are the Weakest Link and We will Help You! The Comprehensive Strategy of the United Nations to Fight Terrorism," *Journal of Conflict and Security Law* 11, no. 3 (2006): 386.

81. UNSG, *A More Secure World*, para 235; UNSC, Res. 1265.

82. One estimate is that there were 55,000 direct conflict deaths in an average year between 2004 and 2009, with a conservative estimate of indirect conflict deaths—individual deaths in conflict zones— exceeding 220,000 for the same period. Geneva Declaration Secretariat, "Trends and Patterns of Lethal Violence," in *Global Burden of Armed Violence 2011: Lethal Encounters* (Cambridge: Cambridge University Press, 2011), 70. Compare the assertion that mortality rates in most countries have actually declined during periods of war because war zones encompass only a relatively small part of the national territory, warfare directly affects only part of the population and, except in a very small minority of cases, war deaths have not been great enough to reverse the long-term decline in nationwide mortality rates. Human Security Report Project (HSRP), "The Paradox of Mortality Rates that Decline in Wartime," in *Human Security Report 2009/2010: The Causes of Peace and The Shrinking Costs of War* (New York: Oxford University Press, 2011), 113, 120. See also Ziad Obermeyer, Christopher Murray and Emmanuela Gakidou, "Fifty Years of Violent War Deaths from Vietnam to Bosnia: Analysis of Data from the World Health Survey Programme," *British Medical Journal 336* (2008): 1482-88; Michael Spagat, Andrew Mack, Tara Cooper, and Joakim Kreutz, "Estimating War Deaths: An Arena of Contestation," *Journal of Conflict Resolution* 53, no. 6 (2009): 934–50.

83. Labonte, "Jus Post Bellum," 209.

84. Labonte, "Jus Post Bellum," 214. Compare Neil MacFarlane and Yuen Foong Khong, *Human Security and the UN: A Critical History* (Bloomington, IN: University of Indiana Press, 2006).

85. Labonte, "Jus Post Bellum," 214-15.

86. Mehrdad Payandeh, "With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect Within the Process of International Lawmaking," *Yale Journal of International Law* 35, no. 2 (2010): 471. Inger Osterdahl and Esther van Zadel, "What Will Jus Post Bellum Mean? Of New Wine and Old Bottles," *Journal of Conflict and Security Law* 14, no. 2 (2009): 191.

87. ICISS, *The Responsibility to Protect*, paras. 5.1-5.31.

88. ICISS, *The Responsibility to Protect*, para. 5.1; UNGA, *Implementing the Responsibility to Protect: Report of the Secretary-General* A/63/677 (2009), para. 48. See also Inger Osterdahl, "The Exception as the Rule: Lawmaking on Force and Human Rights by the UN Security Council," *Journal of Conflict and Security Law* 10, no. 1 (2005): 13.

89. Bellamy, "Responsibilities of Victory," 615.

90. Charter of the United Nations (UN Charter), Art. 2(4). See also Bruno Simma, ed., *The Charter of the United Nations: A Commentary,* 2nd ed. (Oxford: Oxford University Press, 2002), 2: 112-36.

91. UN Charter, Art. 51. See Simma, *Charter of the United Nations*, 788-806.

92. UN Charter, Art. 24(1); Simma, *Charter of the United Nations*, 442-52. See also Bellamy, "Responsibilities of Victory," 623.

93. Claire Breen, "The Edges of Extraterritorial Jurisdiction: The Integration of Economic, Social and Cultural Rights into Peace Support Operations," *Journal of International Peacekeeping* 16 (2012): 47-68.

94. UNSG, *Observance by United Nations Forces of International Humanitarian Law*, ST/SGB/1999/13 (1999).

95. Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Art. 2 of the Covenant)*, CCPR/C/21/ Rev.1/Add.13 (2004), para. 10; Breen, "Edges of Extraterritorial Jurisdiction," 47-63.

96. UN Charter, Art. 2, paras. 1 and 4 respectively.

97. The primacy accorded to State sovereignty was clearly established by the ICJ in the *Corfu Channel* case where the Court stated that there

was no authority for a right of intervention where it would result in the violation of the territorial integrity of a State. *The Corfu Channel Case,* Merits, Judgment, ICJ Reports (1949), 35.   This principle was reaffirmed by the Court in *Nicaragua v. United States* in which the Court stated, "The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; . . . the Court considers that [this right] is part and parcel of customary international law." *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, Merits, Judgment, ICJ Reports 14 (1986), para. 202.

98. This condition is reflective of an earlier statement by the Permanent Court of Arbitration: "Territorial sovereignty . . . involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory." See *Island of Palmas Case (US v. The Netherlands)*, 2 RIAA (1928), 829, 839. See also UNGA Res. 2625 (XXV), "Principles of International Law concerning Friendly Relations and Co-operation among States," (1970).

99. Dissenting Opinion of Judge Fitzmaurice, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* Advisory Opinion, ICJ Reports 16 (1971), para. 115.

100. Kirsten Boon, "Coining a New Jurisdiction: The Security Council as Economic Peacekeeper," *Vanderbilt Journal of Transnational Law* 41, no. 4 (2008): 1018.

101. Jubilut, "Towards a New Just Post Bellum," 66, citing *Behrami and Saramati v. France*, European Court of Human Rights (ECHR), App. No. 71412/01 (2 May 2007), para. 20.

102. UNSG, S/PRST/2000/25 (2000). Similarly, the view of the Red Cross is that it "does not view peace simply as the absence of war, but rather as a dynamic process of cooperation among all states and peoples; cooperation founded on freedom, independence, national sovereignty, equality, respect of human rights, as well as a fair and equitable distribution of resources to meet the needs of peoples." See

Yves Sandoz, "The Red Cross and Peace: Realities and Limits," *Journal of Peace Research* 3, no. 2 (1987): 295.

103. UNGA, Res. 217A (III), *Universal Declaration of Human Rights*, A/810 at 71 (1948); UNGA, Res. 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights*, 21 UN GAOR Supp. (No. 16) at 49, UN Doc A/6316 (1966), 993 UNTS 3; UNGA, Res. 2200A (XXI), *International Covenant on Civil and Political Rights*, 21 UN GAOR Supp. (No. 16) at 52, A/6316 (1966), vol. 999: 171.

104. Kirsten Boon, "The Future of the Law of Occupation," *Canadian Yearbook of International Law* 46 (2008): 110-14.

105. *Hague Convention IV: Laws and Customs of War on Land* (1907), 36 Stat 2277, 205 Consol TS 277.

106. *Convention Relative to the Protection of Civilian Persons in Time of War* (1949), 6 UST 3516, 75 UNTS 287.

107. Grant Harris, "The Era of Multilateral Occupation," *Berkeley Journal of International Law* 24, no. 1 (2006): 8.

108. For example, in Iraq, the UK and the US stated that they would "strictly abide by their obligations under international law, including those relating to the essential humanitarian needs of the people of Iraq," UN Doc. S/2003/538, Letter, 8 May 2003. The recognition of the occupation of Iraq in UNSC Res. 1483 and UNSC Res. 1511 had the effect of binding the Coalition Provisional Authority by The Hague Regulations and the Geneva Conventions. Carsten Stahn, "'Jus in bello,' 'jus ad bellum' – 'jus post bellum'?," *European Journal of International Law* 17, no. 5 (2006): 929.

109. Jennifer Moore, "Collective Security with a Human Face: An International Legal Framework for Coordinated Action to Alleviate Violence and Poverty," *Denver Journal of International Law and Policy* 33, no. 1 (2004): 64-67.

110. Moore, "Collective Security," 1, citing Anne-Marie Slaughter, "The Value of Spirited Debate," *Newsletter of the American Society of International Law*, Jan/Feb 2004, 8.

111. See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, ICJ Reports (2004), 136, 78;

and *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), Judgment, ICJ Reports (2005), 68. See generally, Breen, "Edges of Extraterritorial Jurisdiction."

112. Bellamy, "Responsibilities of Victory," 606; Breen, "Edges of Extraterritorial Jurisdiction."

113. *Construction of a Wall,* para. 112. See also the Congo case, paras. 107-13.

114. *Convention Relative to the Protection of Civilian Persons in Time of War*, Article 2.

115. *Protocol Additional to the Geneva Conventions* of 12 August 1949, and relating to the *Protection of Victims of Non-International Armed Conflicts* (Protocol II) (8 June 1977), 1125 UNTS 609.

116. Breen, "Edges of Extraterritorial Jurisdiction," 67-68.

117. "'Introduction,' Maastricht Guidelines on Violations of Economic, Social and Cultural Rights," *Human Rights Quarterly* 20, no. 3 (1998): 691-705.

118. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, para. 2), (14 December 1990), para. 52. Compare *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, (UN Doc. E/CN.4/1987/17), 9(2); *Human Rights Quarterly* 9 (1987): 122-35.

119. CESCR, *General Comment No. 15: The Right to Water* (Art. 11 and 12 of the ICESCR), UN Doc. E/C.12/2002/1 (2002), para. 21. In addition, para. 22 provides that the obligation to respect also means that during armed conflicts, emergency situations, and natural disasters, the right to water embraces those obligations by which States Parties are bound under international humanitarian law.

120. CESCR, *General Comment No. 15*, para. 44(a).

121. CESCR, *General Comment No. 13: The Right to Education* (Art.13), UN Doc. E/C.12/1999/10 (1999), para. 50.

122. CESCR, *General Comment No. 13*, para. 59.

123. CESCR, *General Comment No. 14: The Right to the Highest Attainable*

Standard of Health (Art. 12 of the ICESCR), UN Doc. E/C.12/2000/4 (2000), para. 36.

124. CESCR, *General Comment No. 14*, para. 52.

125. The right of intervention has been recast more recently to draw increasingly upon human rights violations: "the responsibility of the international community to prevent and punish serious violations of human rights comes into play . . . in the case of 'weak' or 'failed' states, unable to prevent serious violations from being committed on its territory by private parties." See Siobhan Wills, *Protecting Civilians: The Obligations of Peacekeepers* (Oxford: Oxford University Press, 2009), 391; Osterdahl, "The Exception as the Rule."

126. David Malone and Ramesh Thakur, "UN Peacekeeping: Lessons Learned?," *Global Governance* 7, no. 1 (2001): 12.

127. Katarina Mansson, "UN Peace Operations and Security Council Resolutions: A Tool for Measuring the Status of International Human Rights Law?," *Netherlands Quarterly of Human Rights* 26, no. 1 (2008): 83-84. For example, regulations regarding the observance of specific human rights treaties by the UN Interim Administration Mission in Kosovo (UNMIK Regulation No. 1999/24) and the UN Transitional Administration in East Timor (UNTAET Regulation No. 1999/1) personnel were not directly applicable to the United Nations. Mansson, "UN Peace Operations," 101.

128. Criticism of the Security Council is not a new phenomenon but revisiting such criticism in any great depth is beyond the confines of this paper. In essence, the central point of concern pertains to the issue of the five permanent members which, some argue, results in geopolitical bias, especially when the issue of the veto is concerned. Other criticisms pertain to the Council's decision-making process which, it is contended, is not transparent. Other concerns relate to the interrelationship (or lack thereof) between the Security Council and the other main organs of the UN dealing with human rights and social and economic development. The latter is all the more concerning given the influence of the Charter's purposes and principles upon the decision-making of the Security Council. Similarly, an in-depth discussion of Security Council reform is beyond the confines of this paper other than to note the *Report of the High-Level Panel*

on Threats, Challenges, and Change, which identified four principles for reform: (1) any reform should increase the involvement of those who contribute most to the UN in terms of budgets, participation in mandated peace operations, contributions to voluntary activities in the areas of security and development, and diplomatic activities in support of the Organisation's objectives and mandates; (2) broader representation in the decision-making process, especially on the part of developing Member States; (3) the effectiveness of the Council should not be impaired; and (4) the democratic and accountable nature of the Council should be increased. Despite these recommendations and the advancement of two models which could serve as the basis for reconfiguration of Council membership, the reform debate remains stymied. See Bardo Fassbender, "Pressure for Security Council Reform," in *The UN Security Council: From the Cold War to the 21st Century*, ed. David Malone (Boulder and London: Lynne Rienner, 2004): 341-56.

129. See, for example, *San Jose Agreement on Human Rights of 1990* (El Salvador); *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict of 1991* (Paris Agreement) (Cambodia); and *Comprehensive Agreement on Human Rights of 1994* (Guatemala).

130. UNSC, Res. 1398, preambular para. 4.

131. Jubilut, "Towards a New Just Post Bellum," 57.

132. Boon, "Coining a New Jurisdiction," 1030-31.

133. UNSC, Res. 1244, para. 13.

134. UNSC, Res. 1483, para. 4.

135. UNSC, Res. 1483, para. 8(c).

136. UNSC, Res, 1483, para. 8(e).

137. UNSC, Res. 1770, at para. 2(b)(iv). See also UNSC, Res. 1483, para. 2.

138. DiMeglio, "Just War Tradition," 159-61. Compare the obligations on Security Council members: International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries," *Yearbook of the International Law Commission*, vol. 2, pt. 2 (2001), Art. 35-37.

139. UNSC, Res. 1419, para. 10; UNSC, Res. 1378, para. 4.

140. UNSC, Res. 1401, para. 3.

141. UNSC, Res. 1272, para. 13.

142. UNSC, Res. 1543, para. 10; UNSC, Res. 1599, para. 9.

143. UNSC, Res. 1745, para. 10. See also UNSC. Res. 1802, para. 13; UNSC, Res. 1867, para. 2.

144. UNSC, Res. 1969, para. 15.

145. UNSC, Res. 1969, para. 16.

146. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, ICJ Reports (1949), 174-220, at 179.

147. *Reparation for Injuries*, 180.

148. *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion, ICJ Reports (1954), 47-63, at 57.

149. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 16 (1971), para. 53; Elena Katselli, "Holding the Security Council Accountable for Human Rights Violations," *Human Rights and International Legal Discourse* 1, no. 2 (2007): 320.

150. *South Africa in Namibia*, Advisory Opinion, para. 110.

151. Bernd Martenczuk, "The Security Council, the International Court and Judicial Review: What Lessons From Lockerbie?," *European Journal of International Law* 10, no. 3 (1999): 545.

152. *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Provisional Measures, Order of 14 April 1992, ICJ Reports (1992), 3-16, para. 39.

153. *Lockerbie Case*, Dissenting Opinion of Judge Weeramantry, 65.

154. *Prosecutor v. Dusko Tadic (Appeal Judgment)*, IT-94-1-A, ICTY (15 July 1999), para. 28.

155. *Tadic*, para. 29.

156. Court of First Instance, 21 September 2005, Case T-306/01, *Yusuf et. al. v. European Council and European Commission*; Court of First Instance, 21 September 2005, Case T-315/01, *Yassin Abdullah Kadi v. European Council and European Commission; Behrami v. France*, Application No. 71412/01, and *Saramati v. France, Germany and Norway*, Application No. 78166/01, Judgment of 2 May 2007; C-402/05 P; *Kadi and Al Barakaat International Foundation*, Judgment of the European Court of Justice, 3 September 2008. See Elena Katselli, "International Peace and Security, Human Rights and the Courts: A Critical Re-Appraisal," *The International Journal of Human Rights* 16, no. 1 (2012): 257-77.

157. *M & Co v. FRG*, Application No. 13258/87, Commission decision of 9 February 1999, Decisions and Reports 64; *Waite and Kennedy v. Germany*, Judgment of 18 February 1999.

158. *Matthews v. United Kingdom* Judgment of 18 February 1999, paras. 26-35; *Bosphorus v. Minister for Transport, Energy and Communications and others*, Judgment of 30 June 2005, para. 156.

159. *Al Jedda v. United Kingdom* (2011), 53 EHRR 23; [2011] ECHR 1092; 30 BHRC 637, para. 102.

160. *Al Jedda*, para. 102.

161. Katselli, "Holding the Security Council," 320-23. See generally, Bardo Fassbender, "Uncertain Steps into a Post-Cold War World: The Role and Functioning of the UN Security Council after a Decade of Measures against Iraq," *European Journal of International Law* 13, no. 1 (2002): 273-303; Jose E. Alvarez, "Judging the Security Council," *American Journal of International Law* 90, no. 1 (1996): 1-39; Dapo Akande, "The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?," *International and Comparative Law Quarterly* 46, no. 2 (1997): 309-43.

162. Alexander Orakhelashvili, "The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions," *European Journal of International Law* 16, no. 1 (2005): 68.

163. Orakhelashvili, "Impact of Peremptory Norms," 83.

164. Alvarez, "Judging the Security Council," 435-63.

165. Fassbender, "Uncertain Steps," 273-303; Orakhelashvili, "Impact of Peremptory Norms," 59-88; August Reinisch, "Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions," *American Journal of International Law* 95, no. 4 (2001): 851-72; Breen, "Edges of Extraterritorial Jurisdiction."

166. *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-American Court of Human Rights, Series A, no. 18 (2003), para. 101.

167. CESCR, *General Comment No. 8 (1997), The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights*, E/C.12/1997/8 (1997), para. 8.

168. CESCR, *General Comment No. 8*, at, para. 9.

169. Claire Breen, "The Necessity of a Role for the ECOSOC in the Maintenance of International Peace and Security," *Journal of Conflict and Security Law* 12, no. 2 (2007): 262.

170. UNGA, *World Summit Outcome Document*, A/RES/60/1 (2005), para 155.

171. Breen, "A Role for the ECOSOC," 271.

172. Breen, "A Role for the ECOSOC," 275-89.

173. UNSC, *Protection of Civilians in Armed Conflict*, S/PRST/2005/20 (2005).

174. Breen, "A Role for the ECOSOC," 290.

175. Office of the High Commissioner on Human Rights (OHCHR), *Directory of Special Procedures Mandate Holders*, Geneva: OHCHR Special Procedures Branch, 2012.

176. Claire Breen, "Revitalising the United Nations Special Procedures Mechanisms as a Means of Achieving and Maintaining International Peace and Security," *Max Planck Yearbook of United Nations Law* 12 (2008): 185-200.

177. Breen, "Revitalising the United Nations," 200-2.

178. ECOSOC, *Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights: Effective Functioning of Human Rights Mechanisms*, E.CN.4/2002/14 (2002), paras. 65-76; Breen, "Revitalising the United Nations," 177-203; Micha Zenko and Rebecca R. Friedman, "UN Early Warning for Preventing Conflict," *International Peacekeeping* 18, no. 1 (2011): 21-37.

179. Compare MacFarlane and Khong, *Human Security and the UN*.

180. Labonte, "Jus Post Bellum," 233.

181. Bellamy, "Responsibilities of Victory," 623.

Liberal Individualism Meets Conservative Passion: International Legal Responses to Ethnicity in Ethnic Conflicts, and Beyond

Mohammad Shahabuddin

While the end of the Cold War engendered the hope of liberal-democratic "progress" and peace, simultaneous eruption of violent ethnic conflicts brought the issue of "ethnicity"—a primitive notion in the liberal understanding—to the forefront to coexist with normative individualism. In this paper, I argue that international lawyers' treatment of ethnicity along the lines of liberal and conservative traditions informs their response to ethnic conflicts. Further, this paper explains how the engagements of the post-Cold War international lawyers with "ethnicity" reveal the inherent limitations of the liberal international law itself in relation to ethnic conflicts. The paper also demonstrates how international lawyers attempt to reconcile these traditions in order to work out pragmatic solutions for ethnic conflicts, and what normative issues this reconciliatory approach engenders.

On April 6, 1992, a crowd of demonstrators estimated at over 50,000 gathered in front of the Bosnian parliament building in Sarajevo to demonstrate for peace in Bosnia and Herzegovina. The demonstrators were members of all three of Bosnia's largest nationalities: Serbs, Croats, and Bosnian Muslims. Directly across the street, from the upper floors of the ultra-modern Holiday Inn built for the 1984 Winter Olympics, heavily-armed Serbian militiamen fired randomly into the crowd, killing and wounding dozens of the peace demonstrators. This cavalier

killing spree quickly dispersed the crowd and marked the demise
of the few remaining hopes that moderation and compromise
might prevail in Bosnia and Herzegovina.[1]

INTRODUCTION

Robert Donia and John Fine's book on the tradition of tolerance in Bosnia
and Herzegovina starts with the above quotation that grasps the dramatic
moment of the beginning of the full-fledged war in Bosnia.[2] The degree of
violence exerted in this conflict—both by State and non-State actors includ-
ing NATO—is less debated than the causes that turned the Serbs, Croats,
and Muslims (Bosniacs), who had coexisted peacefully for centuries,[3] into
protagonists of one of the deadliest conflicts since the Second World War.
David Campbell offers us a review of the "dominant narrativisation" of
the Bosnian war and demonstrates the criteria by which judgments about
this conflict can be made "about and between competing narratives."[4] For
example, while the Bosnian Serb community perceived the conflict as an
ethnic struggle among rival ethnic groups who could not live together,[5]
Serb and Croat elites within Bosnia and their allies in respective kin-States
depicted the conflict in ethnic terms, which in turn offered justifications for
territorial expansionism.[6] On the other hand, for many Bosnian Muslims,
the issue was not about ethnicity; the conflict was a product of fascism.[7]
One Bosnian army commander is reported to have perceived the conflict in
"civilisational" terms: "It is not an ethnic war; it's a war of ordinary people
against primitive men who want to carry us back to tribalism."[8] International
community,[9] media,[10] scholars of various disciplines[11]—all developed their
own narrative of the conflict.

This dual depiction of ethnicity—for some, passively in the back-
ground; for others, at the forefront and the issue to be addressed—is not
peculiar to the Bosnian conflict. The manner in which one understands the
process of ethnic construction along the lines of the liberal and conservative
traditions has significant implications for the way one perceives the role
of ethnicity in ethnic conflicts.[12] In this paper, I argue that international
lawyers' treatment of ethnicity along the lines of the liberal and conservative
traditions informs their response to ethnic conflicts. I also demonstrate how
international lawyers attempt to reconcile these traditions in order to work
out pragmatic solutions to ethnic conflicts, and what normative issues this
reconciliatory approach engenders.

ETHNICITY, ETHNIC CONFLICTS, AND INTERNATIONAL LAW

International lawyers' engagements with ethnicity in relation to ethnic conflicts broadly appear in three major streams. The first stream argues that individuals constitute the primary unit of international law, and therefore, the empowerment of individuals is the key to securing peace. This Kantian proposition gave birth to the idea of democratic peace at the global level and also the liberal view that the democratic peace thesis is equally relevant for addressing ethnic conflicts. The second stream holds that although liberal individualism is the foundational norm of international law and therefore the idea of group "rights" has no normative relevance, it is permissible for the sake of pragmatism to formulate policies favouring ethnic groups where ethnic tension erupts. In this process, some kind of "liberal exceptionalism" is endorsed. And finally, the third stream recognises the relevance of ethnicity in ethnic conflicts, and therefore proposes conflict prevention mechanisms that incorporate ethnicity-defined group measures such as ethnic federalism and consociationalism.

This paper argues that so far as the foundational notions of these three streams are concerned, they in fact fall within the framework of liberal and conservative traditions of dealing with ethnicity. In other words, it is the dichotomy of these traditions that explains the inherent characters of international legal responses to ethnic conflicts. I will demonstrate that while the democratic peace thesis follows the classical liberal tradition to bypass the conservative notion of ethnicity in dealing with ethnic conflicts, the second stream denies the normative relevance of the conservative tradition of perceiving ethnicity as an important element of identity formation, but in practice relies on this understanding of ethnicity on instrumental grounds, as an exception to the general primacy of individualism. On the other hand, the third stream recognises the salience of ethnicity along conservative lines, and attempts to accommodate ethnicity within the dominant liberal international legal architecture. Together, these three approaches to ethnicity in ethnic conflicts reveal a general pattern of reconciling liberal and conservative traditions in contemporary international law in relation to ethnic conflicts.

To this end, I have adopted David Kennedy's unique approach of historicising law that systematically explores how various actors with various priorities play their part on the international plane, and at the same time, engage with each other in a complex way. An essential character of such an

intellectual cartography is its focus on the wide range of consequences—both desired and undesired—emanating from such a complex interaction of actors and their privileging of certain norms.[13] One can, therefore, trace the influence of Kennedy's powerful methodology while reading this paper, in that without siding with any particular school of thought, I attempt to grasp the complex ways in which international lawyers engage with the notion of "ethnic conflict," and highlight the inherent shortcomings of their positions exposed through such engagements.

Liberal Democracy and Ethnic Conflicts

In an article published in 1983, Michael Doyle provokingly asserts that although wars between liberal and non-liberal States are an historical fact, constitutionally secure liberal States have yet to engage in war with one another; there exists a significant predisposition, if not guarantee, against warfare between liberal States. Thus, despite numerous particular conflicts of economic and strategic interest, Doyle argues, a "liberal zone of peace" has been maintained and has expanded over the years.[14] Such a regime of international peace is premised on liberal democratic norms. Given that the right to liberty belongs to morally autonomous citizens alone, only the State that democratically represents its citizens can exercise the right to political independence. At the international level, States with a democratic character respect each other's right to independence, while individuals enjoy a liberal environment in which they can freely establish private international ties of various kinds without State interference to create a web of mutual advantages and commitments. With this analogy of mutual respect, Doyle rationalises the formation of "a cooperative foundation for relations" among liberal democracies that leads to peace among them.[15]

As the title of his article suggests, Doyle's proposition is largely drawn upon what Immanuel Kant claimed in 1795. In *Perpetual Peace,* Kant offered a vision of world peace of a permanent character that is rooted in the freedom of each citizen in a polity. Thus, the first definitive article of the perpetual peace claims that republicanism, which in itself is the original basis of every kind of civil constitution, would lead to a perpetual peace, in that under such a republican constitution the consent of the citizens is required to decide whether or not war is to be declared. As a result, they will have great hesitation in deciding in favour of war and will do so only in compelling cases.[16] This impact of a republican constitution for peace is markedly

different from a non-republican constitution, which permits war very easily, for individuals—not being citizens—have no voice in the decision-making process.[17] Fernando Teson claims that by "republican," Kant means "what we would call today a liberal democracy, a form of political organisation that provides full respect for human rights."[18]

Having linked the exercise of State power to the primacy of individual freedom, in the second definitive article Kant then envisages a constitution at the global level to be drawn up in light of a republican constitution within which nations would guarantee one another's rights. This would mean establishing a federation of peoples, but not an international State of hegemonic character, with the aim of preventing war and expanding the zone of peace.[19] At the same time, as his third definitive article outlining the notion of hospitality reveals, strangers have the right not to be treated with hostility when they arrive on someone else's territory, for all men are entitled to present themselves in the society of others by virtue of their right to communal possession of the earth's surface.[20] He then concludes that

> The peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in *one* part of the world is felt *everywhere*. The idea of a cosmopolitan right is therefore not fantastic or overstrained; it is a necessary complement to the unwritten code of political and international rights, transforming it into a universal right of humanity. Only under this condition can we flatter ourselves that we are continually advancing towards a perpetual peace.[21]

The Kantian vision of global peace, which linked the idea of democracy and individual human rights to peace,[22] has been extremely popular among liberal international lawyers, especially after the collapse of the Soviet empire. In 1992, Thomas Franck in his pioneering article, "The Emerging Right to Democratic Governance," claimed that in international law, a new norm was emerging that required democracy to legitimise the governance of the State. While governance has always been within the internal affairs of a State protected under its sovereign veil, Franck argues that this emerging law is becoming "a requirement of international law, applicable to all and implemented through global standards, with the help of regional and international organisations."[23]

To substantiate his claim, Franck identifies four qualities that the norm

possesses: pedigree (the depth of the rule's roots in a historical process); determinacy (the rule's ability to communicate the content); coherence (rule's internal consistency and lateral connectedness to the principles underlying other rules); and adherence (the rule's vertical connectedness to a normative hierarchy, culminating in an ultimate rule of recognition, which embodies the principled purposes and values that define the community of States).[24] Of these four tests, the last has particular relevance for our purposes, in that Franck locates the norm of democratic entitlement in the normative hierarchy by relating it to the peremptory norm of non-aggression in international law. "If that principle of non-aggression indeed stands at the apex of the global normative system," Franck argues, "the democratic governance of states must be recognised as a necessary, although certainly not a sufficient, means to that end. Peace is the consequence of many circumstances: economic well-being, security, and the unimpeded movement of persons, ideas and goods. States' nonaggressiveness, however, depends fundamentally on domestic democracy."[25] Franck refers to Kant and his *Perpetual Peace* thesis on this score.[26]

Having traced the pedigree of the individual's right to democratic entitlement to the early twentieth-century idea of self-determination, which was initially meant for communities, Franck defuses the "collective" entitlement of self-determination and reconceptualises it as a collection of the individual's rights to political participation that flourished in post-WWII international law.[27] Yet, elsewhere, he locates peoples' (collective) right to self-determination in the concept of fairness: instead of being a general principle, he argues, self-determination of peoples is a principle that should be applied on case-by-case basis using the fairness paradigm so that the right to self-determination can prevail over territorial integrity in limited cases such as the disintegration of existing States or economically maldistributive side-effects.[28] In this liberal fairness discourse, ethnicity, in relation to the conservative claims for self-determination and ensuing conflicts, is essentially perceived as "postmodern neo-tribalism": postmodern because ethnic tribalism is a direct challenge to modernism, in that it tends to reverse the modernist process of globalising commerce, homogenising culture, creating a global village, and so forth;[29] and neo-tribalism because ethnicity is no longer the monopoly of the backward peoples, in that minority elites in modern societies also present their claims along ethnic lines.[30]

However, the proposition that democracy guarantees peace draws

criticism. Francis Fukuyama, in his "Second Thoughts" on "The End of History" thesis, asserts, within the Hegelian tradition, that it is liberalism as an ideology more than democracy that is the true institutional basis for democratic peace. Setting the liberal ideology as the major premise, he offers a three part syllogism, in which "liberalisation of economic policy would lead to the rapid economic growth, which in turn would lead to the development of democratic political institutions, which would then enlarge the democratic zone of peace and promote the security of those nations inside it."[31]

While Fukuyama emphasises liberal ideology, not democracy per se, for promoting peace, and finds only a "correlation and not an iron-clad relationship" between the degree of liberal democratic consolidation and peace,[32] Susan Marks portrays democracy itself as an "ideology" and in a comprehensive way explains how the propagation of "low intensity democracy" is used in the international legal processes to legitimise, obscure, deny, reify, naturalise, or otherwise support asymmetrical power relations.[33] Martti Koskenniemi, too, holds the view that the liberal zone of peace is a function of a process of externalising conflict—the continuation of conflict between liberal and non-liberal states, and in this sense, the causal link is not between democracy and peace but between imperialism, development, and peace, in that the underlying assumption here is that underdevelopment begets war.[34] Nevertheless, apart from these normative criticisms of the democratic peace theory, another criticism highlights its limits—that this theory largely speaks about peace or absence of conflict at the international level and leaves the issue of ethnic conflict untouched. This point is of particular interest here. Referring to this shortcoming, Brad Roth argues that it is unlikely that participatory mechanisms will be the solution to or a prophylactic against ethnic conflicts, for such mechanisms always leave some scope for dissatisfaction of some groups, and thereby engender reasons for ethnic tension as does the lack of opportunity for political participation.[35] Moreover, he is sceptical about the idea that once an ethnic conflict breaks out, the introduction of an external conception of democratic entitlement, as distinct from any solutions that may be worked out ad hoc by agreement among the potent conflicting forces within the State, would help resolve that conflict.[36] Such prescription for democratic entitlement, he notes, is more likely to facilitate partisan external involvement.[37]

In the context of ethnic conflicts on internal boundary issues, the

political theorist Frederick Whelan notes that when ethnic groups rely on radically different notions of "the appropriate boundaries, or the extent and composition of the political community," the legitimacy of the sovereign unit itself becomes the core of the conflict, which is "insoluble within the framework of democratic theory."[38] This is partly because the legitimacy of the boundaries of the political community is a precondition to the operation of democratic institutions and decision-making processes.[39] Similarly, Robert Dahl asserts that given that any democratic process presupposes the "rightfulness of the unit," which in itself is the issue of contention in many ethnic conflicts, the problem of the proper scope and domain of the unit of citizenship and governance cannot be solved from within the democratic theory.[40]

While talking about ethnic conflicts, Anne-Marie Slaughter, too, registers her scepticism about the viability of liberal democracy in engendering sufficient pacific effect. Although "the deep inculcation of democratic norms of peaceful change and positive-sum bargaining that flow from long experience of alternating parties in power" provide only some hints for the possible effectiveness of liberal democracy in mitigating ethnic conflict, Slaughter nonetheless acknowledges that "to the extent that ethnic conflict results from the desire of persistent minorities to secure the rights and privileges accompanying majority political power, they are by definition unlikely ever to have had the experience of such alternation."[41] Nevertheless, she keeps the liberal faith by concluding that "liberal democracy may not be a cure for ethnic conflict. But it may be the best that the international legal order has to offer."

As a matter of fact, this is what has been offered as a policy prescription to post-Cold War ethnic conflicts. Liberal democracy provides the framework for practically all peacebuilding operations in post-conflict societies since the end of Cold War.[42] In the context of post-conflict Bosnia, David Chandler offers a critical perspective on how this liberal political agenda of "democratisation" has had adverse impacts on democracy itself. Chandler not only challenges the fundamental tenets of the international fantasy of the democratisation of Bosnia by tracing its root to the nineteenth-century's colonial notion of the "White Man's Burden,"[43] but also explains how democratisation policies in practice help perpetuate, if not prolong, the regulatory and disempowering contents behind the language of human rights, multi-ethnic governance, freedom of expression, and civil society-building.[44]

In this process of disempowering Bosnian people and their representatives, he continues, fears and insecurities have been institutionalised with the logic that power cannot be given to Bosnian institutions until there is greater political security.[45] Chandler thus concludes that this vicious cycle is a creation of the international community and that this could be broken by "allowing greater levels of political autonomy—more democracy."[46]

On the other hand, Ronald Paris holds that the liberal democratic project is premised on the understanding that in order to secure a sustainable peace, it is imperative "to transform war-shattered states into stable societies that resemble the industrialised market democracies of the West as closely as possible."[47] One fundamental drawback of this liberal internationalist venture, Paris notes, is that it expects the "beneficiaries" of this venture "to become democracies and market economies in the space of a few years—effectively complementing a transformation that took several centuries in the oldest European states," and most importantly, within fragile political structures.[48]

This leads to an interesting causal relationship—not between the existence of liberal democracy and ethnic peace, but ironically, between liberal democracy and ethnic conflict, at least under some circumstances. As Paris argues, given the inherently mutual conflictual character of democracy and capitalism, their implantation by international design can further destabilise the weak, unstable, and damaged social and political framework of post-conflict societies.[49]

Similarly, Amy Chua provides a persuasive argument on how the globalisation of democracy has created ethnic hatred in many parts of the non-western world. Chua argues that in many countries outside the West the economic impact of globalisation has created market-dominant ethnic minority groups, but the simultaneous exporting of democracy to these countries has politically empowered the economically impoverished majority. Ethnic hatred and backlash have been the obvious results of this process.[50] Her thesis is premised on a series of case studies on the impact of free-market democracy in various parts of the non-western world. With the adoption of market economy in many Southeast Asian countries, she argues, the overseas Chinese minority took control of the economy in those countries. Starting in the 1980s and 1990s, these countries embarked on aggressive market reforms, including free trade and pro-foreign investment policies, deregulation, and privatisation of the State-owned enterprises. At

the same time, the turn to free markets unleashed the entrepreneurial energies of Southeast Asia's overseas Chinese minorities, enormously enhancing their visibility and economic dominance.[51] This phenomenon is also prevalent in Russia (Jews), southern African countries (white community), East Africa (Indians), and West Africa (Lebanese).[52] Although these ethnic minorities were dominant much before the market economy phase, Chua argues that globalisation gave them an enormous opportunity to accumulate prodigious amounts of resources, making their dominance more visible.

Simultaneously, Chua continues, the political impact of globalisation in the form of a global campaign for democracy has empowered impoverished majorities in these countries. The competition for votes fosters the emergence of demagogues who scapegoat the resented minorities and foment active ethno-nationalist movements demanding that their country's wealth and identity be reclaimed by the "true owners of the nation." Chua predicts three kinds of backlashes under such circumstances, of which the backlash against the market-dominant ethnic minority in the form of expulsion or even genocide is one. To substantiate this argument, she selects the examples of genocide in post-Cold War Rwanda and the former Yugoslavia.[53]

In the case of Rwanda, the Tutsis were the market dominant minority for quite a long time. With the adoption of democracy, a number of demagogues appeared with the claim of "Hutu Power." In December 1990, Hutu supremacist Hassan Ngeze published his infamous "The Hutu Ten Commandments," which declared all the Tutsis "dishonest" and urged the Hutus to have unity and solidarity against their common Tutsi enemy.[54] In the spring and early summer of 1994, Hutu Power began broadcasting nationwide calls for the slaughter of Rwanda's Tutsis, and in an "effective and enthusiastic response," ordinary Hutus killed approximately 800,000 Tutsis in just one hundred days.[55] In those days of genocide, "a councilwoman in one Kigali neighbourhood was reported to have offered fifty Rwandan francs apiece (about thirty cents at the time) for severed Tutsi heads, a practice known as 'selling cabbages.'"[56]

Similarly, in the former Yugoslavia, the Croats and Slovenes had always been, and continued to be, disproportionately prosperous *vis-à-vis* the more populous Serbs. The democratic elections of 1990 in both Serbia and Croatia produced demagogues who promoted ethno-nationalism for material ends, ethnic conflict of the worst form being the outcome of such mobilisation. However, Chua adds a note of caution:

> I am certainly not offering an "explanation" for the tremendous
> ethnic hatred or atrocities that unfolded [in the former
> Yugoslavia] in the 1990s. . . . I am distinctly not arguing
> that market-dominant minorities are the sources of all ethnic
> conflict or that market-dominant minorities are the only
> targets of ethnic persecution. . . . Rather, the point is that in
> virtually every region of the world, against completely different
> historical backgrounds, the simultaneous pursuit of markets and
> democracy in the face of a resented market-dominant minority
> repeatedly produces the same destructive, often deadly dynamic.
> Sudden, unmediated democratisation in Yugoslavia—as in
> Rwanda—released long suppressed ethnic hatreds and facilitated
> the rise of megalomaniac ethnic demagogues as well as ferocious
> ethnonationalist movements rooted in tremendous feelings of
> anger, envy, and humiliation.[57]

Chua's thesis emerges in an approach that points to notorious dema-gogues, who pursue their ambition by putting their claims in ethnic terms in the face of economic competition. This position encounters a number of drawbacks: while this approach may explain when and how various elites mobilise the masses for their own material benefits, it does not tell us why the masses respond to those elites' appeals even at the cost of their material wellbeing. It also does not explain why, following the adoption of democracy, the impoverished majority quickly identifies the handful of market-dominant elites along ethnic lines as the cause of its backwardness, when it is often only a very few business elites belonging to a particular ethnic minority who dominate the economy, and the majority of that ethnic minority share the same fate of the impoverished majority. However, Chua's theory is still relevant for our discussion, in that it not only refutes the universal claim to a preventive role by liberal democracies towards ethnic conflicts, but also highlights the poverty of such a liberal notion by identify-ing it as a *cause* of ethnic conflicts when simultaneously coupled with the imposition of market-economy, at least in the non-Western world.

Liberal Exceptionalism vis-à-vis Ethnicity in Ethnic Conflicts

While liberal international lawyers' engagement with the democratic peace theory has the tendency to rely on individualist versions of democracy as the way to peace and in this manner to keep ethnicity (perceived as a conservative

primitive notion and therefore a source of conflicts) at a distance from the discourse on ethnic conflicts, pragmatic needs compel them to acknowledge the instrumental relevance of ethnicity in ethnic conflicts. This is often done by advancing a certain degree of exceptionalism in liberal international legal philosophy. To explain this phenomenon, we now turn to Teson's version of international law and its treatment of ethnic conflicts.

Like the democratic peace theorists, Teson borrows directly from the Kantian framework to claim that the legitimacy of the rights of States under international law is merely derivative of the rights and interests of individuals who reside within them.[58] In his "The Kantian Theory of International Law," criticising traditional international legal scholarship for not acknowledging this normative structure and perceiving international law as a matter between and among States, Teson contends that "the sovereignty of the state is dependent upon the state's domestic legitimacy; and therefore, the principles of international justice must be congruent with the principles of internal justice."[59] This idea of "internal justice" and its significance for the international legitimacy of States as well as a condition of peace, as Kant suggests, leads Teson to reinterpret Kant's most basic proposition—the invalidity of any kind of intervention against another State—and argue that the internal legitimacy of a State is to determine the validity of non-intervention. Teson claims that "citizens in a liberal democracy should be free to argue that, in some admittedly rare cases, the only morally acceptable alternative is to intervene to help the victims of serious human rights deprivations."[60]

Against this backdrop of the Kantian conception of the individual as the building block of international law, Teson argues that liberal theory commits itself to "normative individualism"—the idea that individuals constitute the primary units.[61] Thus, for him, as a matter of general principle, groups defined by ethnic characteristics should not enjoy any special privilege "merely by virtue of the fact that they possess some common ethnic trait."[62] His key criticism of the conservative position on the right of "groups" to self-determination, therefore, follows that such a position perceives the encompassing group, entitled to the right to self-determination, on the basis of nonvoluntary ethnic traits. This, according to Teson, violates the very fundamental liberal notion of consent and individual preference as the basis of political institutions.[63] In the liberal theory, an ethnic group has no rights to its cultural protection if a majority of its members do not want its survival.[64] He therefore concludes, "if a majority discriminates against a

culture. . . , then that majority violates the rights to equal treatment of the members of the culture."[65]

On the other hand, if the culture decays spontaneously, as a result of "market failure"—where individual members rationally prefer another culture over their own, or fail to contribute to the survival of their culture due to ignorance or a free-riding tendency—Teson argues, "it is hard to see how that fact would justify special group rights or secession from a liberal state."[66] Similarly, regarding the territorial claims thesis of the rights to self-determination, Teson endorses Lea Brilmayer's position that ethnicity has only a limited role of identifying the people making the territorial claim, and that claims to territory do not follow *ipso facto* from ethnic distinctiveness.[67] Thus, oppression of a people within a territory leading to a separate territorial claim can be addressed by simply eliminating such oppression.[68]

Having outlined the general normative liberal framework, Teson then moves towards exceptionalism by offering specific conditions under which special group rights can be granted along the lines of the conservative tradition. First, if any despotic government flagrantly violates human rights, then members of a group have the right to take necessary steps, even secession in relevant cases, to free themselves from oppression, provided that no other means of redress is available.[69] Second, in the case of injustice to groups in the form of discriminatory redistribution, groups with a territorial claim attain a moral right to greater autonomy or even to break up the existing State. However, if the group with territorial title does not intend to observe the human rights of its individual members, then its title to territory alone does not suffice to engender any right to self-determination.[70] On the other hand, in the absence of any territorial claim as well as any other specific right that would engender a special right to self-determination for such groups in a conservative sense, no such group right can be granted, for such discriminatory redistribution brings similar sufferings to all other social classes as a part of an "economic programme adopted in a democratic political system that respects individual rights and abides by the strictures of democratic fairness."[71] Finally and most significantly, Teson addresses the conservative notion of "group rights" by deconstructing the concept itself and claiming that group rights or collective rights are not distinct categories in the liberal theory. Philosophically, rights are individualised, nonaggregative, and distributive in contrast to social policies which are nonindividualised, aggregative, and nondistributive.[72] In the classical liberal understanding of

"right," Teson continues, collective rights in the conservative sense are not rights but aggregative social policies lacking "deontological bite," and the word "right" in "collective right" is used only for rhetorical purposes.[73] He thus concludes that various conservative claims framed in the rhetorical language of collective or group rights cannot be called rights in the same sense that the liberal theory defines rights.[74]

Nevertheless, in the final step of his argument, Teson opens up avenues for pragmatism to cope with his normative denial of the conservative notion of group entitlement. While he re-emphasises that the recognition of collective rights has the potential to restrict individual freedoms, he categorically mentions that "nothing in [his argument] precludes the establishment of legal group rights or other forms of group autonomy for weighty pragmatic or prudential reasons, such as the need to avert ethnic conflict."[75] This reconciliation is achieved by limiting the scope of his normative position to the claim that "while legal collective rights may sometimes be an appropriate remedy, they are never required by justice. They are not supported by principled, deontological reasons nor by popular public goods argument. There are no moral collective rights—at least none that is consistent with rights-based liberalism."[76] Thus, by redefining the conservative notion of collective "rights" as "policies," Teson's thesis endeavours to mitigate the tension between the pragmatic needs of recognising ethnicity in the conservative sense with the normative values of liberal individualism. Conservative collective rights may exist as "rights" in rhetorical uses for pragmatic ends, but not in the liberal theory of rights. In other words, here the liberal denial of the conservative tradition of putting ethnicity at the forefront dwells with the pragmatic recognition of the same phenomenon.

Teson's thesis that ethnicity itself does not suffice to create special group rights, but only to the extent that ethnicity is linked to political or territorial injustice may ethnic groups legitimately claim special rights, implies that acts of oppression and political subordination have constructive effects on rights even if in the rhetorical sense. We can, therefore, trace a reverse flow here: it is not liberal international law that prohibits oppression against ethnic "groups" and thereby prevents ethnic tension from erupting; rather, it is the act of oppression that generates a reconciliatory approach in international law towards the conservative notion of group entitlement. This argument has the potential of offering incentives to elites for ethnic group mobilisation in a particular way to develop a normative argument for

collective rights (policies). As a corollary, the pragmatic reconciliation of the liberal norm with the conservative notion of ethnicity in Teson's thesis also implies that special ethnic group entitlements only prevail in a condition of "abnormality," while liberal individualism must dominate the "normal" state of affairs.[77]

The recent Advisory Opinions of the International Court of Justice (ICJ) on the legality of the unilateral declaration of independence of post-conflict Kosovo can be explained within this framework of liberal exceptionalism.[78] First of all, the Court explicitly exhibited the classical liberal hesitancy at the conservative notion of self-determination while dealing with the case. On the one hand, the Court indicated that although in the aftermath of WWII the international law of self-determination developed in such a way as to create a right to independence especially for the peoples of non-self-governing territories and peoples subject to alien rule,[79] there were also instances of declarations of independence outside these colonial/alien rule contexts. The Court then asserted that "the practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases."[80] On the other hand, the Court carefully refrained from telling us whether such State practice has led to the creation of any positive norm in this regard, and simply noted that the issue was highly contentious among the participants in the proceedings of the case.[81] The Court thus bypassed the question of the legality of the conservative ethnic right to self-determination altogether by claiming that since the General Assembly had requested the Court's opinion "only on whether or not the declaration of independence was in accordance with international law," the issue "regarding the extent of the right of self-determination and the existence of any right of 'remedial secession,'" which, according to the Court, "concerned the right to separate from a State," fell beyond the scope of the question posed by the General Assembly; hence, it was unnecessary to resolve these questions in the present case.[82]

Conversely, in his dissenting opinion, Judge Abdul Koroma held the view that the question put before the Court was a legal question (as opposed to a political issue) that required a legal response that the Court failed to deliver.[83] Instead of avoiding the key question of the legality of self-determination and secession in general international law by reference to a mere general statement that international law does not authorise or

prohibit declarations of independence, Koroma asserted that the Court should have concluded that the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo amounted to secession and was not in accordance with international law, for the respect for the sovereignty and territorial integrity of States are the cardinal principles of contemporary international law;[84] "not even the principles of equal rights and self-determination of peoples as precepts of international law allow for the dismemberment of an existing State without its consent."[85] In this sense, Koroma's position is quite similar to the one taken by the Badinter Commission when dealing with Croatia's claim of the right to self-determination along conservative ethnic lines.[86] It is therefore not surprising that both the Commission and Judge Koroma referred to more or less the same legal instruments to substantiate their proposition.[87]

Yet, referring to the fact that both the UN Security Council Resolution 1244[88] (which is *lex specialis* in relation to the political as well as legal matters concerning Kosovo) and the Rambouillet Accords[89] (the Interim Agreement for Peace and Self-government in Kosovo [1999], which was drafted by NATO) reaffirm the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and do not provide for the unilateral secession of Kosovo without its consent, Koroma argued that the actual intention of the Resolution was that Kosovo enjoy substantial autonomy and self-government, but as an integral part of the Federal Republic of Yugoslavia.[90] The Resolution, therefore, provides for "substantial autonomy [for the ethnic Albanian people of Kosovo] within the Federal Republic of Yugoslavia."[91] Koroma's account of the special rights of the Albanians in Kosovo, within the general principle of territorial integrity, thus appears as a fallback position for the ethnic right to self-determination leading to secession—an "exception" to the general liberal principle that substantiates Teson's formula of liberal exceptionalism. This is a special regime of rights for the oppressed Albanians in Kosovo (in that neither the Framework Convention nor any other international convention grants the right to autonomy to any minority group), which is legitimised by the very act of violence, and hence, remains in the sphere of abnormality.

On the other hand, Teson's proposition that the granting of the right to self-determination to any oppressed minority group is subject to the intention of that minority to maintain liberal human rights in the new regime, as we have seen before, is reflected in the Unilateral Declaration

of Independence of Kosovo. For example, paragraph 2 of the Declaration declares Kosovo as "a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law," in which the rights of all communities in Kosovo shall be protected and promoted and the necessary conditions for their "effective participation in political and decision-making processes" will be created.[92] Similarly, the authors of the Declaration assert in paragraph 5 that they welcome the international community's continued support of the democratic development in Kosovo "through international presences established in Kosovo on the basis of UN Security Council Resolution 1244 (1999)." Such a liberal projection of the future State of Kosovo not only offers justification for Kosovo's right to self-determination, but also reinforces the primacy of liberal individualism as the applicable norm in the normal state of affairs.

The Recognition of Conservative Ethnicity and the Liberal Challenge

While Teson's thesis implies that the suppression of ethnic groups and the ensuing conflicts may give rise to ethnic group entitlements in liberal international law, international lawyers in the third stream conversely argue that the absence of recognition of ethnic group rights in international law leads to ethnic conflicts, and therefore, propose an inclusive international legal framework that accommodates the conservative tradition of perceiving ethnicity as a significant element of identity formation. Antony Anghie, for example, argues that ethnic violence is the dramatic expression of the struggle for cultural survival, and therefore, cultural identity should be recognised in international law to prevent ethnic conflicts.[93] His thesis is premised on the normative recognition of ethnicity in the conservative sense, in that he argues that far from being some ornamental aspects of an individual's existence, culture acts as a framework within which individuals comprehend themselves and their relation to the world; hence, cultural identity is central to the very being of the individuals who belong to that group.[94] Ironically, he continues, the current individualist regime of international law through its endorsement of assimilation not only conceives of culture as a "peripheral element of human existence," but also conceals the systematic subordination of ethnic minorities using the rhetoric of liberal neutrality and the principle of non-discrimination.[95] In the absence of any effective forum to voice their grievances, ethnic groups then have recourse to violence to redress the wrong inflicted upon them.[96] Having perceived the

salience of ethnicity in the conservative sense, and thereby linked the lack of group rights in international law with the eruption of ethnic tension and violence, Anghie concludes with optimism that the incorporation of cultural rights by expanding the ambit of individual human rights could develop a framework in which the competing demands of States and minorities may be assessed and settled, and, consequently, the need to resort to violence may be reduced.[97]

While Anghie presents a causal relationship between liberal individualist international law and ethnic conflicts, and proposes the inclusion of ethnic group rights to prevent ethnic conflicts, other jurists within this stream rely on various interpretative techniques to justify their normative recognition and pragmatic accommodation of the conservative notion of ethnicity vis-à-vis ethnic conflicts. For David Wippman, too, ethnicity constitutes the basis for the most viable pragmatic responses to ethnic conflicts, namely, ethnic federalism and consociationalism.[98] In ethnically divided societies, he argues, recognition of ethnicity through the adoption of such measures is of great significance, for a system premised exclusively on the respect for individual rights, even if it succeeds, will not address all of the concerns of subnational ethno-linguistic groups. In his words, "Even if the members of such groups are not, as individuals, subject to discrimination or mistreatment, their aspirations for fulfilling community life may be frustrated absent some measure of self-governance. In a one-person, one-vote system, members of such groups may simply be outvoted and thus permanently frozen out of national political life."[99] Therefore, separatist movements—primarily based on concerns over group identity—are also active in countries (such as Canada and Spain), where individual rights are well protected.[100]

Although Wippman highlights the success of ethnicity-based power-sharing mechanisms along the lines of the conservative tradition in dealing with ethnic conflicts, he is nonetheless aware that such measures encounter the problem of compatibility with the existing liberal architecture of international law. In general, power-sharing mechanisms tend to favour collective rights (the conservative tradition) over individual rights (the liberal tradition), as a result of which many of such practices appear discriminatory when viewed from a liberal individualist perspective.[101] From an individual rights standpoint, Wippman identifies at least three specific human rights norms that are infringed upon by power-sharing practices. First, they are drawn upon characteristics such as race, religion, and language rather

than on neutral merit-based criteria, and thereby violate the fundamental liberal principle of non-discrimination on these grounds. Second, ethnic power-sharing practices may violate the participatory rights of individuals who are not members of a protected ethnic group. And finally, some of the autonomy schemes place restrictions on individual's efforts to settle in areas controlled by members of another ethnic group, and therefore, violate the right to freedom of movement and residence.[102]

Indeed, where power-sharing devices are used to confer power on particular groups in excess of what is reasonably necessary to protect their interests and in ways that are designed to deny other groups meaningful participation in the governance of the State, it may be taken as a form of racism and violation of international human rights obligations. For example, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965) prohibits any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.[103]

Similarly, the power-sharing aspects of consociationalism are challenged by established norms of equal rights of political participation for all, which include the right to take part in the conduct of public affairs, the right to vote and to be elected at genuine periodic elections, and the right to have access, on general terms of equality, to public service in the country.[104] Consociational arrangements violate these rights of the members of the majority community by providing minority ethnic groups with political power disproportionate to their number through reserved seats and offices, minority veto rights, or similar devices.[105] And finally, territorial autonomy for a particular ethnic group restricts the individual right of the rest of the citizens to freedom of movement and residence stipulated in Article 12 (1) of the International Covenant on Civil and Political Rights (ICCPR) that reads, "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." Similar provisions can also be found in Article 13 of the Universal Declaration of Human Rights (UDHR) and Protocol No. 4, Article 2 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

To reconcile his normative and pragmatic recognition of the conservative notion of ethnicity in relation to ethnic conflicts with the liberal international legal regime, Wippman seeks refuge in interpretative techniques to reinterpret the relevant human rights provisions in a way that would open up space (albeit limited) for accommodating the ethnicity-defined power-sharing measures along conservative lines. He thus argues that despite such violations of the international human rights instruments from an individualist perspective, from a group perspective power-sharing arrangements are not *ipso facto* violations of established human rights norms, and hence they are compatible with international human rights law. For example, in relation to the CERD, he argues,

> As an instrument designed primarily to protect individual human rights, it may be that the CERD, strictly interpreted, should be understood to place significant constraints on ethnic federalism. But it seems unduly formalistic to interpret the CERD as a blanket prohibition of political systems designed to enable different racial and ethnic groups to co-exist harmoniously. Moreover, if the CERD is so interpreted, a conflict would be created with the emerging principle that minorities are entitled to effective political participation, going beyond the principle of one person, one vote.[106]

Elsewhere, he argues that consociational practices should be viewed not as creating separate or discriminatory rights for ethnic minorities but as enabling ethnic minorities to exercise their rights on a level close to parity with the dominant groups, thereby ensuring the equality of groups.[107] He extends this analogy to the ICCPR as well, but here he takes note of the limitations of his argument in favour of the conservative notion of ethnic group-based equality within the liberal individualistic framework of the ICCPR: "It might be possible to interpret general 'terms of equality' broadly enough to encompass political systems that focus on the equality of groups rather than of individuals, in keeping with present trends toward recognition of collective rights, but such an interpretation seems inconsistent with the predominantly individual rights focus of the Covenant itself."[108]

Thus, in order to reconcile the liberal and pragmatic traditions vis-à-vis ethnicity and to develop a legal justification for power-sharing, Wippman ultimately takes a "purely pragmatic standpoint," and concludes that power-sharing practices "may compromise some human rights ideals, but they may

also help avoid the even greater injustices associated with other possible solutions."[109] One can rephrase this assertion in this way: power-sharing devices are the most viable ways of addressing injustices towards ethnic minorities and thereby minimising the potential for ethnic conflicts, but being premised on the conservative tradition of emphasising ethnicity in identity formation, these ethnicity-defined mechanisms are to a large extent in tension with liberal individualistic norms of international law.

While Wippman attempts to interpret the existing human rights norms in a way that accommodates the conservative pragmatic measures for ethnic conflict prevention, Steven Ratner, in his effort to make international law "matter" in ethnic conflicts, addresses the lack of international legal measures for minority protection by arguing that emerging non-binding declarations and political documents with "soft law" status as well as "soft mechanisms" and their effective use by competent intermediary actors help generate legal norms for protecting minorities and thereby prevent ethnic conflicts. His point of departure is the fact that in the post-WWII international legal order, liberal individualism with its optimum focus on non-discrimination dominated the discourse on minority rights, while State-oriented reporting mechanisms and individual complaints against human rights violations characterised the implementation mechanisms of international legal obligations.

However, he notes, this legal architecture proved faulty with the eruption of ethnic conflicts in the 1990s when ethnicity came to the forefront.[110] In this context, Ratner argues that by relying heavily on rigid treaty norms, international lawyers are neglecting a large body of soft law norms important to ethnic conflicts in that "while human rights treaties or customary law obviously offer some relevant norms—in particular non-discrimination—they typically only scratch the surface of the issues of ethnic conflict."[111] He addresses this gap with a thorough exploration of the conflict prevention role of the Organization for Security and Co-operation in Europe's (OSCE) High Commissioner on National Minorities (HCNM) and contends that the soft law solution crafted by the OSCE and the Council of Europe (COE) has been useful in advancing the protection of minorities and thereby containing ethnic tension in Europe.[112]

Unlike the rigid and less flexible hard law measures, the soft law provisions in the form of policy declaration or mere political commitment offered the HCNM/OSCE a unique opportunity to negotiate with concerned

parties against the backdrop of norms. Although the OSCE States did not create HCNM's position in order to implement international norms concerning minorities, Ratner asserts, the HCNM has integrated norms into his conflict resolution approach through the following methods: translation of norms (by offering practical guidance and concrete proposals for specific situations);[113] elevation of norms (by convincing the State parties to transform their international soft law commitments into hard, domestic laws);[114] mobilisation of support for the outcomes consistent with norms;[115] development of norms (by deriving norms himself in the absence of any specific legal norm);[116] and finally, dissemination of norms.[117]

The work of the HCNM suggests, Ratner continues, that soft law provisions are effective tools of persuasion in the hands of a normative intermediary, here, the HCNM, who, in order to bridge the gap between the conflicting parties, often relies on documents emanating from bodies without the authority to make hard laws. Although treaties are still the primary source of obligation, under appropriate circumstances, in the hands of efficient actors, and among certain audiences, normative commitments also matter in dealing with ethnic tension.[118] Referring to the techniques that the HCNM applies to integrate norms in his work, Ratner argues that these strategies make international legal norms more meaningful and relevant to domestic actors.[119]

However, Ratner is aware that soft law and the normative intermediary, despite their immense potential for promoting international norms concerning ethnic conflicts, must be able to work in the absence of sufficient architecture for the enforcement or management of international norms, and thus, proposes that in order to mitigate this vacuum, relevant international actors should continue to develop hard law provisions.[120] He nonetheless doubts the fruition of such a complete architecture in the near future; hence, he concludes that until then, "the normative intermediary, with its capacity to connect international regimes and domestic actors and communicate a variety of norms to those who must implement them, represents a critical avenue for preventing ethnic conflict in the short term and laying the seeds for greater respect for human rights."[121]

In short, international lawyers within this stream rely on different techniques to put forward their normative recognition and pragmatic accommodation of ethnicity, understood in the conservative sense, in ethnic conflicts, and thereby exhibit a constant effort to reconcile the liberal and

conservative traditions. While Anghie argues for the incorporation of ethnic group rights within the existing individualist human rights regime, Wippman reinterprets human rights norms to help them appear compatible with pragmatic, ethnicity-defined power-sharing mechanisms. On the other hand, Ratner addresses the absence of hard international law provisions for minority protection by demonstrating how, in the hands of the efficient intermediary, available soft law provisions may normatively further the protection of minorities and thereby make international law relevant in relation to ethnic conflicts. Despite the diversity in their approaches and techniques, they essentially recognise the conservative tradition of perceiving ethnicity as an important element of identity formation, and hence a relevant factor in dealing with ethnic conflicts. Accordingly, they propose guidelines that keep the conservative notion of ethnicity at the core of their proposed conflict prevention mechanisms.

WHAT DOES THIS NARRATIVE TELL US?

This narrative of international legal responses to the post-Cold War moment of ethnic conflicts demonstrates that the liberal worldview falls short in the face of the real world marked with conflicts defined by the protagonists themselves or the outsiders or both along ethnic lines. International law attempts to address this drawback by accommodating the conservative notion of ethnicity within the predominant liberal architecture of international law. It thus transpires that however strong the normative pull of the liberal peace thesis might be, pragmatism demands ethnic accommodation in the conservative sense—a tension that results in the effort to reconcile these two broadly drawn traditions.

Yet such a reconciliatory approach, against the backdrop of the dominant liberal ideology, brings forth normative inconsistency. Although Anghie speaks for a much broader accommodation of ethnic minority rights in international law, he does so without actually considering the issue of the normative compatibility of the conservative cultural rights with the liberal individualist human rights regime. Similarly, while Wippman endeavours to reconcile conservative ethnic measures with normative liberal individualism, in the end he submits to pragmatism. Finally, Ratner's account of the conflict prevention role of the HCNM completely ignores the dichotomy of the ethnic East and the liberal West beneath the whole mechanism of minority protection. Even if the HCNM translates, elevates, and generates norms, he

does so to bring certain Eastern and Central European States under special minority protection obligations, leaving untouched the liberal approach of the West towards minorities.

In this sense, this narrative brings forth the issue of the normative compatibility of current liberal legal norms with an effective response to ethnic conflicts that, in one form or another, requires ethnic accommodation along the lines of the conservative tradition.[122] This gap between the normative stance and pragmatic needs implies that international law, with its normative reliance on liberal individualism, deals with ethnic conflicts in a "quasi-legal" realm.

What then is the way forward? The shortcoming of liberal international law in accommodating the conservative ethnic group phenomenon within its individualist framework is inherent, and therefore demands a drastic remodelling of the normative relationship between ethnicity and international law. One prudent way of doing this is to rethink liberalism itself. Since international law is shaped by the dominant political philosophy of each epoch, the normative accommodation of ethnicity within liberalism is naturally expected to reorganise the normative foundation of international law vis-à-vis ethnicity. As a matter of fact, post-Cold War ethnic violence has already facilitated a fresh discourse on the necessity of ethnic accommodation within liberal political philosophy itself. Indeed, there is a hope for a more accommodative international law in the "liberal" proposition that individual and group rights are not mutually exclusive and it is possible to accommodate group rights within the liberal framework. The proponents of this argument—Yael Tamir, Joseph Raz, and Will Kymlicka, among others—acknowledge that there are compelling interests related to culture and identity, which are fully consistent with the liberal principles of individual freedom and equality, and which justify granting special rights to minorities.[123]

Kymlicka famously advanced his theory of liberal culturalism based on the fact that modern States invariably develop and consolidate a "societal culture" which requires the standardisation and diffusion of a common language, and the creation and diffusion of common educational, political, and legal institutions.[124] These societal cultures are profoundly important to liberalism as liberal values of freedom and equality must be defined and understood in relation to such societal cultures. Therefore, in his theory, while freedom and equality for immigrants require freedom and equality within

mainstream institutions by promoting linguistic and institutional integra-
tion as well as by reforming these same institutions so that linguistic and
institutional integration does not require denial of their ethnocultural iden-
tities, freedom and equality for the "national minorities" requires something
more.[125] Given that these groups already possess a societal culture and they
have fought to maintain these institutions, Kymlicka argues, their demands
for special language rights and regional autonomy have increasingly been
accepted by liberal democracies. He then contends that group-differentiated
treatment of this sort is not a violation of liberal principles, for to expect
the members of national minorities to integrate into the institutions of the
dominant culture is neither necessary nor fair. Freedom for them involves
the ability to live and work in their own societal culture. In short, the aim
of the liberal theory of minority rights is to define fair terms of integration
for immigrants, and to enable national minorities to maintain themselves as
distinct societies. [126]

    While Kymlicka, like the communitarians, recognises the paradoxical
gap between the theory and the practice of group rights in liberal societies—
on the one hand, group-differentiated practices exist in liberal societies in
various forms for the sake of pragmatism; on the other hand, liberalism does
not recognise group rights at the normative level—and urges the norma-
tive incorporation of group rights, he does so essentially within the liberal
framework.[127] What makes Kymlicka different from a communitarian is his
liberal justification for group-differentiated practices in liberal democracies
with the central argument that depriving minorities of their rights will be a
violation of the liberal principles of autonomy and equality. Conforming to
the core of liberalism, he categorically claims in relation to the rights of "il-
liberal" groups that minority rights are consistent with liberal culturalism if
they first "protect the freedom of individuals within the group," and second,
"promote relations of equality (non-dominance) between groups."[128]

    However, this liberal shift, despite its promise for a better coherence with
pragmatic needs and also practice, is often depicted as counterproductive
for liberalism itself. The liberal theorist Chandran Kukathas, for example,
dismantles the notion of cultural rights altogether.[129] Despite his concerns
for minority communities, he finds it unnecessary to abandon, modify, or
reinterpret liberalism. According to him, the very emphasis of liberalism on
individual rights and liberty reflects not hostility to the interests of com-
munities but wariness of the power of the majority over minorities. Thus,

there is no need to look for alternatives to liberalism or to throw away the individualism that lies at its heart. Therefore, unlike Kymlicka, he finds it unnecessary to accommodate any idea of group rights to address the issues of minority. Rather, he says, we need "to reassert the fundamental importance of individual liberty and individual rights and question the idea that cultural minorities have collective rights."[130] This proposition heavily depends on his assumption that collective rights are based on the rights of individuals. For Kukathas, while the interests given expression in groups do matter, they matter ultimately only to the extent that they affect actual individuals. Therefore, groups and communities have no special moral primacy in virtue of some natural priority.

Solely relying on the primacy of individual choice, Kukathas contends that as long as individuals choose to remain with a group, liberal or illiberal, outside society is not entitled to intervene in the internal affairs of that group. In his words, "the primacy of freedom of association is all-important; it has to take priority over other liberties—such as those of speech or worship—which lie at the core of the liberal tradition."[131] Now, if membership in a cultural community is voluntary, and if the outside society has no right to intervene in the internal affairs of that community, it follows that to remain a member of that community, individuals must stick to the rules of that community. Kukathas believes that in this way some protection is given to the cultural communities through individualism without actually deviating from basic liberal principles.

Another prominent liberal philosopher, Brian Barry, vehemently opposes the idea of the State promoting communal identities although he recognises the role of communities and associations in human well-being.[132] He asserts that the fundamental liberal position on group rights is that individuals should be free to associate together in any way they like provided that their taking part in the activities of the group should come about as a result of their voluntary decision and they should be free to cease to take part whenever they want to.[133] In this sense, he argues, there should not be any liberal protection of "group" rights, for "the only ways of life that need to appeal to the value of cultural diversity are those that necessarily involve unjust inequalities or require powers of indoctrination and control incompatible with liberalism in order to maintain themselves."[134] Given that such cultures are unfair and oppressive to at least some of their members, he finds it hard to see why they should be kept alive artificially, especially

when he assumes that with embracing liberalism, groups will give up their demand for separate cultural rights.[135]

That the State does not lend any special weight to the norms of illiberal—or liberal—groups, is, according to Barry, the essence of what it means to say that a society is a liberal society.[136] It is therefore natural that he criticizes Kymlicka's emphasis on "diversity" and "autonomy" for minorities; these notions refer to policies that would systematically and paradoxically undercut those rights of individuals to protection against groups that liberal States should guarantee. His crucial question thus follows: "How can a theory that would gut liberal principles be a form of liberalism?"[137] More candidly, he asks, "If a liberal is not somebody who believes that liberalism is true (with or without inverted commas), what is a liberal?"[138] Consequently he refuses to recognise Kymlicka as a liberal: "A theory that has the implication that nationalities (whether they control a state or a sub-state polity) have a fundamental right to violate liberal principles is not a liberal theory of group rights. It is an illiberal theory with a bit of liberal hand-writing thrown in as an optional extra."[139]

This controversy *within* liberalism regarding the accommodation of the conservative notion of group rights indicates that it may take a bit longer for this age-old controversy between liberal individualism and conservative collectivism to reach a subtle compromise that keeps their core values intact. For now, let ethnicity remain as a symbol of the unaccomplished liberal dream of "progress" and universal "civilisation," and liberalism itself as a part of the problem.

In between this normative optimism and pessimism, however, the ostensible failure of liberalism paradoxically opens up avenues for flexible accommodation of ethnicity for securing peace on pragmatic grounds, as various institutional responses—both domestic and international—to ethnic conflicts demonstrate. The Dayton Agreement designed for making peace in Bosnia would be a pertinent example in this context; other contemporary peace agreements are not any different.[140] However, the peacemaking devices in these agreements—such as ethnicity-defined power-sharing arrangements among the conflicting groups in the forms of federalism, consociationalism, or regional autonomy; permanent separation of ethnic groups in the form of ethnic partition; perpetuating the subordination of minorities by granting special minority rights; addressing the individualist concerns of the members of contending groups through promulgating human rights,

strengthening human rights institutions, and resource allocation; or ethnic accommodation through cultural (in the broadest sense) protection as well as promotion of the minority groups along the conservative line—are largely the reflections of the way in which ethnicity is perceived in ethnic conflicts. While the constructivist understanding of ethnic conflicts[141] (that relies on the central role of elites in mobilising the conflicting groups along ethnic lines) leads to a number of power-sharing arrangements that in fact offer privileged official positions to minority elites,[142] the instrumentalist understanding of ethnic conflicts[143] (that highlights the profit maximising tendency of rational individuals) perceives ethnic conflicts as a development and/or governance issue and ends up with proposing massive development activities, building or strengthening human rights implementation mechanisms, introducing quota systems for minority members in the public service and higher educational institutions, and so on.[144] In contrast to this liberal understanding of ethnicity in ethnic conflicts, other peacemaking devices drag the conservative notion of ethnicity to the forefront of the response to ethnic conflicts by guaranteeing, among other things, the protection and promotion of the ethnic culture, language, and religion.[145]

In one way or the other, this dichotomous way of perceiving ethnicity in ethnic conflicts reflects back on the nineteenth-century traditions of perceiving the role of ethnicity in the political organisation of nation-states. The same is also true for international lawyers' responses to ethnicity in ethnic conflicts. In this sense, it would be arbitrary to think of any pragmatic regime dealing with ethnic conflicts outside the normative realm that addresses the issue of ethnicity itself.

Therefore, in the absence of any concrete headway towards the remodelling of liberalism in relation to ethnicity, international law will continue to deal with ethnic conflicts in an environment of ambivalence. This vacuum in the normative coherence also highlights that ethnicity expressed through the dichotomy of the liberal and conservative traditions determines the way in which international law engages with contemporary events—a phenomenon that is as much true at present as it has been throughout the history of international law's development. This also indicates that for an effective response to this drawback of international law vis-à-vis ethnic conflicts, international lawyers must not hesitate to look beyond international law for both the root of the problem and a seed of hope.

ENDNOTES

1. Robert J. Donia and John V. A. Fine, Jr., *Bosnia and Hercegovina: A Tradition Betrayed* (London: Hurst, 1994), 1.

2. This particular incident of 6 April 1992 is also featured in the chapter on the Bosnian war in Noel Malcolm's *Bosnia: A Short History* (London: Macmillan, 1994), 235.

3. See, generally, Donia and Fine, *Bosnia and Hercegovina*.

4. See David Campbell, *National Deconstruction: Violence, Identity, and Justice for Bosnia* (Minneapolis: University of Minnesota Press, 1998), 33-81.

5. Campbell, *National Deconstruction*, 44.

6. Donia and Fine, *Bosnia and Hercegovina*, 6-7.

7. Campbell, *National Deconstruction*, 33.

8. Quoted in Thomas Harrison, "A Question of International Solidarity," in *Why Bosnia? Writings on the Balkan War*, ed. Rabia Ali and Lawrence Lifschultz (Stoney Creek, CT: Pamphleteer's, 1993), 181-82.

9. Campbell, *National Deconstruction*, 49-53.

10. Campbell, *National Deconstruction*, 53-55.

11. Campbell, *National Deconstruction*, 55-78.

12. The discourse on ethnicity, in terms of the process of the construction of its constitutive elements, is informed by three mainstream schools of thought, namely, primordialism, instrumentalism, and elite-constructivism, which can also be perceived as the expressions of the liberal and conservative traditions vis-à-vis ethnicity. These approaches to the construction of ethnicity shape the understanding of ethnic conflicts. For example, primordialists argue that primordial attachments that define one's entity in a broader society have enormous emotional value. For unless the "given" or "assumed given" or "constructed" features that engender attachment among group members persist, the very existence of an ethnic group will be jeopardised. Therefore, any real, perceived, or constructed threat to language, religion, culture, and similar features, the argument follows, plays a significant role in mobilising ethnic groups for collective action. In contrast, Francesco

Caselli and Wilber Coleman II's instrumentalist position perceives ethnic conflicts as competition over the economy's resources and ethnicity as a mere tool for rational choice that makes for peace or conflict at the individual level. See Francesco Caselli and Wilbur J. Coleman II, "On the Theory of Ethnic Conflict," *Working Paper No. 12125* (Cambridge, MA: National Bureau of Economic Research, March 2006). On the other hand, Berch Berberoglu's socialist theory of ethnic conflict perceives ethnicity as a mobilisational tool in the hands of the bourgeoisie social class. See Berch Berberoglu, *Nationalism and Ethnic Conflict: Class, State, and Nation in the Age of Globalisation* (Lanham, MD: Rowman and Littlefield, 2004). While these approaches to ethnicity in ethnic conflicts touch upon only limited aspects of complexities involved in ethnic conflicts, Donald Horowitz's theory of group entitlement, and Barbara Harff and Ted R. Gurr's framework for analysing ethno-political mobilisation highlight the centrality of ethnicity, understood in terms of socio-historically constructed primordial attachments, for a comprehensive understanding of ethnic conflicts. See Donald Horowitz, *Ethnic Groups in Conflict*, 2nd ed. (Berkeley, CA: University of California Press, 2000); Donald Horowitz, *The Deadly Ethnic Riot* (Berkeley, CA: University of California Press, 2001); Donald Horowitz, "Structures and Strategy in Ethnic Conflict," in *Annual World Bank Conference on Development Economies* (Washington, DC, April 1998); Barbara Harff and Ted R. Gurr, *Ethnic Conflict in World Politics* (Boulder, CO: Westview, 2004). In other words, while the primordial theories of ethnic conflicts understand ethnicity essentially in conservative terms, the instrumental and elite-constructive theories of ethnic conflicts, in keeping with classical liberal tradition, refute any central role of ethnicity in ethnic conflicts. On the other hand, in order to offer a comprehensive understanding of ethnic conflicts, Horowitz and Hurff and Gurr take a reconciliatory approach and recognise the relevance of both traditions. Other major accounts of ethnic conflicts include, but are not limited to, Raymond C. Taras and Rajat Ganguly, *Understanding Ethnic Conflict*, 2nd ed. (New York: Longman, 2002); Kumar Rupsinghe, *Civil Wars, Civil Peace* (London: Pluto, 2000); Michael E. Brown et al., eds., *Nationalism and Ethnic Conflict* (Cambridge, MA: MIT Press, 1997); Ben Fowkes, *Ethnicity and Ethnic Conflict in the Post-Communist World*

(Basingstoke, UK: Palgrave, 2002); Rodolfo Stavenhagen, *Ethnic Conflict and the Nation-State* (New York: Palgrave Macmillan, 1996); Joseph F. Healey, *Race, Ethnicity, Gender, and Class: The Sociology of Group Conflict and Change* (Thousand Oaks, CA: Pine Forge, 2006); Susan Olzak, *The Global Dynamics of Racial and Ethnic Mobilisation* (Stanford, CA: Stanford University Press, 2006); Paul Richards, ed., *No Peace, No War: An Anthropology of Contemporary Armed Conflicts* (Athens, OH: Ohio University Press, 2004); Frances Stewart, ed., *Horizontal Inequalities and Conflict: Understanding Group Violence in Multiethnic Societies* (Basingstoke, UK: Palgrave Macmillan, 2008); Richard D. Ashmore et al., eds., *Social Identity, Intergroup Conflict, and Conflict Reduction* (Oxford: Oxford University Press, 2001); V. P. Gagnon, Jr., *The Myth of Ethnic War: Serbia and Croatia in the 1990s* (Ithaca, NY: Cornell University Press, 2004); James L. Peacock et al., eds, *Identity Matters: Ethnic and Sectarian Conflict* (New York: Berghahn, 2007); Marc H. Ross, *Cultural Contestation in Ethnic Conflict* (Cambridge: Cambridge University Press, 2007); Santosh C. Saha, ed., *Perspectives on Contemporary Ethnic Conflict: Primal Violence or the Politics of Conviction?* (Lanham, MD: Lexington, 2006); Steve Fenton, "Beyond Ethnicity: The Global Comparative Analysis of Ethnic Conflict," *International Journal of Comparative Sociology* 45, no. 3/4 (2004): 179-94; Stefan Wolff, *Ethnic Conflict: A Global Perspective* (Oxford: Oxford University Press, 2006); Matthew Hoddie, "Ethnic Conflict's Dilemmas and Paradoxes," *International Studies Review* 9, no. 3 (2007): 519-21; Joseph R. Rudolph, ed., *Encyclopaedia of Modern Ethnic Conflicts* (London: Greenwood, 2003); Stephen Ryan, *Ethnic Conflict and International Relations* (Aldershot, UK: Dartmouth, 1990); Rogers Brubaker, *Ethnicity without Groups* (Cambridge, MA: Harvard University Press, 2004); Amy Chua, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (New York: Doubleday, 2003); Milton J. Esman, *An Introduction to Ethnic Conflict* (Cambridge: Polity, 2004).

13.   Some of his representative works include David Kennedy, "International Human Rights Movement: Part of the Problem?," *Harvard Human Rights Journal* 14 (2002): 101-26; *Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, NJ: Princeton University Press, 2004); *Of War and Law* (Princeton, NJ: Princeton University

Press, 2006); "One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream," *New York University Review of Law and Social Change* 3 (2007): 441-59; "The Mystery of Global Governance," *Ohio Northern University Law Review* 34 (2008): 827-60.

14. Michael W. Doyle, "Kant, Liberal Legacies, and Foreign Affairs," *Philosophy and Public Affairs* 12, no. 3 (1983): 213-15. For a detailed discussion on this topic, see Michael E. Brown, Sean M. Lynn-Jones, and Steven E. Miller, eds., *Debating the Democratic Peace* (Cambridge, MA: MIT Press, 1996); Tarak Barkawi and Mark Laffey, eds., *Democracy, Liberalism, and War* (London: Lynne Reinner, 2001); Steven W. Hook, ed., *Democratic Peace in Theory and Practice* (Kent, OH: Kent State University Press, 2010).

15. Doyle, "Kant," 213.

16. Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* (1795), in *Kant: Political Writings,* ed. H. S. Reiss (Cambridge: Cambridge University Press, 1991), 100. See also Immanuel Kant, *The Metaphysics of Morals* (1797), in *Kant: Political Writings*, 164-73.

17. Kant, *Perpetual Peace,* 100.

18. Fernando Teson, "The Kantian Theory of International Law," *Columbia Law Review* 92 (1992): 61.

19. Kant, *Perpetual Peace,* 102.

20. Kant, *Perpetual Peace,* 105-6.

21. Kant, *Perpetual Peace,* 107-8. Italics in original.

22. See Teson, "Kantian Theory." See also Thomas Franck, "The Emerging Right to Democratic Governance," *American Journal of International Law* 86 (1992): 88.

23. Franck, "The Emerging Right," 47.

24. Franck, "The Emerging Right," 51.

25. Franck, "The Emerging Right," 88.

26. Franck, "The Emerging Right," 88.

27. Franck, "The Emerging Right," 52-56.

28. See, generally, Thomas Franck, *Fairness in International Law and*

Institutions (Oxford: Oxford University Press, 1995), 140-69.

29. Franck, *Fairness*, 140-41. See also Thomas Franck, "Postmodern Tribalism and the Right to Secession" in *Peoples and Minorities in International Law*, ed. Catherine Brölmann, René Lefeber, and Marjoleine Zieck (Dordrecht, The Netherlands: Martinus Nijhoff, 1993), 3-27; Rosalyn Higgins, "Postmodern Tribalism and the Right to Secession: Comments," in *Brölmann, Lefeber, and Zieck, Peoples and Minorities in International Law*, 29-35. Martti Koskenniemi notes that the Romantic ethnic challenge to statehood in the form of self-determination is "post- (not pre-) modern precisely because of the urgent sense that these emerging identifications are not capable of being carried out by the creation of new States to represent them, with the unified, formal political structure of the modern state." See Martti Koskenniemi, "National Self-determination Today," *International and Comparative Law Quarterly* 43 (1994): 259.

30. Franck, *Fairness*, 143-44.

31. Francis Fukuyama, "Second Thoughts: The Last Man in a Bottle," *The National Interest* 65 (Summer 1999): 16-44. See also Francis Fukuyama, "The End of History?," *The National Interest* 16 (Summer 1989): 3-18.

32. Fukuyama, "Second Thoughts."

33. Susan Marks, *The Riddle of All Constitutions* (Oxford: Oxford University Press, 2000).

34. Martti Koskenniemi, "'Intolerant Democracies': A Reaction," *Harvard International Law Journal* 37 (1996): 234.

35. Brad Roth, "Popular Sovereignty: The Elusive Norm," *Proceedings of the American Society of International Law* (1997): 369.

36. Roth, "Popular Sovereignty," 369.

37. Roth, "Popular Sovereignty," 369.

38. Frederick Whelan, "Democratic Theory and the Boundaries Problem," in *Liberal Democracy: NOMOS XXV*, ed. J. Roland Pennock and J. W. Chapman (New York: New York University Press, 1983), 13-47.

39. Whelan, "Democratic Theory," 13-47.

40. Robert Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989), 207.

41. Anne-Marie Slaughter, "Pushing the Limits of the Liberal Peace: Ethnic Conflict and the 'Ideal Polity,'" in *International Law and Ethnic Conflict*, ed. David Wippman (Ithaca, NY: Cornell University Press, 1998), 143. For an account of Slaughter's liberal approach to international law in general, see Anne-Marie Slaughter, "Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine," *Columbia Law Review* 92 (1992): 1907-96; "Toward an Age of Liberal Nations," *Harvard Journal of International Law* 33 (1992): 393-405; *A New World Order* (Princeton, NJ: Princeton University Press, 2004); *The Idea That Is America: Keeping Faith with Our Values in a Dangerous World* (New York: Basic, 2007).

42. Roland Paris, "Peace-Building and the Limitations of Liberal Internationalism," *International Security* 22, no. 2 (1997): 63.

43. David Chandler, *Bosnia: Faking Democracy After Dayton* (London: Pluto, 1999), 7-33. Cf. Ralph Wilde, *International Territorial Administration* (Oxford: Oxford University Press, 2008), 289-431.

44. See, generally, Chandler, *Bosnia*, 66-153.

45. Chandler, *Bosnia*, 196.

46. Chandler, *Bosnia*, 196.

47. Paris, "Peace-Building," 63.

48. Paris, "Peace-Building," 78.

49. Paris, "Peace-Building," 78.

50. Chua, *World on Fire,* 9-12. See also Zlatko Isakovic, "Democracy, Human Rights and Ethnic Conflicts in the Globalised World," *East European Human Rights Review* 8, no. 2 (2002): 199-236.

51. Chua, *World on Fire*, 35. The ethnic Chinese minorities in Myanmar, Vietnam, Thailand, and the Philippines comprise fewer than 5% of total population in each country, but they control the largest and the most lucrative department store chains, principal banks, major supermarkets, and fast-food restaurants; and as a result, in all these countries, ethnic hatred arose against the Chinese community (25-29,

34, 35-37).

52. Chua, *World on Fire*, 78, 97-100, 112-120.

53. Backlashes against market-dominant ethnic minorities in other countries like Indonesia and Uganda are also discussed in her work. However, those incidents were of limited scale.

54. Chua, *World on Fire*, 169.

55. Chua, *World on Fire*, 169.

56. Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed with Our Families* (New York: Farrar, Straus, and Giroux, 1998), 58-60, cited in Chua, *World on Fire,* 170.

57. Chua, *World on Fire*, 174.

58. Teson, "Kantian Theory," 53.

59. Teson, "Kantian Theory," 54.

60. Teson, "Kantian Theory," 92, 93. One may wish to explain the Western intervention against the Gaddafi regime in Libya within this framework.

61. Teson, "Kantian Theory," 54.

62. Fernando Teson, "Ethnicity, Human Rights, and Self-Determination," in Wippman, *International Law and Ethnic Conflict*, 86. Italics in original.

63. Teson, "Ethnicity," 88-89.

64. Teson, "Ethnicity," 94.

65. Teson, "Ethnicity," 94.

66. Teson, "Ethnicity," 94.

67. Teson, "Ethnicity," 95.

68. Teson, "Ethnicity," 95.

69. Teson, "Ethnicity," 99.

70. Teson, "Ethnicity," 107.

71. Teson, "Ethnicity," 100.

72. Teson, "Ethnicity," 103.

73. Teson, "Ethnicity," 105.

74. Teson, "Ethnicity," 106.

75. Teson, "Ethnicity," 111.

76. Teson, "Ethnicity," 111.

77. Cf. *Aaland Islands Case,* Report of the International Commission of Jurists, *League of Nations Official Journal*, Special Supplement No. 3 (1920).

78. See *Accordance with International Law of Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Report (2010); the Dissenting Opinion of Mohamed Bennouna, paras. 1-16; the Dissenting Opinion of Judge Leonid Skotnikov, paras. 1-18; the Dissenting Opinion of Judge Abdul G. Koroma.

79. The Court referred to these oft-cited cases in this context: *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* Advisory Opinion, ICJ Reports (1971), paras. 52-53; *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports (1995), para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, ICJ Reports (2004), para. 88.

80. Advisory Opinion, *Kosovo*, para, 79.

81. Advisory Opinion, *Kosovo*, para. 82.

82. Advisory Opinion, *Kosovo*, para. 83. While the Court in its Opinion avoided the disturbing question of self-determination, in his dissenting opinion, Judge Mohamed Bennouna held the view that the Court should have exercised its discretion to refrain from giving any opinion on such a political process that the Security Council initiated but could not finalise. See the Dissenting Opinion of Mohamed Bennouna in *Kosovo*, paras. 1-16, especially paras. 2, 3, 5. According to him, by doing so, the Court "could have put a stop to any 'frivolous' requests which political organs might be tempted to submit to it in future, and indeed thereby protected the integrity of its judicial function" (para. 3). The same view is taken by Judge Leonid Skotnikov on the grounds that the Court, for the first time in its history, dealt with a question (posed by the General Assembly) whose answer entirely depended on

the interpretation of a decision taken by the Security Council—another United Nations organ. See the Dissenting Opinion of Judge Leonid Skotnikov in *Kosovo*, paras. 1-18.

83.   Dissenting Opinion, Judge Koroma, *Kosovo*, para. 20.

84.   Dissenting Opinion, Judge Koroma, *Kosovo*, para. 20.

85.   Dissenting Opinion, Judge Koroma, *Kosovo*, para. 22.

86.   Cf. Arbitration Commission Opinion No. 2 (1991), *European Journal of International Law* 3 (1992): 184.

87.   For example, the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (1970)*; Principles IV and VI and Principle VIII of the *Helsinki Final Act* (1975).

88.   United Nations, *Official Records of the Security Council*, 4011th meeting, S/RES/1244 (1999), annexes 1 and 2. These annexes provide that the political process must take "full account" of the "principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region."

89.   United Nations, *Official Records of the Security Council*, doc. S/1999/648.

90.   Dissenting Opinion, Judge Koroma, *Kosovo*, para. 13.

91.   Dissenting Opinion, Judge Koroma, *Kosovo*, para. 13.

92.   See Advisory Opinion, *Kosovo*, para. 75.

93.   Anthony Anghie, "Human Rights and Cultural Identity: New Hope for Ethnic Peace?," *Harvard International Law Journal* 33, no. 2 (1992): 341.

94.   Anghie, "Human Rights," 349, 352.

95.   Anghie, "Human Rights," 348, 352.

96.   Anghie, "Human Rights," 348, 352.

97.   Anghie, "Human Rights," 351.

98.   For a detailed theoretical account of consociationalism, see the following works by Arend Lijphart: "Consociation and Federalism: Conceptual and Empirical Links," *Canadian Journal of Political*

Science 12, no. 3 (1979): 499-515; *Democracy in Plural Societies: A Comparative Exploration* (New Haven, CT: Yale University Press, 1977); "Consociational Theory: Problems and Prospects: A Reply," *Comparative Politics* 13, no. 3 (1981): 355-60. See also Charles E. Ehrlich, "Democratic Alternatives to Ethnic Conflict: Consociationalism and Neoseparatism," *Brooklyn Journal of International Law* 26 (2000): 447-83. For a critical evaluation of ethnic federalism, see Alemante G. Selassie, "Ethnic Federalism: Its Promise and Pitfalls for Africa," *Yale Journal of International Law* 28 (2003): 51-107; Nicole B. Herther-Spiro, "'Can Ethnic Federalism Prevent Recourse to Rebellion?'—A Comparative Analysis of Ethiopian and Iraqi Constitutional Structures," *Emory International Law Review* 21 (2007): 321-71.

99.   David Wippman, "International Law and Ethnic Conflict in Cyprus," *Texas International Law Journal* 31 (1996): 168.

100. Wippman, "International Law," 169.

101. David Wippman, "Practical and Legal Constraints on Internal Power Sharing," in Wippman, *International Law and Ethnic Conflict*, 240.

102. Wippman, "Practical and Legal Constraints," 231.

103. United Nations, *General Assembly Resolution 2106A* (1965), UN GAOR, 20th Sess., Supp. No. 14. UN Doc A/6014, 48. It is to be noted that the CERD permits "special measures" for the advancement of particular racial or ethnic groups, in order to ensure that those groups have equal rights and opportunities, provided that such measures do not lead to the maintenance of separate rights for different racial groups. Moreover, the Convention also requires that special measures be discontinued after the objectives for which they were taken have been achieved.

104. Such rights are incorporated in Article 21 of the *Universal Declaration of Human Rights* and Article 25 of the *International Covenant on Civil and Political Rights.*

105. Wippman, "Practical and Legal Constraints," 234.

106. Wippman, "International Law," 179.

107. Wippman, "Practical and Legal Constraints," 233.

108. Wippman, "Practical and Legal Constraints," 237.

109. Wippman, "Practical and Legal Constraints," 241.

110. Steven Ratner, "Does International Law Matter in Preventing Ethnic Conflict?," *International Law and Politics* 32 (2000): 599-603. For an approving response, see John Packer, "Making International Law Matter in Preventing Ethnic Conflict: A Practitioner's Perspective," *International Law and Politics* 32 (2000): 715-25.

111. Ratner, "International Law," 695.

112. Ratner, "International Law," 615-17.

113. Ratner, "International Law," 624.

114. Ratner, "International Law," 636.

115. Ratner, "International Law," 638.

116. Ratner, "International Law," 640-46.

117. Ratner, "International Law," 646.

118. Ratner, "International Law," 668.

119. Ratner, "International Law," 694.

120. Ratner, "International Law," 698.

121. Ratner, "International Law," 698.

122. To explain the limitation of the liberal individualist approach to ethnic conflicts, Ninan Koshy describes the proceedings involving the Sri Lankan ethnic conflict before the Human Rights Commission and the Sub-Commission in which almost exclusive attention was given to the violations of core individual rights rather than to the ethnic and political structures giving rise to the conflict as such or to the related claims of some Tamil groups for an autonomy scheme. See Ninan Koshy, "Ethnic Conflicts in Sri Lanka and the UN Human Rights System," in *Ethnic Conflicts and the UN Human Rights System,* ed. Henry J. Steiner, cited in Henry J. Steiner, "Ideals and Counter-Ideals in the Struggle over Autonomy Regimes for Minorities," *Notre Dame Law Review* 66 (1991), 1559n33. Similarly, in the context of Nigeria, Eghosa Osaghae registers his distrust of individualist human rights as the sole system to address ethnic conflicts, and argues that

although individual rights are necessary, group rights which "regard ethnic groups as deserving of protection of justice in competition with others are also needed" for ethnic conflict management. See Eghosa E. Osaghae, "Human Rights and Ethnic Conflict Management: The Case of Nigeria," *Journal of Peace Research* 33, no. 2 (1996): 171. Lacking these rights, he asserts, the continued existence of ethnic groups cannot be guaranteed, nor can their subjugation by other groups be prevented, in that the entrenchment of individual rights alone cannot serve the purposes which group rights are meant to serve (178). Using the example of ethnic tension in Nigeria, Osaghae thus concludes that there are important ethnic group interests which cannot be served by individual rights; at least some fundamental group rights such as the rights of the ethnic group to exist, to preserve and protect its language and culture, and to participate equally with others in the affairs of the State, including the sharing of power and resources, have to be recognised, which would then become "a meaningful basis for trying to redress the imbalances and inequalities among the various groups" (186). This claim is equally true for other conflict situations as well.

123. Yael Tamir, *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1995); Joseph Raz, "Multiculturalism: A Liberal Perspective," *Dissent* 41 (Winter 1994): 67-79; Joseph Raz, "Multiculturalism," *Ratio Juris* 11, no. 3 (1998): 193-205. For a detailed discussion on group rights within liberalism, see David Miller and Michael Walzer, eds., *Pluralism, Justice, and Equality* (Oxford: Oxford University Press, 1995); Jeremy Waldron, *Liberal Rights: Collected Papers* (1981–1991) (Cambridge: Cambridge University Press, 1993); Joel E. Oestreich, "Liberal Theory and Minority Group Rights," *Human Rights Quarterly* 21, no. 1 (1999): 108-32; Steven Wheatley, "Deliberative Democracy and Minorities," *European Journal of International Law* 14, no. 3 (2003): 507-27; Max Plog, "Democratic Theory and Minority Rights: Internal and External Group Rights in a Global Democracy," *International Journal on Minority and Group Rights* 10 (2003): 52-82; Claus Offe, "Political Liberalism, Group Rights, and the Politics of Fear and Trust," *Studies in East European Thought* 53 (2001): 167-82; Eric J. Mitnick, "Three Models of Group-Differentiated Rights," *Columbia Human Rights Law Review* 35 (2004): 102-44; Geoff Gilbert, "Autonomy and Minority Groups: A Right in International Law?," *Cornell International*

Law Journal 35 (2002): 307-53.

124. Societal culture is defined as a set of institutions, covering both public and private life, with a common language, which has historically developed over time on a given territory, which provides people with a wide range of choices about how to lead their lives.

125. Kymlicka defines national minorities as groups who formed functioning societies on their historical homelands prior to being incorporated into a larger state.

126. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995). See also Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford: Oxford University Press, 2001), 51-66; Leighton McDonald, "Regrouping in Defence of Minority Rights: Kymlicka's Multicultural Citizenship," *Osgoode Hall Law Journal* 34, no. 2 (1996): 292-319.

127. For a communitarian perspective on group rights, see for example Vernon van Dyke, "The Individuals, the State, and Ethnic Communities in Political Theory," *World Politics* 29, no. 3 (1977): 343-69; also Vernon van Dyke, "Collective Entities and Moral Rights: Problems in Liberal-Democratic Thought (1982)," in *Group Rights—Perspective Since 1900*, ed. Julia Stapleton (Bristol: Theommes, 1995), 180-200.

128. Kymlicka, *Politics in the Vernacular*, 22-23.

129. See, generally, Chandran Kukathas, "Are There Any Cultural Rights?," in Stapleton, *Group Rights*, 258-98. See also Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford: Oxford University Press, 2003).

130. Kukathas, "Cultural Rights," 261.

131. Kukathas, "Cultural Rights," 289.

132. Brian Barry, *Culture and Equality* (Cambridge: Polity, 2001), 112-54.

133. Barry, *Culture and Equality*, 148.

134. Barry, *Culture and Equality*, 135.

135. Barry, *Culture and Equality*, 135.

136. Barry, *Culture and Equality*, 125.

137. Barry, *Culture and Equality*, 125.

138. Barry, *Culture and Equality*, 132.

139. Barry, *Culture and Equality*, 140. Emphasis added.

140. See for example the Chittagong Hill Tracts (CHT) Peace Accord (Agreement between the National Committee on Chittagong Hill Tracts Constituted by the Government of Bangladesh and the Parbattya Chattagram Jana Samhati Samiti—PCJSS, Dhaka, 3 December 1997); the Belfast Agreement (Agreement Reached in the Multiparty Negotiations, Belfast, 10 April 1998). See also the works by Christine Bell: *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000); "Peace Agreements: Their Nature and Legal Status," *American Journal of International Law* 100, no. 2 (2006): 373-412; *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: Oxford University Press, 2008).

141. For example, Chua, as we have already seen, argues that simultaneous exportation of a market economy and popular democracy to the non-Western world has engendered two set of groups: an economically empowered market dominant minority and a politically empowered majority. Under such circumstances, Chua asserts, demagogues mobilize the impoverished masses along ethnic lines against the market dominant minority, and this leads to ethnic conflicts. See, generally, Chua, *World on Fire*. Such treatment of ethnicity as a mere tool for political mobilisation is also evident in the Marxist understanding of ethnic conflicts, as the theory of Berberoglu reveals. His socialist theory of ethnic conflicts argues that nationalism and ethnic conflicts are manifestations of class interests and class forces that invoke national and ethnic symbolism to advance their own narrow class projects and do so in the name of the nation or ethnic group they claim to represent. See Berberoglu, *Nationalism and Ethnic Conflict*, 107. Ethnic conflicts are, in this sense, the outcome of dominant class forces in society attempting to advance their class interests in the name of ethnicity. Therefore, Berberoglu concludes that in capitalist societies, the classes that foster and in turn benefit from such conflict are the national and petty bourgeoisies whose ideology is bourgeois nationalism. "Ethnic conflict, arising from national, cultural, racial, and other differences among people that the bourgeois forces have come to promote in their

effort to take (or hold on to) state power, is in essence a product of bourgeois and petty bourgeois nationalism" (107). However, from his socialist point of view, nationalism in itself is not to be rejected, for the manner in which the ethno-nationalist tool is used depends on the character of the actors. Thus, Berberoglu distinguishes the nationalism of the bourgeoisie class from that of the proletariat: "The use of nationalist ideology by working class-organisations to mobilise the masses, responding to their yearning for national identity and independence under colonial and neocolonial conditions, is something entirely different than the nationalist call by the bourgeois forces that use nationalism as an extension of their narrow, nationally based class interest, portraying it as the general national interest" (113).

142. For example, Strand One of the Belfast Agreement provides for a series of power-sharing arrangements to accommodate political elites of both the sides within the post-conflict political power structure. Article 1 of Strand One stipulates "a democratically elected Assembly in Northern Ireland which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community." Similarly, Article 5 requires "safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected," including "allocations of Committee Chairs, Ministers and Committee membership in proportion to party strengths . . . ." Besides, Article 8 provides that "there will be a Committee for each of the main executive functions of the Northern Ireland Administration. The Chairs and Deputy Chairs of the Assembly Committees will be allocated proportionally, using the d'Hondt system. Membership of the Committees will be in broad proportion to party strengths in the Assembly to ensure that the opportunity of Committee places is available to all members." According to Article 15, the First Minister and Deputy First Minister shall be jointly elected into office by the Assembly voting on a cross-community basis. In the same manner, the CHT Peace Accord in Part B (Kha) provides for three Hill District Councils, wherein only the permanent residents of the CHT will be members. There is also provision in Part C (Ga) of the Accord for a Regional Council in coordination with these District Councils. The

Chair of this Council shall be elected indirectly by the elected members of the District Councils. According to Part C (Ga), the Regional Council shall be formed with twenty-two members of whom two-thirds will be elected from among the tribals. The Regional Council is given the responsibility of supervising and coordinating the subjects vested under the Hill District Councils.

143. For the instrumentalists, human beings are rational individuals, who act primarily to optimise their economic profits in a given situation. Ethnic groups are, thus, conceived as a collection of profit-maximising individuals, and consequently, ethnic conflicts are perceived as a form of value-free competition over scarce economic resources between or among coalitions identified along ethnic lines. Therefore, instrumentalists emphasise that instrumental incentives, monitoring mechanisms, and allocation of pay-offs are indispensable concepts for maintaining group affiliation and for an understanding of collective ethnic action. Such an approach, however, does not explain why rational individuals form ethnic communities in the first place to attain their material goals. Bypassing this question, instrumental theories of ethnic conflicts often attempt to demonstrate the use of ethnicity for instrumental purposes, such as a cost-minimising tool used by rational individuals for the efficient functioning of monitoring and allocation mechanisms within a group. See, for example, Caselli and Coleman II, "On the Theory of Ethnic Conflict."

144. The Belfast Agreement deals with both the civil and political, and the economic, social, and cultural aspects of human rights of the individual members of both the communities. In Article 1 of the part on civil and political rights, the parties affirm their commitment to the mutual respect, civil rights, and religious liberties of everyone in the community, in particular, the right of free political thought; the right to freedom and expression of religion; the right to pursue democratically national and political aspirations; the right to seek constitutional change by peaceful and legitimate means; the right to freely choose one's place of residence; the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender, or ethnicity; the right to freedom from sectarian harassment; and the right of women to full and equal political participation. For this purpose, Article 5 provides for the establishment of the Northern Ireland Human Rights

Commission. The issues relating to reconciliation and the victims of violence are specifically dealt with in Articles 11-13. On the other hand, the part on economic, social and cultural rights categorically mentions that the British Government will pursue broad policies for sustained economic growth and stability in Northern Ireland and for promoting social inclusion, including, in particular, community development and the advancement of women in public life (Article 1). Article 2 details the commitments for massive development activities in Northern Ireland with a view to "tackling the problems of a divided society and social cohesion in urban, rural and border areas . . . ." Similarly, in the CHT Peace Accord, the issue of land settlement was depicted as the foremost concern of the indigenous communities of the CHT. Thus, Article 2 of Part D (Gha) stipulates that "the land record and right of possession of the tribal people will be ascertained after finalisation of the ownership of land of the tribal people. And to achieve this end, the government will start land survey in CHT and resolve all disputes relating to land through proper scrutiny and verification in consultation with the regional councils to be formed under this agreement." According to Article 3, "The government will ensure leasing two acres of land in the respective locality subject to availability of land of the landless tribals or the tribals having less than two acres of land per family. However, groveland can be allotted in case of non-availability of necessary lands." Article 4 provides for a "commission (land commission), composed of tribal representatives, under a retired judge (may be non-tribal) for the disposal of all disputes relating to lands. Besides settlement of the land disputes of the rehabilitated tribal, this commission will have full power to annul all rights of ownership on land and hills which have so far been given illegal settlements or encroached illegally." It was also pledged under Clause 5 of Part D (Gha) that "each family of the repatriated members of the PCJSS will be given [BD] Taka 50,000 (approx. GBP 500) in cash at a time for their rehabilitation."

145. For example, in addition to the individual right to perform and profess religion, the Belfast Agreement contains highly accommodative provisions for the promotion of minority languages. Article 3 of the part on economic, social, and cultural rights recognises the importance of respect, understanding, and tolerance in relation to linguistic diversity, while Article 4 stipulates in relation to the Irish language that

the British Government will, where appropriate and where people so desire it, take resolute action to promote the language; facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand; place a statutory duty on the Department of Education to encourage and facilitate Irish medium education in line with current provisions for integrated education; seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland; and encourage the parties to secure agreement that this commitment will be sustained by a new Assembly in a way which takes account of the desires and sensitivities of the community. Similar acknowledgement is also made in Article 5 in relation to the sensitivity of the use of cultural symbols and emblems. Similarly, the CHT Peace Accord under clause 5 of Part D (Gha) declares that the government and elected representatives shall make efforts to maintain separate cultures and traditions of the tribal communities, and, in order to develop the tribal cultural activities at the national level, the government shall provide necessary patronisation and assistance.

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Unholy Trinity: Assessing the Impact of Ethnicity and Religion on National Identity in Nigeria

Daniel Egiegba Agbiboa and Andrew Emmanuel Okem

The struggle to accommodate ethnic and religious differences among its people is arguably Nigeria's biggest problem today. This paper employs the social identity theory to explore the impact of ethnicity and religion on the emergence of a true national identity in Nigeria. The central thesis of this paper is that political mobilization drawn along ethno-religious lines has undermined the sense of national identity in Nigeria. The paper draws on colonial policies with a view to assessing the historical processes that have nurtured deep divides in the Nigerian society and suggesting options for intervention.

INTRODUCTION

Nigeria is usually characterized as a deeply divided state in which major political issues are vigorously and even violently contested along complex ethnic, religious, and regional lines.[1] The disparate and often warring ethno-religious groups in Nigeria subscribe to a model of conduct that elevates ethnicity and religion over the broader interests of the nation. Time and again, efforts at nation building have been undermined by Nigeria's complex ethno-religious configuration. Today, a true national identity in Nigeria remains elusive. Indeed, "since its creation via a 1914 amalgamation by the British, Nigeria has continually gone through the motions of searching for a more participatory and cost-effective political order without, in fact, getting anywhere close to this goal."[2]

The overarching aim of this study is to critically examine the impact of ethno-religious identity on national identity in Nigeria. Our thesis is that

political mobilization drawn along ethnic and religious lines has undermined the sense of national identity in Nigeria. We draw on colonial policies to assess the historical processes that have nurtured deep divides in Nigerian society and to suggest options for intervention. The paper has three main sections. The first section is a conceptual analysis of ethnicity, national identity, and religion. The second section examines the demography of religion and religious conflicts in Nigeria, with particular focus on the violent confrontations between Christians and Muslims. The third section recommends creative ways through which the impasse of ethno-religious conflicts can be resolved to allow for the emergence of a true national identity in Nigeria.

A CONCEPTUAL ANALYSIS

Central to the understanding of identity and identity conflicts in Africa are the concepts of ethnicity, religion, and nationality. Beginning with ethnicity, two major approaches can be identified in the literature. On the one hand, there is the "primordialist" approach which sees ethnicity as something given or ascribed at birth, deriving from the kin-and-clan structure of human society and hence something more or less fixed and permanent.[3] On the other hand, "ethnicity has been theorised as an instrument, a contextual, fluid and negotiable aspect of identity, a tool used by individuals, groups, or elites to obtain some larger, typically material end."[4]

In the Nigerian context, ethnicity tends to be understood as "the employment and or mobilisation of ethnic identity or differences to gain advantage in situations of competition, conflict or co-operation." In this regard, the ethnic group is one "whose members share a common identity and affinity based on a common language and culture, myth of common origin and a territorial homeland, which has become the basis for differentiating 'us' from 'them,' and upon which people act."[5] According to Okwudiba Nnoli, "ethnicity arises when relations between ethnic groups are competitive rather than co-operative. It is characterized by cultural prejudice and political discrimination."[6] In this connection, ethnic identity becomes the banner under which the game of politics and power is played by ethnic groups.[7] Ethnicity can also be viewed from a class perspective, which emerged from the inordinate desire of the colonizers to exploit their various colonies, especially in Africa. According to Nnoli, "ethnicity in Africa emerged and persisted either as a mechanism for adaptation to the imperialist system or as an instrument for ensuring a facile and more

effective domination and exploitation of the colonised."[8] This form of ethnic control is seen as leading to negative consequences in terms of distribution of national resources, ultimately resulting in ethnic grievance. The end of the colonial era, however, does not mean that the objective realities upon which ethnicity was constructed have disappeared—black faces have merely replaced white faces.

Ethnic conflicts have long been recognised as one of the major threats to national identity and political stability in any nation-state.[9] Scholars have attributed ethnic conflicts to various factors, including (1) the emotional power of "primordial givens" or cultural ties, (2) the struggle for relative group worth, (3) mass-based resource competition, (4) electoral mobilization, (5) elite manipulation, (6) false consciousness, and (7) defective political institutions and inequitable state policies.[10] In Africa, says Claude Ake, "ethnicity is politicized, politics is ethnicized and ethnic groups tendentially become political formations whose struggles with each other and competing interests may be more conflictual for the exclusivity of ethnic group membership."[11] For James Fearon, the politicization of ethnicity arises when "political coalitions are organized along ethnic lines, or when access to political or economic benefits depends on ethnicity."[12]

The ability to (mis)use endogenous group markers such as ethnicity has found increasing currency in analysis of conflict in the case of African societies. Our own perspective and approach for this paper is that ethnicity is not a primordial feature of these societies but an instrumental marker that is used to mobilize and successfully appropriate power, resources, and political ascendancy. So conceived, we argue that the state in Africa is neither neutral nor an arbitrator: it is itself a focal point of competition, an actor in the conflict.[13] In this way, "great ethnic conflict has usually been caused by the capture, or apparent near capture, by one group of control over the centralized state, and the dangers of dominance this has foretold."[14]

In ethnic analysis, the term "nation" takes on a particular meaning that is distinct from its more customary designation as a sovereign country, upheld by the United Nations. Instead, it describes "a population with its own language, cultural traditions, historical aspirations, and, often, its own geographical home."[15] More often than not, the concept of nationhood is associated with the belief that "the interests and values of this nation take priority over all other interests and values."[16] The salience of national identity subsists in highly subjective factors. As Howard Handelman argues,

"nationality becomes politically important only when members believe themselves to have a common history and destiny that both unites them and distinguishes them from other ethnicities in their country."[17] Perhaps the extent to which a group maintains a distinct spoken language remains the most important factor in national identity. For example, French Canadians, Turkish Kurds, and Malaysian Chinese have maintained their "mother tongues." As such, their national identities remain politically salient.

Nationalist aspirations become far more volatile when they seek to create an independent ethnic state. Handelman notes that "such separatist movements are most likely to arise when an ethnic minority is concentrated in a particular area of the country and represents a majority of the population in that region." This is clearly seen in the Tamil-Sinhalese conflict in Sri Lanka.[18] Religion is one of the key aspects of national identity, which some authors have argued can be used instrumentally to prosecute war in much the same way as others have analysed the instrumental role of ethnicity in conflict.[19] It is to the concept of religion that we now turn our attention.

Modern social theory took secularization as a largely inevitable process of modernization. Secularization was largely seen as an outcome of modernity and a facilitator for it.[20] Both Max Weber and Karl Marx predicted that with the development of capitalism and the rise of rational modes of thinking, the role of religion, as the illogical and superstitious, would diminish in people's lives. Samuel Huntington, however, argues that far from sinking into atrophy, "in the modern world religion is central, perhaps the central force that motivates and mobilizes people."[21] Similarly, Peter Berger insists that "far from being in decline in the modern world, religion is actually experiencing resurgence."[22] This is partly because rapid modernization in the Third World has left many people "psychologically adrift" and "culturally dislocated."[23] The disintegration of village life and age-old accepted customs often create a huge void not filled by the material lifestyle of modernity.

But what is religion? According to Meredith McGuire, "religion is one of the most powerful, deeply felt, and influential forces in human society. It has shaped people's relationships with each other, influencing family, community, economic, and political life. . . . Religious values influence their actions, and religious meanings help them interpret their experiences."[24] Stanley Eitzen and Maxine Baca Zinn identify three core aspects of religion. First, religion is a social construction: "it is created by people and is a part of culture." Second, religion is an "integrated set of ideas by which

a group attempts to explain the meaning of life and death." Third, religion is a "normative system defining immorality and sin as well as morality and righteousness." Sociologists identify two fundamental reasons why the study of religion is important: (1) religion is a ubiquitous phenomenon that has a profound impact on human behaviour, and (2) religion influences society and society impacts on religion.[25]

In line with cultural anthropologist Clifford Geertz and philosopher of religion Paul Tillich, this paper theorizes religion as a cultural "system of meaning."[26] According to Tillich, "meaning is the common characteristic and the ultimate unity of the theoretical and the practical sphere of spirit, of scientific and aesthetic, of legal and social structures."[27] Commenting on Tillich, John Morgan writes, "neither religion nor culture can be spoken of in the absence of the other, for they both convey meaning, granted the difference in direction and level of intensity."[28] In an oft-cited passage, Geertz defines religion as "(1) a system of symbols which acts to (2) establish powerful, pervasive, and long-lasting moods and motivations in men by (3) formulating conceptions of a general order of existence and (4) clothing those conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic." Elsewhere, Geertz argues that "the view of man as a symbolizing, conceptualizing, meaning-seeking animal . . . opens a whole new approach . . . to the analysis of religion." [29]

Conflicts motivated by religious identity have the reputation of being among the most intractable, given the often absolutist views to which they are tied. While adherence to belief systems can help to develop a sense of belonging and purpose, they can easily lead to intolerance, discrimination, and violent actions. Yet, "religious conflicts" need not be about religion or religious conversion, and indeed usually have non-religious causes. They are so called because religion is the unifying and mobilizing identity. As noted by Jeffrey Seul, "Religion is not the cause of religious conflict; rather for many . . . it frequently supplies the fault line along which intergroup identity and resource competition occurs."[30]

The Social Identity Theory (SIT) is a useful theory for making sense of religious identity conflicts in a pluralist context like Nigeria. The SIT was developed in 1979 by Henri Tajfel and John Turner to understand the psychological basis of intergroup discrimination. The SIT purports that membership in social groups forms an important part of an individual's identity.[31] According to Tajfel and Turner, the group is "a collection of

individuals who perceive themselves to be members of the same social category, share some emotional involvement in this common definition of themselves, and achieve some degree of social consensus about the evaluation of their group and membership of it." Elsewhere, Tajfel and Turner argue that "people tend to classify themselves and others into various social categories, such as organisational membership, religious affiliations, gender, and age cohort."[32] A social category provides the group member with a structure of self-reference and thus an identity. Seul defines group identity as "members' shared conception of its enduring characteristics and basic values, its strengths and weaknesses, its hopes and fears, its reputation and conditions of existence, its institutions and traditions, its past history, current purposes, and future prospects."[33]

The SIT further asserts that a person does not have a single "personal self," but rather several selves that correspond to widening circles of group membership. Different social contexts may trigger an individual to think, feel, and act on the basis of his or her personal, familial, or national "levels of self." In the same way, an individual also has a number of social identities. In summary, the SIT states that first "social identification is a perception of oneness with a group of persons." Second, social identification involves the forming of in-groups and out-groups. Third, "social identification leads to activities that are congruent with the identity, support for institutions that embody the identity, stereotypical perceptions of self and others, and outcomes that traditionally are associated with group formation, and it reinforces the antecedents of identification."[34] It is important to add that "religion remains a powerful source of individual and group identity [because] religion frequently serves the identity impulse more powerfully and comprehensively than other repositories of cultural meaning can or do."[35] Furthermore, "no other repositories of cultural meaning have historically offered so much in response to the human need to develop a secure identity [and therefore] religion is often at the core of individual and group identity."[36]

THE COLONIAL LEGACY OF DEEP DIVIDES IN NIGERIA

Nigeria is an amalgam of rival ethnic groups pitched against each other in a jostle for power and resources that are reflected in the political processes, sometimes threatening the corporate existence of the country. To some pundits, ethnicity remains the real stuff of politics in Nigeria.[37] With

a population of about 167 million and some 250 distinct ethnic groups, Nigeria is a pluralistic society and a "hot spot" for ethnic conflict. There are three major ethnic groups in Nigeria: the Igbo in the southeast, the Hausa-Fulani in the north, and the Yoruba in the southwest. These three ethnic groups have dominated Nigeria's political landscape since independence in 1960. The northern Hausa-Fulani consist of 30 percent of the country's total population; the western Yoruba make up 20 percent of the total; and the eastern Igbo constitute 17 percent, with the rest being the so-called "minorities."[38] It should further be noted that these three dominant ethnic groups can be further divided into sub-groups. Twenty-nine distinct divisions can be identified within the Hausa-Fulani community, twelve within the Yoruba, and thirty-two within the Igbo.[39]

Any serious assessment of the causal basis of the chasm between ethnicity and national identity in Nigeria must begin with the historical origins of the Nigerian federation. Bolaji Akinyemi points out that "there was no Nigeria before Flora Lugard coined the name: there were Fulani, Hausa, Tiv, Idoma, Igbo, Ogoni, Ijaw, Urhobo, and Yoruba nationalities before there was a Nigerian nation."[40] In other words, the Nigerian state was a British construct that ignored the large number of different and competing nationalities. Although Nigeria may have about fifty ethnic constellations, ethnolinguistic claims number between two hundred and five hundred groupings due to disputes among linguists about parameters of differentiation and categorization.[41] Although three "majority" ethnic groups—Hausa-Fulani, Igbo, and Yoruba—coalesce to make up about two-thirds of the national population, some of the so-called "minority" groups constitute important (numerically and otherwise) segments of the political economy. In addition, the incessant minority agitations for recognition and relevance, as well as their refusal to concede the political terrain to the majority ethnic groups and their divisive battles for ascendancy, serve both to enrich and complicate the elusive search for a true national identity in Nigeria.

Rotimi Suberu insists that minority problems are "deeply rooted in complex historical and structural processes of pre-colonial and colonial incorporation and consolidation of diverse ethnic segments, federal territorial evolution and reorganizations, revenue allocation, and political competition and representation."[42] By nurturing and entrenching the hegemony of the country's three major ethnicities, these processes legitimized "the expropriation of the resources of the oil-producing communities as part of an official

strategy of centralized national cake-sharing."[43] Currently, in 2012, peace in Nigeria hangs only by a thread. The process of democratization appears to have awakened long-suppressed feelings among the hundreds of ethnic nationalities in the country. The level of rivalry between groups is usually intense. While some groups are pushing for greater participation in the running of the affairs of the nation-state, others are clamouring for greater autonomy. Frequently, groups have resorted to a pedagogy of violence, fighting brief wars to settle primordial scores.[44] Indeed, the task of deriving a true national identity from a collection of ethnic groups has become the national question.

The year 2011 marked the ninety-seventh anniversary of the amalgamation of the northern and southern protectorates of Nigeria—a reality that marked a watershed in the chequered history of the country. It gave Nigeria its present size and shape. The Protectorate of Northern Nigeria was formed in 1900, with Lord Lugard, the British colonial administrator, as High Commissioner. Six years later, the British Colonial Office combined the colony and Protectorate of Southern Nigeria as a separate Protectorate. According to David Bevan, Paul Collier, and Jan Willem Gunning,[45] Lord Lugard favoured the aristocratic society of the North, to the degree that the British became not only agents of development but also defenders of a stagnant feudal structure.[46] In 1914, Lord Lugard unified what could have been three separate countries, each destined to have at least fifty million people at the turn of the twentieth century.

As Governor-General of Nigeria during the World War I era, Lugard may be said to have produced contradictory effects on the future of Nigeria's unity. Lugard was the linchpin in Nigeria's amalgamation, but his policies harmed the country's national integration. Amalgamation extended the boundaries of the nation and was the glue that held the north and the south together. National integration was ostensibly supposed to be the process by which ethnic and religious divisions would be softened as the people segued into a sense of "shared citizenship" and "national consciousness."[47] It was Lugard who invented the British policy of Indirect Rule in Africa, a policy that attempted to govern Africans through their own "native authorities."[48] Indirect Rule was particularly successful in Nigeria, leaving the Northern Emirates virtually intact and especially strong. But by helping to preserve indigenous cultures and native institutions, Indirect Rule also helped to sustain "tribal identities" in Nigeria, and hence made national integration a

Herculean task. It can be argued that while Lugard was a hero of national integration, he was also inadvertently its greatest adversary.

Lugard's amalgamation policy combined in one country nations and peoples who had no reason to think of themselves as members of a common society.[49] Amalgamation was driven in part by the British desire to create a single, economically viable political entity. The Northern and Southern regions continued to be administered separately, but from an early date, British colonial policy presumed that resources would flow from the more advantaged coastal regions to the poorer Northern interior. In their account of the causes of ethnic conflicts in Nigeria, Daniel Krymkowski and Raymond Hall point to the fact that the "legacy of European colonialism tended to combine and thus enlarge indigenous political and social territorial units and to centralise resources, power, status, and privilege in the administrative centre."[50] This arrangement forced many ethnic groups to come together in a single unit, restructured historically cultured traditional patterns and social relations, separated kin and kindred mostly for economic and administrative reasons, and generally restructured traditional patterns of conflict resolution. The administrative style imposed by the British rule created and nurtured deep distrust, suspicion, and cleavages which precipitated divisive battles among the major ethnic groups struggling to control the Nigerian state. No wonder the Sarduna of Sokoto and late Premier of the Northern Region, Sir Ahmadu Bello, called the amalgamation policy "the mistake of 1914."[51]

ETHNO-REGIONALISM IN NIGERIA

The construction of Nigeria culminated, late in the colonial era, in a three-way federation of Northern, Western, and Eastern regions under the 1954 Lytelton constitution. Henceforth, regionalism was introduced into Nigerian politics and ethno-regionalism took centre stage in the political process.[52] While the federal structure accommodated what were by that time undeniable ethno-regional political contours, these in turn were largely a creation of British colonialism: people saw themselves in ethnic terms because the British had insisted on seeing them in that way. Regional polarization precipitated distributional conflict well before the transition to independence, and a focus on redistribution rather than production was later to intensify as the country's state governments mushroomed and ethnic nationalities struggled for the centre's abundant resources and power.

Despite the Northern and Southern Protectorates being united to form a single Nigeria in 1914, each region retained considerable autonomy under the colonial rule. Against this backdrop, it was only natural that "tribes" would develop within, and identify with, these separate northern, eastern, and western regions.[53] This was a rational way to lobby the colonial authorities for resources. Thus, mobilisation along ethno-regional lines proved to be the most effective manner of building what Robert Bates calls "winning coalitions."[54]

Consequently, groups which had heretofore sought only loose affiliations now came together as "tribes."[55] This was a welcome development for the colonial authorities who demanded larger groups for administrative purposes. To illustrate, let us take a cursory look at how the western Yoruba "tribe" came into existence. Far from being a primordial social formation with its origins shrouded in the mists of time, historical evidence points to the fact that the Yoruba "tribe" is a modern political and social construct. Prior to colonial rule, Yoruba as a political unit or identity was nonexistent. In fact, the word "Yoruba" was not familiar to the people of south-west Nigeria until the nineteenth century. Instead, the individuals of this region regarded themselves as Oyo, Ketu, Egba, Ijebu, Ijesa, Ekiti, Ondo, or members of other smaller communities. Though the groups may have had a common language in academic linguistic terms, Allan Thomson argues that "different dialects meant that these languages were not always mutually intelligible."[56]

Under the British imperial rule, social relationships between the "Yoruba" clans recorded a seismic change. Two reasons are adduced for this: (1) the imperial authorities needed much larger communities to reduce the costs and difficulty of administration, and (2) missionaries also desired larger communities and people who spoke the same language to aid their conversion to Christianity. And so, "a standard Yoruba vernacular was invented by missionaries (based on the Oyo dialect, the largest clan)."[57] From this point onward, it was in the interest of the "clans" to adopt this standard Yoruba language as it became the medium of Western education. Besides, it was imperative for persons in this region to assume a common Yoruba identity to be recognised by, and to gain access to, the colonial state. Thus, "ethnic coalitions were re-forged and enlarged to meet the demands and opportunities of the new modern state. And just as the Yoruba adapted, so did the Hausa-Fulani and the Igbo."[58] As independence drew near, the major

ethno-regional groups were united by a shared desire to oust the common enemy—the colonialists—from the country. But as Milton Iyoha and Dickson Oriakhi observe, "sharp lines of polarisation were apparent, especially between the Hausa-Fulani, Yoruba, and Igbo ethnic groups that dominated the Northern, Western, and Eastern regions, respectively."[59] Subsequently, these rivalries crystallized into bitter political struggles under the combined impact of economic competition and electoral mobilization.

Nigeria's first postcolonial rulers were bequeathed a state made up of three regional structures, which were configured by the British to use the majority ethnic groups as anchors for the regional governments: Hausa-Fulani in the north, Yoruba in the southwest, and Igbo in the Southeast. The huge territorial, population, and economic power asymmetries between these regions quickly proved politically debilitating. Besides the differences in the level of social and economic development of the ethnically based regions, there was an explosive contradiction between the political power of the Muslim Hausa-Fulani of the north and the socio-economic power of the Yoruba in the industrial southwest and the Igbo of the oil-rich southeast. Though this arrangement has turned out to be deeply flawed, it reflected British thinking at the time that given Nigeria's ethnic makeup, regionalism should be crowned as the organizing principle for the postcolonial state. The assumptions were simple and, as it turned out, specious.

The first assumption was that although the dominant ethnic groups in each region would dominate their respective regional governments, no ethnic group would be sufficiently powerful to dominate at the centre. But with two-thirds of the land mass and over half of the population, the Northern Region dominated the centre. The second assumption was that each region would develop a multi-party system which would help to temper the possibility of parochial dominance at the centre by any ethnic group. The regions, however, became one-party monoliths. The Northern Nigerian People's congress used its narrow ethnic majority in the north (sixteen million out of thirty-one million northerners were Hausa-Fulani) to control and dominate the entire country. The third assumption was that the constitutional machinery at the centre would ensure the emergence of effective national governing institutions. The trouble here was that the regional government had advantages over the centre due to an established jurisdictional legacy. Not only did it precede the federal government by more than a decade but it also had established "Nigerianized" bureaucracies, self-contained economic

systems with control of the marketing boards, direct access to the international economic system, and residual powers through the independence constitution.

The adoption of a federal structure at independence therefore represented an institutional response both to the administrative autonomy and political salience of Nigeria's existing regions and to their explosive demographic configuration, which led to three major nationalities in fierce competition over economic resources and political power.[60] Certainly, the defective structure of the immediate postcolonial state was a primary causal factor in the prolonged political crisis and civil war (1967-70) that followed the collapse of the First Republic. Many Nigerians responded to ethno-regional constitution by voting for their respective "cultural brokers." The burden was on the selected candidates to capture central federal resources and bring these back to the regional community. Thus, in the long run, no powerful nationwide political party or constituency emerged. Instead, local considerations dominated, and issues of ethnicity became increasingly politicised. Each region was governed by a political party that squarely identified with just one ethnic group: the Hausa-Fulani governed in the north, the Yoruba in the west, and the Igbo in the east.

To its detriment, the First Republic's three-legged constitution stopped short of institutionalizing this ethnic balancing act with a stable political system. Too many suspicions existed and persisted between the regions. For example, "the west and north resented the larger presence of easterners in the federal bureaucracy. Each region saw itself in a vulnerable position."[61] In addition, the tripartite federal constitution turned a blind eye on the aspirations of minority ethnic groups which could not break this political oligopoly of the Igbo, Yoruba, and Hausa-Fulani. Perhaps the greatest constitutional threat lay with the fact that it was possible for two of the regions to join forces and collude against the third. And this was, in fact, what happened. Following independence, the northern party formed a coalition with the eastern party in an attempt to exploit an internal split within the isolated western Yoruba party. As Thomson notes, "using their majority in the national assembly, they created a fourth federal region in order to disperse the power of the Yoruba."[62] The consequent instability to which this gave rise, along with economic mismanagement and labour migration, nurtured deep social and political tensions in Nigeria and undermined nation building.

During the first six years of independence (1960-66), regional tensions

pushed the country into utter chaos. Political stability was eroded when the federal government, dominated by the numerically superior North, intervened in elections in the West, and then again when the North and West formed an alliance to benefit from the oil-rich Eastern region. The latter development led to two military coups in 1966 and culminated in the secession of the Eastern region in 1967 and its forcible reintegration after three years of civil war.[63] The introduction of the elements of a unitary government into Nigerian politics by the Aguiyi-Ironsi regime contributed directly to the outbreak of the Nigerian civil war in 1967. The unitary system, introduced via Decree 34 of May 1966, was designed to eradicate tribalism and regionalism. To this end, it provided for a unified national civil service and a strong administrative centre based in Lagos. From the centre, all appointments were to be made on a competitive basis. However, the prospect of national competition was largely perceived by Northern political elites as placing the region at an acute disadvantage in accessing the executive cadres of the civil service. The Decree led to the outbreak of severe rioting in the North. This marked the beginning of internecine ethno-regional rivalries in resource allocation, recruitment, and the control of executive power. Piqued by the Northern (Hausa-Fulani) dominance of the military government, Igbo politicians (spearheaded by Earnest Ojukwu) led the eastern region to secession. An Independent Republic of Biafra was declared on 30 May 1967 on the grounds that the people of Eastern Nigeria could no longer be protected by any authority outside the new Biafra. The bloody civil war that followed this proclamation of Biafra was not to end until January 1970.[64] This era, according to Thomson, marked the "low point in Nigerian aspirations to national unity, and probably the highpoint of political mobilisation based on ethnicity."[65]

Over a million people were killed during the fratricidal war. One thing that the war of 1967 left in its wake was the reinforcement of ethnic mistrust and division. The nation fragmented into subcultures, "distinctive sets of attitudes, opinions, and values that persist for relatively long periods of time in the life of a country and give individuals in a particular subculture a sense of identity that distinguishes them from individuals from other subcultures."[66] In the Nigerian context of relative scarcities, social differences are amplified and demonized in absolutist fashion, and people view each other with hostility or, at best, suspicion. As Ake comments, "the groups struggle on grimly, brutally, with little confidence in the possibility of resolving conflicts

peacefully. This in turn exacerbates the problem of political instability for which [Nigeria] is deservedly notorious."[67]

Ethno-regional tension in Nigerian politics continues to rear its ugly head in complex ways, including ongoing debates over the rules for intergovernmental sharing of revenues, calls for further subdivision (or amalgamation) of the thirty-six state structure,[68] popular repudiation of population census figures which appear to favour particular sections of the country, and debates over the "federal character principle" which constitutionally mandates the equitable representation of states in federal public services and institutions.[69] A common thread that runs through these struggles is the tension between politically motivated redistribution and economic efficiency. Two fundamental issues underscore the problems of ethno-regional politics in Nigeria: (1) control of political power and its instruments (such as the armed forces and the judiciary) and (2) control of economic power and resources.

Since the transition to democracy in 1999, the perception that the "North" has had disproportionate influence on national political leadership has gained widespread currency. Given the peculiar nature of ethnic and religious configurations in the country, the Northern power hegemony translated into Muslim domination in a multi-ethnic and multi-religious country. That the north had eclipsed the south politically is indisputable; eight of the country's eleven heads of state in the period before the move to democracy were northern Muslims. Altogether, the eight wielded power for a total of thirty-five years compared to four years for the southerners. Moreover, a close look at the top ranks in the Nigerian armed forces corroborates the fact that in the period since 1980, only northerners have occupied the army's most strategic post, the position of Chief of Army Staff. Though the current Army Chief is from the southeast, our main concern is with antecedents. The same pattern also persists in other facets of national, political, and economic life. The top positions in most government ministries, parastatals, public corporations, the education sector, and the diplomatic service are mostly held by northerners. This dominance of northerners in strategic government positions has had the effect of exerting centrifugal pressure on the nation's corporate entity. The Northern response to arguments of Northern/Islamic domination of the political process is the popular thesis that Hausa-Fulani control of political power is only natural given the Yoruba control over the financial sector and the bureaucracy, and

Igbo control of national commercial life and much of its vibrant informal sector. Yet, it is widely agreed that political power often overrides every other power.

Thus far we have explored the reality of ethnicity and ethno-regionalism in Nigeria and its evolving threats to the emergence of a true national identity. In the following section we explore how the demography of religion in Nigeria impacts the project of nation building.

RELIGION, IDENTITY, AND CONFLICT IN NIGERIA

Given its religious pluralism, Nigeria serves as a veritable case study for the role of religion in the formation of national identity. The religious demography in Nigeria is evenly split between Christians and Muslims with the latter having a slight edge in terms of its size. Muslims constitute 50.5 percent of the population while Christians constitute 48.2 percent of the total population. Other religious groups make up the remaining 1.4 percent.[70] Based on the demography, it is not surprising that religion dominates the daily affairs of Nigerians. In February 2004, Nigerians were ranked "the most religious people in the world with 90 percent of the population believing in God, praying regularly and affirming their readiness to die on behalf of their belief."[71] How does this commitment impact on how people perceive themselves as citizens of Nigeria? Does religion (sp)oil the emergence of a true national identity and shared citizenship in Nigeria? These are some of the pertinent questions that this section seeks to address.

A number of studies have explored the nexus between identity and religion.[72] From a socio-political perspective, the concept of identity has both an individualist and collective meaning: it is a "process located in the core of the individual and yet in the core of his community culture, a process which established, in fact, the identity of these two identities."[73] Identity is said to be "always anchored both in physiological 'givens' and in social roles." Its attributes include "commitment to a cause," "love and trust for a group," "emotional tie to a group," and "obligations and responsibilities" relating to membership of a group with which a person identifies.[74]

In her study on the impact of religion on identity in northern Nigeria, Georgina Blanco-Mancilla defines identity as "an ensemble of 'subject positions,' e.g., 'Muslim Hausa,' 'Christian Female,' 'northern Nigerian'; each representing the individual's identification with a particular group, such as ethnicity, religion, gender."[75] This definition captures the way people view

themselves in Nigeria: identity is defined by affiliation to religious and eth-
nic groups rather than the Nigerian state. In Nigeria, it is falsely assumed by
many that a Hausa man, by virtue of his ethnicity, is a Muslim. Similarly, it
is assumed that every Igbo person is a Christian. This link between religion
and ethnicity holds serious implications for religious converts in Nigeria. For
instance, is a Hausa man more of a Muslim than an Idoma man who con-
verts to Islam? A more embracing definition sees identity as "a combination
of socio-cultural characteristics which individuals share, or are presumed to
share, with others on the basis of which one group may be distinguished
from others."[76] In this sense, identity is not only how one sees one's self; it
is a fusion of how one sees one's self and how one is perceived by others. As
the defining feature of people's perception of the other, identity has a deep
political undertone. The place of identity in politics is very important since
it serves as the "basis for inclusion and exclusion."[77] This construction of
identity has repercussions for the relationship between identity, citizenship,
and group rights in a country like Nigeria where "citizenship is tied to group
rights and thus, inextricably linked with identity." The consequence of this
is that religious affiliation tends to override citizenship.[78]

    As a determinant of group's rights, identity delimits who has access to
"opportunities, entitlements, and participation . . . based on the religion
of the seeker."[79] Against this backdrop, some of the respondents in Blanco-
Mancilla's study in Kaduna State believe that non-Muslims get menial jobs
as compared to Muslims who are less qualified than they are. According to
the respondents, the discrimination is based on "religion and ethnicity."[80]
In the life of its adherents, religion acts as many things. It can, for instance,
"act both as a strong identity and bond to a social group and as a tool to
legitimize power."[81] It can, on the one hand, stimulate social interaction
and, on the other hand, create barriers that determine whether you belong
to particular social group or not. Religion also acts as the prism through
which adherents perceive and interact with the world. By creating its sets of
values, meanings, structures, and worldviews, religion significantly defines
how people perceive themselves and others.

    In a deeply religious country like Nigeria, religion plays an important
role in social interaction, and its role as a legitimizer of power has serious
implications for this pluralist country. This derives from the views of the
dominant religious groups who see God as the source and summit of power.
This perception of power leads to the contestation for political leadership

along religious lines. This partly explains why election and political appoint-ments are areas where the interplay between religion and politics comes to the fore in Nigeria. Supporters of religious groups strongly canvass for one of their kin to be elected into political office. In many instances, "these contestations result in violence. In such conflicts, holders of particular identities as defined by the attackers are singled out for liquidation, forced to relocate and their properties torched. The collective nature of the violence is perhaps serving to strengthen geo-political solidarity."[82] For instance, the appointment of a Christian as a local council chairman in Jos in September 2001 triggered violence that led to the death of about 160 people.

The divorce of religion from politics may be characteristic of the more developed countries, but religion remains a pervasive force in the Third World. Although Harvey Cox, in *The Secular City* (1965), sounded the death knell of traditional religion,[83] in Nigeria religion and politics are closely related. The encroachment of religion into the political realm in Nigeria portends a grave danger for the stability of the country and the emergence of a true spirit of nationalism. To complicate matters, past leaders have acted as though the country has a single religion.

During his time as president, Ibrahim Babangida registered Nigeria as a member of the Organization of Islamic Countries (OIC).[84] Anchored by the values and goals of OIC, membership of the organisation is underpinned by a commitment to the advancement of Islam.[85] That a sitting president took such a bold step underscores the significance of religion in the Nigerian polity. According to Shola Abogunrin, politics and religion are viewed as "two inseparable institutions in the human social psyche and structure."[86] Arguing from the Muslim vantage point, Raufu Abubakre contends that "Islam is a way of life, which dictates the political ideology and practice in any Islamic society" and asserts that "earthly governments are mere agents of God's theocratic governance of the physical and spiritual world."[87] The inseparable link between religion and social life creates deep suspicion when it is perceived that one religious group is dominating the political affairs of the country. Members of different religious groups want their own religion to dominate the affairs of the country. The struggle for ascendancy and control which puts Christianity and Islam at daggers drawn has marked the history of Nigeria since independence.

Nigeria's history is marred by series of civil unrests, religious conflicts, ethnic crises, and incessant riots. The violence that has punctuated Nigeria's

return to civil rule points to the significant role of religion in Nigerian politics and identity.[88] During the years of military dictatorship, pressing issues such as human rights and the enthronement of democracy acted as a unifying force for the different religious groups. Both Christians and Muslims had a common enemy to fight; they wanted to be liberated from the oppressive clutches of military dictators. Following the 1998 death of Nigeria's last despot, Sani Abacha, Olusegun Obasanjo won the presidency in a democratic election. The nascent democracy unfortunately had to contend with years of religious tensions that had been suppressed and have accumulated in the collective psyche of the Nigerian population. At the dawn of democracy, the pseudo-harmony forged during the protracted reign of military dictators was exposed as different religious groups began a systematic campaign for the recognition of their rights.

Within the Muslim community, there was a systematic move for the institutionalization of the *Shari'ah* legal codes in Muslim dominated states. Proponents of the movement contended that it was their constitutional right to practice their religion within the tenets of the Shari'ah legal code. The agitation for the implementation of Shari'ah was laced with human rights language as it sought to justify its implementation through a constitution protecting religious freedom.[89] The campaign for the implementation of Shari'ah drew the battle line between the predominantly Muslim community and the minority Christian groups living in northern states. The agitation crystallized on 27 October 1999 when Zamfara became the first state to implement the Shari'ah legal code. In the following year twelve northern states implemented Shari'ah and established the *hizbah* groups to enforce the Shari'ah legal code. This move was greeted with fears by non-Muslims; it was seen as a prelude to the formation of an Islamic state. In response to this, some Christian leaders under the auspices of the Christian Association of Nigeria (CAN) began clamouring for the implementation of Canon Law in largely Christian states. The consequences of this religious difference, laced at times with intolerance, degenerated into major religiously motivated violence. Between 1999 and 2010, over ten thousand people were killed in violence coloured by religious undertones. [90] The net effect of these ethno-religious conflicts and pogroms has been to polarize the religious groups and pre-empt the emergence of true national identity.

For example, in 2001, the Nigerian state became embroiled in bloody ethno-religious violence in Kano, Kaduna, and Plateau states. These

massacres came in the wake of the implementation of Shari'ah in some
northern states. Particularly in Jos, the capital of Plateau state, the conflict
has pitted Hausa settlers versus the Afizere, Anaguta, and Berom indigenous
groups of Plateau. The underlying problem is the alleged rights of indigenes,
defined as earliest extant occupiers or the recognized original inhabitants,
to control particular locations, as opposed to the rights of supposedly later
settlers. Officials in Nigeria often use the slippery term "indigene" to limit
settler access to public resources such as land, schools, and government jobs.
In effect, the population of every state and local government area in Nigeria
is divided into indigenes and settlers—people who cannot trace their roots
back to earliest times. Settlers can still be Nigerian citizens and thus are not
completely stateless, but discrimination against them can provoke serious
violence.[91]

The Jos metropolis registered serious crises beginning on 7 September
2001 and again on 2 May 2012. The crises claimed hundreds of lives, first
in Yelwa in February with the massacre of about a hundred Christians, sixty-
seven of them in COCIN Church Yelwa, and later reprisal killing in Yelwa
by Christians who massacred between 650 and 700 Muslims in May 2004.
The chorus of disapproval by Muslims against the latter killings led to the
declaration of a state of emergency in Plateau State by President Obasanjo. It
is important to note that these killings are usually camouflaged ethnic riots
for supremacy between the various ethnic groups. *Tell* magazine captures the
conflict in Plateau thus:

> Since the September 7, 2001 bloodbath in Jos, the city seems to
> have fallen from the respectable Plateau, as home to peace and
> tourism. From the Jos city tragedy to the recent killings in the
> adjoining towns and villages, the state has been engulfed for just
> one reason: the battle for supremacy between Hausa and Fulani
> settlers and the indigenes. And this has been largely exploited by
> religious bigots and political jobbers.[92]

The indigene-settler distinction is particularly explosive because it reinforces
and is reinforced by other identity-based divides in Nigeria.

More recently, Nigeria has been troubled by bomb attacks launched by
the Northern Islamist sect Boko Haram (which means "Western education
is sin"). The bombs are targeted at Nigeria's religious and ethnic fault lines
in an escalating bid to destabilize the nation. In 2011, Boko Haram was
responsible for at least 450 killings in Nigeria. By early 2012, attacks by

Boko Haram had claimed over nine hundred lives. Tellingly, out of the 178 documented clashes that took place in Northern Nigeria between 1980 and 2004, 104 were religiously motivated.[93] Clearly, all is not well with Nigeria.

CONCLUSION

We have examined how political mobilization along ethno-religious lines has precluded the emergence of a true national identity in Nigeria, while pitting the two major religions in the country—Christianity and Islam—against each other. In this concluding section, we suggest that the problem of ethno-religious identity and mobilisation can be checked if the Nigerian government and policymakers—to whom our recommendations are mainly directed—adopt certain key approaches.

First, we suggest that Nigeria should be restructured with more emphasis on decentralization to enable the ethnic groups within the federation to exercise meaningful control over economic and social development in their respective areas. In this regard, the states in Nigeria should have control over the police to enable them function effectively, particularly in crime control and security of lives and properties. Second, there should be fair and equitable recognition and acceptance of the fact that each group is entitled to a minimum level of self-determination within the national framework. We recommend that a national policy be emplaced which ensures that no group, however small, is denied its just rights and entitlements, since such denials lead to frustration and inability to identify with the nation-state. Third, the government should continue to build a political culture and political fora which promote accommodation between diverse groups and support non-killing approaches, like dialogues, to conflict resolution. Further, political and religious leaders in Nigeria must be seen to be openly and unanimously denouncing any form of ethno-religious violence or religious terrorism in the country. Fourth, the issue of national fragmentation could also be addressed within the spectrum of a consociational democracy. In a consociational setting, the centrifugal tendencies inherent in a plural society are counteracted and offset by the cooperative attitudes and behaviour of the leaders of different segments of the populations. Elite cooperation is a necessary condition for consociationalism. It is defined in terms of both the segmented cleavages typical of a plural society and the political cooperation of segmented elites. Finally, there is a need to establish a committee of community leaders, which from time to time should be charged with the

task of reviewing the relationship between the warring parties. Only equity, equality, and a true democratic order can provide a bedrock of unity and peaceful coexistence, which may transcend ethno-religious identities and bring about a true spirit of national identity.

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Mennonite Religious Values as a Resource for Peacebuilding between Muslims and Eastern Christians

Andrew P. Klager

The relatively nascent study of religion, conflict, and peacebuilding seeks to activate religious values, principles, beliefs, practices, rituals, symbols, and narratives that can potentially mobilize religious leaders and laity to devise nonviolent ways of preventing or transforming conflict. A storehouse of Muslim and Orthodox Christian values and teachings offers resources for interreligious peacebuilding in regions where these two faith traditions live side by side. Further, the conflict transformation theory and methods of Mennonites, a historic peace church whose peacebuilding pedigree has earned them worldwide credibility, have been shaped by historically-conditioned religious values that have preserved their peace convictions and inspired them to work in relief, development, and peacebuilding. The Mennonite narrative may serve as a template for comparable peace-cultivating indigenous Islamic and Orthodox Christian values that can be incorporated into conflict transformation theory, methods, exercises, and initiatives.

INTRODUCTION

Eastern Christianity—Chalcedonian, Oriental, and Assyrian—has been in contact with the Muslim world longer than any other faith tradition, claiming a mixed heritage of both amicable and hostile relations that harken back to the seventh-century Arab expansion. The list of regions where tensions between Muslims and Christians exist is a long one. From post-conflict trauma healing and reconciliation in the Balkans and the sporadic

escalation of interreligious violence between Muslims and Coptic Christians in pockets of post-Revolutionary Egypt to negotiations between the Greek-controlled south and Turkish-controlled north on the island of Cyprus and the myriad sources of tension between Orthodox Christians and Muslims in Russia, Uzbekistan, Syria, Lebanon, Iraq, Iran, Ethiopia, and Sudan, sectarian strife and mistrust between these two ancient faith traditions is a perennial dilemma depending on how power dynamics amplify religious rivalry. Although religious rivalry is often a surrogate for the many temporal factors that exacerbate violent conflict, religious values and teachings have increasingly been accepted as an effective resource for peacebuilding. Given religion's burgeoning value, the effectiveness of Mennonite religious resources that have nurtured their long-held peace convictions are worthy of deliberate exploration.

For the paradigms that inform this analysis, I am indebted to studies by John Paul Lederach, Mennonite conciliator and Professor of International Peacebuilding at the Kroc Institute for International Peace Studies, University of Notre Dame, and Marc Gopin, Director of the Center for World Religions, Diplomacy, and Conflict Resolution at George Mason University. Lederach draws on his impressive global experience in strategic conflict transformation and observation of Mennonite Central Committee's (MCC) peacebuilding operations to challenge the appropriateness of applying uniform conciliation methods and peacebuilding strategies cross-culturally and interreligiously. Instead, an "elicitive, discovery-based methodology of learning and practice" is preferable to an elitist transferral of expertise.[1] In Lederach's paradigm, a peace practitioner should apply an elicitive model based on at least three principles: contextualization, understanding of culture, and empowerment. This paper focuses on the last principle—grassroots empowerment of locals, specifically as capacity-building through a long-term commitment among local Muslim and Orthodox Christian peacebuilders to elicit indigenous religious values that hold the highest promise of cultivating a sustainable peace.

To complement Lederach's confidence in the empowerment of locals to elicit ad hoc, context-tailored conflict transformation strategies in the form of inculcating peace-centred religious values, Marc Gopin offers two important criteria for increasing the efficacy of these elicited religious devices: the faith communities' values, beliefs, practices, rituals, symbols, and memories uncovered by peace practitioners should (1) invite integration into universal

humanity and embrace of the Other (2) without threatening the unique religious identity of each group.[2] In his recognition that identifying and demarcating truth is crucial for a normal functioning human life, Gopin asks, "How does one's group negotiate the boundaries between self and Other? Do those boundaries require dehumanization of the Other or not, do they require war, or do they require compassion, justice, or even love toward those who are beyond the boundary of the group?"[3] My aim in this paper is to elicit indigenous religious values that stigmatize interreligious rivalry and encourage interreligious hospitality.

This becomes an exercise in identifying authentic, non-impositional religious values, rituals, and memories that inspire mutual respect, love, compassion, and empathetic solidarity with the Other through hermeneutical engagement with the Orthodox Christian and Islamic traditions. "This cannot," observes Gopin, "take the form of a weaning from religious identity," but instead requires an authentic attitudinal shift that creates a "quiet revolution in religious thinking, both individually and collectively."[4] The sincere commitment to upholding a religious identity safeguards against a sense of inferiority compared to the ostensibly loftier Western liberal values that sometimes hijack peacebuilding processes. More generally, Gopin affirms that "the Middle East . . . could benefit from an elicitive approach to the religious communities involved in the conflict. Eliciting conflict resolution and peacemaking methods from religious cultures," Gopin continues, "will be crucial to the future of the Middle East, especially since so much of the violence and opposition to the peace process has come from religious communities."[5]

MENNONITE, ORTHODOX CHRISTIAN, AND MUSLIM RELIGIOUS VALUES FOR BUILDING PEACE

The Mennonite empathetic disposition developed intuitively based on a collective memory of past persecution, from some 4,000 Anabaptists executed between 1525 and 1550 to the oppression of the Bolshevik Revolution and Stalin's collectivization policies in the twentieth century.[6] These painful memories and common heritage induce empathy for those who face similar injustices today in such a way that the empowerment of local peacebuilders encompasses solidarity and identification with the disempowered, voiceless, and marginalized.[7] Offsetting the partisanship that an over-emphasis on justice at the expense of peace often produces, a past marked by sectarianism

has led Mennonites themselves to experience the sensation of being vulnerable enemies of a hegemonic religious rival. This has persuaded them to humanize the Other—or their enemies.[8] As Gopin observes, by "travel[ling] the globe in search of the defenseless, keenly aware of their own history as defenseless strangers, . . . each time [Mennonites] work toward securing the legitimacy of Otherness and the identity of a threatened group, they reaffirm the spiritual depth of their own experience."[9]

These experiences and their religiously-inspired peace convictions have compelled Mennonites to engage in relief, development, and peacebuilding for decades in regions where Orthodox Christians and Muslims coexist, typically under the auspices of MCC. Their peacebuilding operations usually take the form of interfaith dialogues, grassroots problem-solving workshops, peace education, and post-conflict trauma healing and rehabilitative services. For example, MCC provided humanitarian assistance to all sides of war-torn Bosnia and Herzegovina, Croatia, Kosovo, and Serbia during the 1990s and shifted focus in the early 2000s to post-conflict trauma healing, strategic peacebuilding, and interreligious trust-building that supports reconciliation in the region. North American Mennonite theologians and Shi'a Muslim scholars from the Imam Khomeini Education and Research Institute in Qom, Iran have entered into dialogue over the past decade to build relationships and explore peace-cultivating mutually affirmed religious values. MCC has also partnered with Syriac Orthodox clergy since the 1980s by collaborating with the Association for the Poor, a local Syrian social service agency that operates the Homs Orphanage, and by supporting the education of Orthodox priests at St. Ephrem Seminary in Damascus. MCC also continues to support the Coptic Orthodox Church and partner organizations in Egypt by supporting Christian-Muslim dialogue and interreligious forums, post-conflict trauma healing and conflict mediation training for Orthodox clergy, the Middle East North Africa Peacebuilding Institute, and much-needed development projects that help ameliorate tension between Copts and Muslims.

Our focus on the religious dynamics of peace and conflict therefore invites us to explore the impressive mixture of peace-cultivating Mennonite religious values that have shaped and preserved their nearly five-hundred year old peace convictions. These values and convictions speak not only to the procedural contributions of Mennonites to peace and conflict studies, but to a religious content that has strengthened the credibility of this

community in conflict settings as a historic peace church.[10]   Conflict is transformed, Gopin astutely observes,

> when active members of the church engage in a serious hermeneutic of their own tradition and then teach that to the lay community. . . . This is a method of transforming opinions, giving people the cognitive and behavioral capacity to engage in peacemaking and tolerance, while at the same time maintaining the authenticity of a tradition with those members who guard that authenticity zealously.[11]

Where accords drafted by government leaders cannot assure the cessation of violence by co-belligerents who are unbound by high-level, track I negotiations,[12] this transformation of opinions, or the "attitudinal change"[13] that Mohammed Abu-Nimer outlines, can more effectively overcome this state of "cold peace."[14]   Shifting weight to the religious source of peace rather than of violence also reduces opportunities to defame another's religious heritage—Mennonite, Orthodox Christian, or Muslim. As Gopin observes, this shift neutralizes attacks on "the very thing, religion, that many in the group are holding onto as their source of strength in a violent or conflict-ridden situation. . . ."[15] By offsetting the accent on religious causes of conflict with the capacity of religious resources to prevent and resolve conflicts and encourage peaceful coexistence, we underscore the importance of Gopin's dual concern for solidarity with the extended human community—perceived enemies included—while respecting the preservation of each unique religious identity.[16]

A brief note on the problem of sources is in order when we consider the cultural, ethnic, political, historical, and religious diversity of Eastern Christianity with its Chalcedonian, Oriental, and Assyrian varieties. Eastern Christianity is unified in its veneration of saints, bishops, theologians, and monastics from the historical Levant, Asia Minor, and Egypt before the Council of Chalcedon (451 CE) and holds a liturgical and ascetic heritage that is mutually recognizable even today. Of course, Oriental and Assyrian expressions differ from the post-Chalcedonian Byzantine ascetic traditions, Russian monasticism, and the neptic spirituality of Mt. Athos.[17]   But when Christendom is considered as a whole, divergence is relatively minor. Certainly the Greek Nicene and ante-Nicene fathers and the desert fathers of Nitria, Scetis, and Kellia are highly regarded by all Eastern Christian traditions. It is also true that the many hesychasts,[18] ascetics, and defenders

of the faith who are loyal to Chalcedonian, Miaphysite,[19] or Nestorian Christological distinctions appeal to the same themes and tools for building peace. Thus, for example, though St. Silouan the Athonite was of Russian stock and embraced neptic spirituality at St. Panteleimon Monastery, the underpinning virtues, teachings, ontology, and ascetic sensitivities that he taught in service of peacemaking and love of enemies would not be out of place in the Coptic monastic literature of Wadi al-Natrun.

Gelassenheit and Kenosis

Marc Gopin insists that "in order to understand the religious foundations and unique character of Mennonite peacemaking, it is necessary to explore . . . the origins of the community and how this affects the nature of their peace work."[20] To uphold this sentiment, we will begin by explaining the peacemaking character that imbues the early Anabaptist-Mennonite principle of *Gelassenheit*—a term usually translated as "yieldedness."[21] Arnold Snyder describes this principle as yielding "inwardly to the Spirit of God [and] outwardly to the community and to outward discipline."[22] A variety of Anabaptist-Mennonite groups claimed allegiance to this principle, especially among South German Anabaptists, the Spiritualists, Marpeckites, and Moravian Brethren.[23] The application of Gelassenheit for practical peacebuilding lies in the preparedness to sacrifice one's self-will in acquiescence to the wider community's welfare. Gelassenheit therefore teaches the humility to listen, learn, and compromise in an elicitive manner for building intra- or inter-communal peace.[24] Expressions of this "yieldedness" might be the admission of third-party conciliators of their own need for transformation to become authentic peacemakers, a willingness to compromise and make personal sacrifices at the negotiating table, and the voluntary display of remorse for one's involvement in past injuries of the Other. Each of these applications may serve as an antidote to the Western arrogance inherent in an elitist transferal of expertise that the receiving culture often associates with colonialism and economic imperialism.[25]

Gelassenheit's theological cousin in Orthodoxy is *kenosis*, but from the divine perspective. Kenosis denotes the "self-emptying" of Christ when he accepted an earthly existence, that is, when the Creator took on the seemingly incompatible created human flesh of the Theotokos and ever-virgin Mary. As a human being, God incarnate was now capable of tasting death by nonviolently acquiescing to humanity's violence. This new access to

death allowed Jesus to conquer it through his resurrection in order to liberate humanity from its curse, thereby "trampling down death by death," as the Divine Liturgy expresses it. Although the act of kenosis is primarily an act of solidarity with humanity, the humility that Jesus displays by becoming a human being is—perhaps paradoxically—primarily a *divine* characteristic that Christians are called to imitate through ascetic disciplines that encourage self-denial.

Like Gelassenheit, this imitable humility encourages reconciliation through the willingness to listen to and empathize with the Other. Accordingly, Gopin's aforementioned dual criteria are reflected in the two parallel features of kenosis, which teaches that God's solidarity with all humanity through his incarnation and suffering did not undermine Christ's unique divinity. Kenosis, then, is a cosmic illustration of extending one's community to include all humanity—both allies and enemies—without giving up that community's unique identity, whether human or divine. A similar display is Gandhi's willingness to self-identify as a Muslim and a Christian while still remaining a Hindu when this served his objective to humanize and honour the Other.[26] This is not unlike Paul's self-promotion as "a slave to all" by becoming a Jew to the Jews, a gentile to the gentiles, and weak to the weak (1 Cor 9:20).

The central requirement of a Muslim is "total submission to God's will and to Islam,"[27] which reflects precisely the dual character of Gelassenheit. This submission—the very meaning of the word Islam—to both God and the Islamic *umma* is reminiscent of the Orthodox and Mennonite obligation to cultivate holiness and imitate the suffering of Jesus by subduing individualist ambitions through corporate submission to one's faith community. The act of prayer serves as a consistent reminder of a Muslim's submission to God, which is achieved through inner jihad "as a metaphorical war against ignorance rather than a religious Armageddon."[28] As a result of this submission through inner jihad, the pious Muslim who has been wronged humbles her- or himself—in the spirit of Gelassenheit or kenosis—to forgive and offer mercy to the offender. So central is forgiveness in Islam that it trumps even justice as the highest virtue, as the Qur'an makes clear: "Repel evil (not with evil) but with something that is better (*ahsan*)—that is, with forgiveness and amnesty" (23:96).[29] For this ethical hierarchy, we have Muhammad's example to guide Muslims, as he ultimately forgave his Meccan persecutors and designated the area around the Ka'bah in Mecca a sanctuary for former

enemies where retribution was forbidden.[30] Even when his own followers asked him to invoke God's wrath upon their Meccan adversaries, Muhammad replied, "I have not been sent to curse anyone but to be a source of *rahmah* (compassion and mercy) to all."[31] As Islam is not an absolutely pacifist religion, it authorizes a restrained proportionate use of violence in pursuit of justice as a way to account for the degrees of human ability to transcend reprisal. But for Muslims who represent the upper echelon of God's favour, forgiveness is both possible and more desirable. As the Qur'an instructs, "The recompense of evil is punishment like it, but whoever forgives and amends, he shall have his reward from Allah" (42:40).[32]

This forgiveness through submission to Islam is a restorative measure; by giving space for the offender to acknowledge wrongdoing and repent, "the victim demonstrates willingness to rehabilitate the offender in society."[33] The creativity it takes to surmount the desperation that foments retribution is more difficult to harness, for "whoever is patient and forgiving, these most surely are actions due to courage" (Q42:43).[34] But it is this creativity, mobilized often by Bedouin shaykhs and village elders in their traditional peacemaking processes,[35] that informs the Islamic principles guiding conflict resolution: repentance, *sulh* (reconciliation), and *tahkim* (arbitration).[36] These principles that guide conflict resolution practices in the Muslim consciousness require a similar self-effacement and restraint that Gelassenheit requires of Mennonites and the implications of kenosis require of Orthodox Christians. Further, as both Gelassenheit and kenosis encourage empathetic solidarity with human suffering by imitating Jesus's somewhat paradoxical abnegation from conception to crucifixion, Allah is likewise the archetype for Muslims as the Oft-Forgiving (*al-Ghafour*) and Most Merciful (Q39:53). Muhammad is again a model of this imitable quality, declaring upon his entrance into Mecca after years of persecution and sporadic warfare, "There is no censure from me today on you (for what has happened is done with), may God, who is the greatest among forgivers, forgive you."[37]

Vergöttung and Theosis

In practical terms, inculcating Orthodox Christians who are involved in protracted conflicts with the import of kenosis might encourage them more seriously to embrace the ascetic disciplines that propel one's transfiguration, that is, the ontological elevation in holiness of a peacemaker. From a human

perspective, this transfiguration appears as the inverse of the kenotic incarnation. Probing the kenotic motivation for cultivating virtues also gives occasion to articulate the telos or goal of the resulting transfiguration. This suggests an anthro-ontology—or inner essence (*ousia*)—that naturally and intuitively capacitates one for genuine peacemaking and therefore inspires, motivates, and measures peacemaking behaviour. While the preamble to UNESCO's constitution declares, "Wars begin in the minds of men," it may therefore be more appropriate to replace the word "minds" with "spirits," "souls," or "hearts." Indeed, when Abu-Nimer outlines the "3Hs" of attitudinal change as the head, heart, and hand—representing cognition, emotion, and behaviour respectively—he situates the "spirit" in the middle of this triangular arrangement.[38]

Conflict analysts have increasingly acknowledged the merits of the inner life and transformation of the peace practitioner in mediation processes. It is a difficult task to detect the motives of religious militants who suspend fidelity to peace-cultivating religious values such as humility, love, compassion, mercy, forgiveness, and trust on a personal level. More important, however, is Gopin's observation that these peace-cultivating religious values cannot be applied exclusively to personal conflict scenarios since their opposites—anger, pride, grudge-holding, selfishness, fear, hate, and distrust of the Other—feed an appetite for international warfare as much as for interpersonal conflict.[39] Accordingly, Gopin stresses what he calls the "interiority"[40] of a peacebuilder and insists that "prayer, meditation, the experience of divine love, ecstasy, guilt, and repentance all reflect the central importance of the inner life."[41] This transformation is needed to offset a violent religious militant's "inner experiences of jealousy, anger, and rage that generate violent reactions to the world."[42]

Gopin, therefore, recommends incorporating a concern for the inner life in conflict transformation workshops and training sessions as an alternative to secular conciliation processes that often "systematically disenfranchise those religious people or spiritual leaders who discover change by other means."[43] Gopin further insists that this attentiveness to the inner life should be mandatory for both the adversarial parties engaging in violence and the third-party mediator.[44] Cynthia Sampson and John Paul Lederach also note the "connection between spirituality and pragmatic international peacebuilding,"[45] specifically in the way that conflict transformation emanates from the transformed peacemaker.[46] Further, Joseph Miller, a

Mennonite theologian, historian, and former MCC worker in Budapest, Hungary, claims that being "spiritually compelled" to build peace reflects a transfiguration through memory, that is, the recollection of hardships experienced amidst intractable violence that continues to embolden Mennonite peacemakers today.[47]

Theologically, this transfiguration or elevation in holiness through attentiveness to one's inner life is known as *theosis* for Orthodox Christians and *Vergöttung* for early Anabaptists. Both suggest a process of deification.[48] Menno Simons, for example, fashioned the new birth as being "so united and mingled with God that he becomes a partaker of the divine nature."[49] Similarly, Menno's Dutch co-labourer, Dirk Philips, insisted that followers of Christ are "participants of the divine nature, yes, and are called gods and children of the Most High."[50] Hans Denck, a Bavarian Anabaptist leader and humanist, placed accent on the Logos suffusing Christians that "it might divinize them."[51] And Pilgram Marpeck, a Tyrolean Anabaptist lay-theologian, characterized Christian soteriology as "an integration of, or participation between, the human and the divine,"[52] wherein through obedience to Christ, human beings "more fully partake of the divine nature and spiritual good."[53] As a historic peace church, early Anabaptists, especially of the South German-Austrian strand, fulminated against Luther's so-called "cheap grace" theology whose weak ethical accountability sanctioned the use of the sword. Marpeck, for instance, taught that partaking of divinity occurs because we "pattern ourselves after" Christ who "forbade such vengeance and resistance (Lk 9, 21; Mt 5), and commanded the children who possessed the Spirit of the New Testament to love, to bless their enemies, persecutors, and opponents, and to overcome them with patience (Mt 5; Lk 6)."[54]

The ascetic cultivation of such virtues as humility, temperance, sobriety, compassion, and obedience are the inverse of the "passions that are at war in your members" identified by James in his epistle as responsible for the outbreak of war (Js 4:1-3). This anticipates Gregory of Nyssa's description of "a peacemaker par excellence" in his *On the Beatitudes* as one "who pacifies perfectly the discord between flesh and spirit in himself and the war that is inherent in nature. . . ."[55] The Orthodox Christian peace tradition therefore places an accent on the importance of becoming Mary of Bethany, whose singular devotion to Christ reflected her holiness, before imitating the more pragmatic servanthood of Martha. In this manner, the Mary-to-Martha

order teaches that Orthodox peacebuilders must first become ontologi-
cally compatible with Christ's divinity for union with the Prince of Peace
through a process of self-emptying, or kenotic ascesis. This transformed
identity is what capacitates one for more intuitive peacebuilding. Gregory
Nazianzen teaches, for example, that "we must purify ourselves first, and
then approach . . . the Pure."[56] Among several examples, Gregory recalls the
Centurion who sought healing from Christ but was unworthy to invite him
into his house due to his uncleanliness that resulted from "commanding
many in wickedness, and serving in the army of Caesar."[57] The remedy of
this ineligibility is the emulation of Zacchaeus who "climb[ed] up on the
top of the sycamore tree by mortifying his members" through an ascetic
suppression of passions and vices (Col 3:4-5).[58]

John Chrysostom elucidates the positive outcome of suppressing the
passions by ascending the beatific ladder in his "Homilies on the Gospel of
Matthew." Specifically, he insists that purity of heart and holiness, especially
through temperance, is a prerequisite for not only seeing and uniting with
God, but also for being a peacemaker. Reminiscent of the triangular pat-
tern among the conflicting parties and third-party conciliator, Chrysostom
observes, "Here he [Christ] not only takes away altogether our own strife
and hatred amongst ourselves, but he requires besides this something more,
namely, that we should set at one again others, who are at strife." The reward
for this attention to peacemaking, claims Chrysostom, is "spiritual, . . . for
they shall be called the children of God."[59] This requisite holiness for ef-
fective peacemaking can inspire Orthodox Christians in conflict settings to
be attentive to the inner life as a way to acquire the capacity to love one's
enemies. Chrysostom calls this interior precondition for peacemaking the
"very summit of virtue";[60] it reflects the progressive dynamic of theosis. He
further outlines the typical progression in behaviour commensurate with
one's holiness: when wronged, (1) to avoid injustice, (2) to seek only equal
retaliation, (3) to be quiet rather than retaliate, (4) to accept wrongful suf-
fering, (5) to give up more than the wrongdoer wishes, (6) not to hate, (7)
to love the wrongdoer, (8) to return good for evil, and (9) to entreat God
for the wrongdoer. Here Chrysostom notes the height of this temperance
or discipline that generates the prescribed holiness for loving one's enemies:
"the thing enjoined was great, and needed a fervent soul, and much earnest-
ness,"[61] leading to no less than "becoming like God."[62]

In Islamic thought, this attentiveness to one's inner life is a prerequisite

for either compliance with the many guidelines for limited defensive warfare or, if a Muslim wishes to follow a higher way, to endure suffering patiently, offer forgiveness and mercy, and encourage a nonviolent resolution to conflict. The capacitation for either recourse, as Abu-Nimer observes, requires prior transformation since Islam teaches that "peace has an internal, personal . . . application" in addition to its social dimensions.[63] For example, the Qur'an teaches that "if you have to respond to an attack, respond only to the extent of the attack leveled against you; but to bear yourselves with patience is indeed far better for those who are patient in adversity" (16:126).[64] Maulana Wahiduddin Khan explains that this patience (*sabr*) is an essential value that encourages nonviolent means of resolving conflict and is an emphasis of approximately two hundred Qur'anic verses. Specifically, this patience requires the inner jihad of nonviolent activism that creates an unhurried space for proposing peaceful solutions to a conflict.[65]

Moreover, this inner, greater jihad (*jihad al-akbar*) is "a struggle to purify one's interior state," which produces the patience and self-restraint needed for either limited proportionate warfare or the more honourable and preferable choice to forgo violence altogether (Q5:45).[66] Such purification reflects the anthro-ontological or inner essence requirement for becoming a peacemaker along the same lines as theosis in Orthodoxy and Vergöttung in Mennonite spirituality. The ontological capacitation for peacemaking and struggle toward perfection (*Insan-i kamil*) reflects the original composition or human form (*fitrah*) of all Adam's children. "According to Islamic tradition," Ayşe S. Kadayifçi-Orellana observes, "the individual's responsibility to uphold peace emerges out of the original constitution of human beings (*fitrah*), which is good and Muslim in character."[67] The desire for external peace in society is therefore possible only through the inner peace and transformation of a Muslim who purifies one's inner self. This process capacitates him or her to build peace by acting on and shaping society through a nonviolent struggle that reflects his or her transfigured fitrah.

In this sense, attentiveness to the inner life through submission and obedience holds promise as a shared religious value among Christians and Muslims engaged in conflict. Further, it satisfies Gopin's dual criteria in its fidelity to the Mennonite, Orthodox Christian, and Muslim identities and its cultivation of the inner essence of a peacemaker who can then intuitively affirm the Other as a human to be loved rather than a symbol of an obscenity to be annihilated. The satisfaction of these criteria therefore occurs when

those in conflict settings move beyond ritual rehearsal and cognitive assent to beliefs, and deliberately internalize ethical standards capacitated by an attentiveness to the inner life. In this transformed state, love, compassion, and peacemaking efforts toward the Other become natural and intuitive rather than grudgingly accepted. "Otherwise," Gopin observes, "deficiencies of character are bound to undermine the [conflict resolution] methods that are being taught."[68] Sharon Nepstad reminds us, for instance, that religious militants and religious peacemakers formulate truth differently; the former rigidly usurp all facets of truth, while the latter are open to persuasion and the possibility that those outside their religious community also possess some truth.[69] Therefore, a deliberately integrated attentiveness to the inner life alongside more traditional peacebuilding foci helps meet the formidable challenge of conservative or fundamentalist religious interpretations. It introduces a widely receptive conservativeness or earnestness of piety rather than a contentious dogmatism. This renders peacemaking more evolutionary, dynamic, and intuitive rather than based on polarizing "yes" or "no" reactions to religious precepts susceptible to polemical disputes, violent dissent, or devastating re-interpretations.

Free Will and the Humanization of the Other

Both free will and the purposive humanization of the Other also resonate with the Mennonite, Orthodox Christian, and Islamic faith traditions and sensitivities. More research is needed to delineate precisely why acknowledging the freedom or vulnerability of the human will to various social, cultural, political, economic, and religious forces encouraged early Anabaptist-Mennonite religious toleration, and how embracing free will can be applied to interreligious peacebuilding. Prominent Anabaptist leaders including Hans Denck, Pilgram Marpeck, Peter Riedemann, Menno Simons, David Joris, Melchoir Hoffman, and Balthasar Hubmaier embraced free will from a variety of angles against the prevailing consensus of the Magisterial Reformers. To be sure, these Anabaptists were not as charitable and sophisticated as post-Enlightenment or twenty-first-century thinkers. Their use of the ban and their vocal censure of the teachings, handling of Scripture, sacramentology, and ethical behaviour of the Catholic Church and rival Reformers appear distasteful to modern sensibilities. Nevertheless, their views were progressive relative to the oppressive and violent policies of the Catholic Church from which they split.

The ban, for instance, was implemented mainly as a restorative measure to ensure ethical and theological uniformity among members of an Anabaptist community that everyone had freely chosen to join and could leave at any time. Against a backdrop of rapidly multiplying schisms, it was intended as a positive instrument to help preserve a uniform Anabaptist identity. More importantly, Anabaptists exercised the ban as a much gentler alternative to the savage tactics of the Catholic inquisition.[70] "To burn heretics," Hubmaier taught, "is to recognize Christ in appearance, but to deny him in reality."[71] The displeasure of some Anabaptists with the Catholic Church and rival sectarian groups did not imply their denial of these faith communities' right to exist and operate freely. Rather, such quarreling, however acerbic, reveals a simultaneous—if somewhat paradoxical—concern for the unity of the universal church under the umbrella of a unified doctrinal and ethical standard with the freedom to diverge if reconciliation remains elusive.[72] The Anabaptists' defence of the legitimacy of their teachings and practices in settings of interreligious conflict represents a significant advancement over their counterparts, and factors into the Mennonite self-identification as a free church that avoids proselytization in its global relief, development, and peacebuilding operations. The original anthropological basis for Anabaptist religious self-determination was eventually superceded by the post-Enlightenment endorsement of personal liberties and civil rights. But the nonviolent convictions of many Mennonites today owe their formation to an early embrace of free will that set them on a trajectory favouring the peaceful coexistence of different religions.

Robert Kreider observes that both a "concern for freedom of conscience and religious association was implicit in [Anabaptist] teaching."[73] For example, Hubmaier, whose two treatises on free will testified "to the freedom of the human being to do good and evil,"[74] leaned on his Nominalist academic pedigree and borrowed heavily from Erasmus's *De libero arbitrio* (1524) to develop his view that the human will was "made truly free by the death and resurrection of Christ."[75] Further, so unshakable was Hubmaier's conviction that violent intimidation in matters of faith is indefensible due to free will that he composed a trilogy on this very topic: *An Earnest Christian Appeal to Schaffhausen, Theses Against Eck,* and *On Heretics and Those Who Burn Them* (1524). Hubmaier believed, for instance, that "a [Muslim] Turk or a heretic cannot be overcome by our doing, neither by sword nor by fire." Indeed, "the inquisitors," he taught, "are the greatest heretics of all, because counter

to the teaching and example of Jesus they condemn heretics to fire."[76]

The Austerlitz preacher, Kilian Aurbacher, believed that it is "never right to compel one in matters of faith, whatever he may believe, be he Jew or [Muslim] Turk . . . [since] . . . Christ's people are a free, unforced, and uncompelled people."[77] Hans Denck uses similar language to explain the import of free will for soteriology as for religious voluntarism. Since free will suggests the capacity to either accept or reject divine favour, "God does not wish to compel us."[78] For this reason, "no one shall deprive another— whether heathen or Jew or Christian—but rather allow everyone to move in all territories in the name of God."[79] The principle behind this acceptance of religious diversity is the humanization of the Other. For example, the Regensburg Anabaptist, Hans Umlauft, instructs the recipient of his 1539 letter, Stephen Rauchenecker, to "remember that we are humans and just as human as you and your kind, created after the image of God," who should be granted "the same merciful God you claim for yourself. For God is a God of the heathen also and not a respecter of persons."[80] Umlauft further adds, "We ought properly to take this to heart and judge no one . . . [nor] claim God for ourselves in a partisan spirit . . . [and think] that all other people who do not share our views or belong to our group are nothing but pagans."[81] Umlauft is so generous as to suggest that we should "listen carefully to the saying of Christ that many from the east and from the west (who have been called [Muslim] Turks and heathens) will come and sit at table with Abraham in the kingdom of God."[82]

Free will is also axiomatic within Orthodox theology, which abounds in examples from patristic literature. In his *De vita Moysis* Gregory of Nyssa gives us a characteristically patristic description of free will as the equidistant suspension between two latently invasive yet ultimately non-coercive forces: virtue and passions, life and death, God and the Evil One.[83] The human will is free because Christ has conquered death and rendered it powerless and because divine love refuses to coerce. If God did manipulate the human will according to his own desire, Gregory insists, "then certainly any human choice would fall into line in every case, so that no distinction between virtue and vice in life could be observed."[84] Orthodoxy further teaches that internally, variations in holiness are also inevitable to the degree that free will guarantees a manifold response to divine grace and a perpetual transfiguration from glory to glory (*epektasis*) that reflects the infinitude of God.[85]

In Islam, as Abu-Nimer explains, religious diversity is conceived on

cosmogonical grounds as "integrally related to the free will that God has bestowed on humanity." The source of this free will for all human beings is the patriarch Adam, through whom people are expected to be diverse "in the expression of their faith."[86] Abu-Nimer further expounds Islam's promulgation that "the purpose of human life is to realize one's status as a 'free' agent, invested with Free Will and able to make choices between good and evil, right and wrong."[87] Reflecting on the religious diversity that free will generates, Abu-Nimer further maintains, "Differences among people, inevitable in humanity, are a basic assumption in Islam."[88] This belief is evinced in the verse in the Qur'an, "If your Lord had so willed, He could have made mankind one people" (11:118),[89] with religious freedom codified under the Qur'anic aphorism, "Unto you your religion, and unto me my religion" (109:6).[90]

In addition to didactic and homiletic considerations, the manner in which free will plays out in real life and the diversity it produces can be communicated and instilled through role-playing exercises and storytelling in problem-solving workshops. Such exercises are an application of the Qur'anic word that God has "made you tribes and families that you may know each other" (49:13).[91] Similarly, the peacebuilding potential of a shared action by conflicting groups is expressed in the Qur'an: "Each one has a goal toward which he turns. Then strive together toward all that is good. Whatever stand you take, God will bring you all together" (2:148).[92]

This religious diversity among and fluctuation in holiness within human beings dispels the myth that all people of a defined group can be completely evil and justifiably annihilable, and encourages the humanization of the Other. In this sense, the goal of attitudinal change in problem-solving workshops should be based partially on the acknowledgement that it is irrational to enact violence on a divergent group simply because of differences that are in fact inevitable and unavoidable. It is therefore helpful to recognize that, as Orthodox lay-theologian Paul Evdokimov observes, "There is no separation between good and evil people, but such a dividing line, rather, runs through the heart of every one of us."[93] This insight may dissuade potential belligerents, as an example of attitudinal change in problem-solving workshops or dialogues, from categorizing humanity into allies who warrant goodwill and enemies earmarked for annihilation. Instead, such a charitable principle might encourage them to acknowledge a measure of good in every human being and stand in empathetic solidarity with all of humanity whose

imperfections are both unavoidable and shared. John's Gospel confesses "the true light that enlightens every [human being]" (Jn 1:9) in like manner to the Islamic teaching that Allah breathed his spirit into all human beings (Q15:29). Similarly, Orthodoxy affirms the image or icon of God in every human being from creation, so the violent confrontation of one's enemies becomes nothing less than the most egregious form of iconoclasm.

The humanization of the Other is also preserved in Orthodoxy's teaching on the interconnectedness of humanity, the universal character of salvation, and the accompanying eschatological dimensions.[94] For instance, Archimandrite Sophrony (Sakharov) comments on the impenetrable mystery of the "ontological unity of humanity"[95] in the teachings of Silouan the Athonite, a prominent early twentieth-century *staretz* (Russian spiritual elder) from the Monastery of St. Panteleimon. Further, he insists, "Christlike love . . . makes all men ontologically one."[96] This cosmic unity, described wonderfully by Alyosha's staretz, Fr. Zosima, in Dostoevsky's *The Brothers Karamazov,* renders it impossible to properly adjudicate the culpability of individual human beings:

> Everything is like an ocean, everything flows and intermingles, you have only to touch in one place and it will reverberate in another part of the world. . . . Take yourself in hand, and be answerable for the sins of all men. My friend, this is actually true: you need only make yourself sincerely answerable for everything and everyone, and you will see immediately that it is really so, and that it is you who are actually guilty of the sins committed by each and every man.[97]

This understanding forestalls the individualism that characterizes several Christian views of salvation that describe Jesus as a "personal Saviour." An individualistic and isolationist view of salvation such as this—foreign to Orthodox theology—often promotes a somewhat self-congratulatory attitude that can characterize others who have not found this same salvation as inferior or sub-human. This is a fateful step toward interreligious rivalry.

An individualistic understanding of salvation can eventually foster social Darwinist impulses that—because salvation is the major consideration—carry eschatological overtones. Eschatological paradigms that teach a sanctimonious division of the hereafter can encourage violence in this life that simulates eternal torment in the next. Orthodox teaching, however, avoids this bifurcation of humanity and justification of violence by teaching

that the interaction with God at the final judgment is a uniform encounter with merciful love for every human being, however objectionable it is to some or euphoric to others.[98] Isaac the Syrian, for example, maintains that "those who are punished in Gehenna, are scourged by the scourge of love. . . . The power of love works in two ways: it torments sinners . . . [as] bitter regret. But love inebriates the souls of the sons of Heaven by its delectability."[99] Similarly, Thomas Hopko's appraisal is guided by a characteristically Orthodox eschatological instinct when he remarks, "It is precisely the presence of God's mercy and love which cause the torment of the wicked. God does not punish; he forgives. . . . In a word, God has mercy on all, whether all like it or not. If we like it, it is paradise; if we do not, it is hell."[100]

The implications of this for conflictive faith communities include the cultivation of a uniform love and respect for all humanity—ally or enemy—in imitation of the uniform eschatological encounter with divine mercy. Jesus provides a foundational expression of Orthodoxy's eschatological sensitivities in this regard:

> And this is the judgment, that the light has come into the world, and men loved darkness rather than light, because their deeds were evil. For every one who does evil hates the light, and does not come to the light, lest his deeds should be exposed. But he who does what is true comes to the light, that it may be clearly seen that his deeds have been wrought in God (Jn 3:19-21).

The salient import of Orthodox eschatology as a resource for interreligious peacebuilding then is the uniform and unremitting love (light) of God in the Eschaton for *both* those who are attracted to and repelled by his mercy. This undermines the Western medieval imagery of the eternal torment of God's enemies in the afterlife as justification for violence against one's enemies in this life. Instead, if the divine eschatological attitude in Orthodoxy functions as a precedent, the posture of the third-party conciliator and adversarial parties will be one of invariable and sustained love, respect, and mercy that humanizes the Other.

The humanization of the Other is indigenous to Islamic thought as well. As Abu-Nimer observes, "The other—the different one—has legitimacy, which provides him with the right to protection by virtue of his being human. For example," he continues, drawing on a hadith from the al-Bukhari collection, "the Prophet stood to respect a funeral and when he was told that it was a Jewish funeral, he wondered aloud: 'Is that not a soul!'"[101] Indeed,

several recent gestures in Egypt that seek to trigger cognitive dissonance, so crucial to the humanization process, are reminiscent of Muhammad's tolerant behaviour.[102] One such example includes the thousands of Muslims who created a human barrier to protect Coptic Christian worshippers following the 2011 new year's bombing of al-Qiddissin Church in Alexandria.[103] To return the favour, Coptic Christians formed a human chain around Muslims prostrating during Friday prayers amidst protesters in Tahrir Square at the onset of the 25 January Revolution.[104] Muslims and Copts also chanted "We are one"—in what eventually became the Maspero Massacre—while demonstrating against the inaction of the Interior Ministry after a church was lit ablaze by Muslim extremists in the Aswan governorate.[105]

The humanization of the Other as expressed in the Qur'an stems from cosmogonical conditions such as the diversity of humanity. For example, Allah says, "We have conferred dignity on the children of Adam, and have borne them over land and sea, and have provided for them sustenance out of the good things of life, and have favored them far above most of Our creation" (17:70).[106] It is this dignity and the spirit of God in every human being (Q15:29) that informs the Islamic preference for peaceful coexistence with all human beings. The Qur'an, for example, teaches that if anyone kills a single person, "it shall be as if he had killed all mankind, and whoever saves the life of one, it shall be as if he had saved the life of all mankind" (5:32).[107] These circumstances reflect the responsibility of Muslims in light of the inherent value of every human being from creation to consummation.[108]

CONCLUSION

Orthodox Christians and Muslims engaged in conflict stand at the door of a storehouse of authentic religious values that underscore the irenic import of submission to God and one's religious community, attentiveness to the inner life, acknowledgement of free will and resultant diversity, and humanization of the Other. These values and teachings can assuage mutual suspicion and encourage solidarity with all of humanity and empathy with those who suffer. More to the point, cultivating the inner life and embracing free will and the ontological unity of humanity not only ensures fidelity to one's religious identity, whether Mennonite, Orthodox Christian, or Muslim, but it also accepts the many other various religious or non-religious identities that free will inevitably engenders. This acceptance of the religious diversity that free will breeds therefore inspires the peaceful coexistence between Muslims and

Orthodox Christians by legitimizing the differences and peculiarities that are as unavoidable as one's own.

This embrace of diversity encourages the transformation of conflict through relationship-building without capitulating to a homogenization process that obscures cherished religious distinctives that offer meaning and strength. In this regard, Gopin rightly calls such dilution of unique religious expressions "a vehicle of oppression of the identity of the Other" as much as aggressive proselytization.[109] The challenge is to devise exercises and build strategies that incorporate interreligious dialogues, forums, training curricula, problem-solving workshops, university lectures, and sermons that powerfully elicit these shared religious values to increase the prospect of their widespread and profound internalization. Education through didactic and homiletic means (especially if a religious representative is able to communicate the irenic values of both faith traditions), role-playing, story-telling, and genuine expressions of remorse may offer hope of success if participants recognize the foregoing religious values as intellectual validations of these gestures. If interreligious peacebuilders can use an authentically elicitive, grassroots strategy to conduct the above initiatives in a way that incorporates peace-cultivating religious values, Muslims and Orthodox Christians committed to a durable peace may yet realize genuine attitudinal change in seemingly hopeless conflict settings.

ENDNOTES

1.   John Paul Lederach, "Journey from Resolution to Transformative Peacebuilding," in *From the Ground Up: Mennonite Contributions to International Peacebuilding*, ed. Cynthia Sampson and John Paul Lederach (Oxford: Oxford University Press, 2000), 46-47. Cf. John Paul Lederach, *Preparing for Peace: Conflict Transformation Across Cultures* (Syracuse, NY: Syracuse University Press, 1995); Christopher Mitchell, "Mennonite Approaches to Peace and Conflict Resolution," in Sampson and Lederach, *From the Ground Up*, 222-26.

2.   Marc Gopin, *Between Eden and Armageddon: The Future of World Religions, Violence, and Peacemaking* (Oxford: Oxford University Press, 2000).

3.   Gopin, *Between Eden and Armageddon*, 81.

4.   Gopin, *Between Eden and Armageddon*, 63.

5. Gopin, "The Religious Component of Mennonite Peacemaking and Its Global Implications," in Sampson and Lederach, *From the Ground Up*, 251.

6. See Robert Herr and Judy Zimmerman Herr, "Building Peace in South Africa: A Case Study of Mennonite Program," in Sampson and Lederach, *From the Ground Up*, 76. Cf. Gopin, "Mennonite Peacemaking," 235-36.

7. See Herr and Herr, "Building Peace," 76. Cf. Gopin, "Mennonite Peacemaking," 235-36.

8. See Gopin, "Mennonite Peacemaking," 239.

9. Gopin, "Mennonite Peacemaking," 240.

10. See Herr and Herr, "Building Peace," 68, 70-73 and Gopin, "Mennonite Peacemaking," 242. Gopin also outlines Martin Buber's preference for the relational "I-You" interaction that affirms the long-term trust- and relationship-building process over the instrumentalist and utilitarian "I-It" interaction that views the conflict transformation process as a mere means to an end (245-47).

11. Gopin, *Between Eden and Armageddon*, 88. Cf. Gopin, "Mennonite Peacemaking," 240.

12. Cf. John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford: Oxford University Press, 2005), 41-49.

13. Mohammed Abu-Nimer, "Conflict Resolution, Culture, and Religion: Toward a Training Model of Interreligious Peacebuilding," *Journal of Peace Research* 38, no. 6 (2001): 687, 689-90.

14. Cf. Timothy D. Sisk, "Power-sharing after Civil Wars: Matching Problems to Solutions," in *Contemporary Peacemaking: Conflict, Violence, and Peace Processes*, ed. John Darby and Roger Mac Ginty (New York: Palgrave Macmillan, 2003), 140.

15. Gopin, *Between Eden and Armageddon*, 62. Gopin also observes, "Far too little attention is given, by contrast, to all of the circumstances leading up to attacking or being attacked, how to avoid a conflict that turns into war, which religious values prevent conflict and bloodshed, or what to do when the war or acts of violence are over in terms of mourning, recovery, and reconciliation and the moral laws and values

that come into play for this crucial stage of human relations" (74).

16.   Gopin, *Between Eden and Armageddon*, 64.

17.   As Metropolitan Kallistos Ware remarks, *nepsis* "means literally sobriety and wakefulness—the opposite to a state of drugged or alcoholic stupor; and so in the context of the spiritual life it signifies attentiveness, vigilance, recollection." Kallistos Ware, *The Orthodox Way* (Crestwood, NY: St. Vladimir's Seminary Press, 1995), 114.

18.   Kallistos observes that "stillness or inward silence is known in Greek as *hesychia*, and he who seeks the prayer of stillness is termed a hesychast." Ware, *The Orthodox Way*, 122.

19.   This is the Christological belief in the Oriental Orthodox churches (Coptic, Ethiopian, Eritrean, Syriac, Malankara Syrian, and Armenian) in a *single hybrid* human-divine nature of Christ.

20.   Gopin, "Mennonite Peacemaking," 233.

21.   Timothy George, "The Spirituality of the Radical Reformation," in *Christian Spirituality: High Middle Ages and Reformation*, ed. Jill Raitt (New York: Crossroad, 1987), 340-41.

22.   C. Arnold Snyder, *Anabaptist History and Theology: Revised Student Edition* (Kitchener, ON: Pandora, 1997), 152.

23.   *The Mennonite Encyclopedia*, s.v. "Gelassenheit"; George, "Radical Reformation," 339-40.

24.   Cf. Gopin, *Between Eden and Armageddon*, 153-54.

25.   Cf. Gopin, *Between Eden and Armageddon*, 183-84.

26.   Mohandas Gandhi, *All Men Are Brothers*, ed. Krishna Kripalani (New York: Continuum, 1980), 55. Cf. Gopin, *Between Eden and Armageddon*, 23, 149.

27.   Mohammed Abu-Nimer, "A Framework for Nonviolence and Peacebuilding in Islam," *Journal of Law and Religion* 15, nos. 1-2 (2000-1), 243 (emphasis mine).

28.   Pipi Van Slootin, "Dispelling Myths About Islam and Jihad," *Peace Review: A Journal of Social Science* 17 (2005): 292.

29.   Quoted in Mohammed Abu-Nimer, "An Islamic Model of Conflict

Resolution," in *Crescent and Dove: Peace and Conflict Resolution in Islam*, ed. Qamar-Ul Huda (Washington, DC: United States Institute of Peace, 2010), 84. Cf. Qur'an 4:148, 13:22, 7:199, and 28:54.

30. Abu-Nimer, "Peacebuilding in Islam," 248. Cf. *Sahih al-Bukhari* vol. 5, bk. 59, no. 603. All Sahih al-Bukhari *Hadiths* are from Muhammad Muhsin Khan, *The Translation of the Meaning of Sahih al-Bukhari: Arabic-English* (Ankara: Hilal Yayinlari, 1972).

31. Cited in Abu-Nimer, "Peacebuilding in Islam," 248.

32. *The Holy Qur'an*, trans., M. H. Shakir (Elmhurst, NY: Tahrike Tarsile Qur'an, 1983).

33. Liyakat Takim, "Peace and War in the Qur'an and Juridical Literature: A Comparative Perspective," *Journal of Sociology and Social Welfare* 38, no. 2 (June 2011): 152.

34. *The Holy Qur'an*, trans., M. H. Shakir.

35. See Abdul Aziz Said, Nathan Funk, and Ayşe S. Kadayifçi, "Islamic Approaches to Peace and Conflict Resolution," in *Peace and Conflict Resolution in Islam: Precept and Practice*, eds. Abdul Aziz Said, Nathan Funk, and Ayşe S. Kadayifçi (Lanham, MD: University Press of America, 2001), 10.

36. Marc Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East* (Oxford: Oxford University Press, 2002): 118-19, 136-37, 97 respectively.

37. Muhammad Ibn Sa'd, *al-Tabaqat al-Kubra* (Beirut: Dar Sadir, 1957), 2:142. See also Abu-Nimer, "Peacebuilding in Islam," 248n64.

38. Abu-Nimer, "Conflict Resolution, Culture, and Religion," 689-90.

39. Gopin, *Between Eden and Armageddon*, 73-74.

40. Gopin, *Between Eden and Armageddon*, 21.

41. Gopin, *Between Eden and Armageddon*, 21. To make his point, Gopin points to the example of Maha Gosananda, a Cambodian Buddhist monk, who began walking through mine-riddled regions of Cambodia with a message of peace and reconciliation, once insisting, "We must remove the land mines in our hearts which prevent us from making peace—greed, hatred, and delusions. We can overcome greed with

weapons of generosity, we can overcome hatred with the weapon of loving kindness, we can overcome delusion with the weapon of wisdom. Peace starts with us" (44-47).

42. Gopin, *Between Eden and Armageddon*, 47.

43. Gopin, *Between Eden and Armageddon*, 47.

44. Gopin, "Mennonite Peacemaking," 252; cf. 243, 247.

45. Cynthia Sampson and John Paul Lederach, "Preface," in Sampson and Lederach, *From the Ground Up*, v.

46. Lederach, "Transformative Peacebuilding," 47.

47. Joseph S. Miller, "A History of the Mennonite Conciliation Service, International Conciliation Service, and Christian Peacemaker Teams," in Sampson and Lederach, *From the Ground Up*, 28-29.

48. Andrew P. Klager, "Ingestion and Gestation: Peacemaking, the Lord's Supper, and the *Theotokos* in the Mennonite-Anabaptist and Eastern Orthodox Traditions," *Journal of Ecumenical Studies* 47, no. 3 (Summer 2012): 441-42; Andrew P. Klager, "St. Gregory of Nyssa, Anabaptism, and the Creeds," *Conrad Grebel Review* 26, no. 3 (Fall 2008): 49-50; Thomas N. Finger, "Anabaptism and Eastern Orthodoxy: Some Unexpected Similarities?," *Journal of Ecumenical Studies* 31, nos. 1-2 (Winter-Spring 1994): 67-91.

49. Menno Simons, "The Spiritual Resurrection," in *The Complete Writings of Menno Simons*, ed., John C. Wenger and trans., Leonard Verduin (Scottdale, PA: Herald, 1956), 58.

50. Dirk Philips, "Enchiridion," in *The Writings of Dirk Philips (1504-1568)*, ed. and trans. Cornelius J. Dyck, William E. Keeney, and Alvin J. Beachy (Scottdale, PA: Herald, 1992), 145.

51. Hans Denck, "Whether God Is the Cause of Evil," in *Spiritual and Anabaptist Writers: Documents Illustrative of the Radical Reformation*, ed. George H. Williams and Angel M. Mergal (Philadelphia: Westminster John Knox, 1977), 101.

52. Stephen Blake Boyd, *Pilgram Marpeck: His Life and Social Theology* (Durham: Duke University Press, 1992), 71.

53. Pilgram Marpeck, "Clare Verantwortung," in *The Writings of Pilgram*

Marpeck, ed. and trans. William Klassen and Walter Klaassen (Eugene, OR: Wipf & Stock, 1999), 62-63.

54. Marpeck, "Clare Verantwortung," 63.

55. Gregory of Nyssa, *On the Beatitudes,* in *Ancient Christian Writers*, trans. Hilda C. Graef (New York: Paulist, 1954), 18: 165.

56. Gregory Nazianzen, "Oration on the Holy Lights," in *Nicene and Post-Nicene Fathers II*, ed. Philip Schaff and Henry Wace (Peabody, MA: Hendrickson, 2004), 7: 354.

57. Nazianzen, "Oration," 354-55.

58. Nazianzen, "Oration," 355.

59. John Chrysostom, "Homilies on the Gospel of Matthew," in *Nicene and Post-Nicene Fathers I*, ed. Philip Schaff and Henry Wace (Peabody, MA: Hendrickson, 2004), 10: 94.

60. Chrysostom, "Homilies," 123.

61. Chrysostom, "Homilies," 123.

62. Chrysostom, "Homilies," 123.

63. Abu-Nimer, "Peacebuilding in Islam," 243 (emphasis mine).

64. Quoted in Mohamed Fathi Osman, "God Is the All-Peace, the All-Merciful," in *Beyond Violence: Religious Sources for Social Transformation in Judaism, Christianity, and Islam*, ed. James L. Heft (New York: Fordham University Press, 2004), 58.

65. Maulana Wahiduddin Khan, "Non-Violence and Islam," paper prepared for the Symposium, Islam and Peace in the 21st Century, Washington, DC (6-7 February 1998), 1. Cited in Ayşe S. Kadayifçi-Orellana, "Religion, Violence and the Islamic Tradition of Nonviolence," *The Turkish Yearbook* 34 (2003): 47-48.

66. Paul L. Heck, "*Jihad* Revisited," *Journal of Religious Ethics* 32, no. 1 (Spring 2004): 99.

67. Kadayifçi-Orellana, "Religion, Violence," 46-47.

68. Gopin, *Between Eden and Armageddon*, 180.

69. Cf. Sharon Erickson Nepstad, "Religion, Violence, and Peacemaking," *Journal for the Scientific Study of Religion* 43, no. 3 (2004): 299-300. This

is certainly compatible with the Orthodox Christian understanding of *theosis* as encompassing truth—even outside the Church—or Holy Tradition; cf. John Anthony McGuckin, *The Orthodox Church: An Introduction to its History, Doctrine, and Spiritual Culture* (Malden, MA: Blackwell, 2008), 96.

70. Cf. Walter Klaassen, "Church Discipline," in *Anabaptism in Outline: Selected Primary Texts*, ed. Walter Klaassen (Scottdale, PA: Herald, 1981), 211-12.

71. Balthasar Hubmaier, "Concerning Heretics and Those who Burn Them, 1524," in Klaassen, *Anabaptism in Outline*, 292.

72. Cf. Andrew P. Klager, "'Truth is Immortal': Balthasar Hubmaier (c.1480-1528) and the Church Fathers" (PhD diss., University of Glasgow, 2011), 6-7, 354.

73. Robert S. Kreider, "Anabaptism and Humanism: An Inquiry into the Relationship of Humanism to the Evangelical Anabaptists," *Mennonite Quarterly Review* 26, no. 2 (April 1952), 139.

74. Balthasar Hubmaier, "Freedom of the Will, I," in *Balthasar Hubmaier: Theologian of Anabaptism*, trans. and ed. H. Wayne Pipkin and John H. Yoder (Scottdale, PA: Herald, 1989), 429.

75. Balthasar Hubmaier, "A Christian Catechism," in Pipkin and Yoder, *Balthasar Hubamaier*, 359. Cf. Thor Hall, "Possibilities of Erasmian Influence on Denck and Hubmaier in their Views on the Freedom of the Will," *Mennonite Quarterly Review* 35, no. 2 (April 1961): 149-70, esp. 160-64.

76. Balthasar Hubamier, "On Heretics and Those Who Burn Them," in Pipkin and Yoder, *Balthasar Hubmaier*, 62.

77. Killian Aurbacher, "Hulshof, 1534," in Klaassen, *Anabaptism in Outline*, 293.

78. Hans Denck, "Whether God is the Cause of Evil," 97. Cf. Hall, "Freedom of the Will," 149-70, esp. 156-60.

79. Hans Denck, "Commentary on Micah, 1527," in Klaassen, *Anabaptism in Outline*, 292.

80. Hans Umlauft, "Hans Umlauft to Stephan Rauchenecker, 1539," in

Sources of South German/Austrian Anabaptism, trans. Walter Klaassen, et al., ed. C. Arnold Snyder (Kitchener, ON: Pandora, 2001), 10: 283.

81. Umlauft, "Hans Umlauft," 283-84.

82. Umlauft, "Hans Umlauft," 284.

83. See Andrew P. Klager, "Free Will and Vicinal Culpability in St. Gregory of Nyssa's *De vita Moysis*," *Greek Orthodox Theological Review* 55, nos. 1-4 (2010): 149-79, esp. 152-53; Paul M. Blowers, "Maximus the Confessor, Gregory of Nyssa, and the Concept of 'Perpetual Progress,'" *Vigiliae Christianae* 46, no. 2 (1992): 156; Albert-Kees Geljon, "Divine Infinity in Gregory of Nyssa and Philo of Alexandria," *Vigiliae Christianae* 59, no. 2 (2005): 162; Anthony Meredith, *Gregory of Nyssa* (New York: Routledge, 1999), 24.

84. Gregory of Nyssa, *Gregory of Nyssa: The Life of Moses*, trans. Everett Ferguson and Abraham J. Malhebre (New York: Paulist, 1978), 2.74.

85. Cf. Klager, "Free Will and Vicinal Culpability," 158-59.

86. Abu-Nimer, "Peacebuilding in Islam," 259; cf. 251.

87. Abu-Nimer, "Peacebuilding in Islam," 251.

88. Abu-Nimer, "Peacebuilding in Islam," 259.

89. The Qur'an, 22nd ed., trans. Abdullah Yusuf Ali (Elmhurst, NY: Tahrike Tarsile Qur'an, 2007).

90. *The Meaning of the Glorious Koran*, trans. Mohammed Marmaduke Pickthall (Delhi: Taj Company, 1991).

91. *The Holy Qur'an*, trans., M. H. Shakir.

92. *The Qur'an As It Explains Itself*, trans. Shabbir Ahmed (New York: Lighthouse, 2003). Cf. Amir Hussain, *Oil and Water: Two Faiths, One God* (Kelowna, BC: CooperHouse, 2006), 184.

93. Paul Evdokimov, "Eschatology: On Death, the Afterlife, and the Kingdom; the 'Last Things,'" in *In the World, of the Church: A Paul Evdokimov Reader*, ed. and trans. Michael Plekon and Alexis Vinogradov (Crestwood, NY: Saint Vladimir's Seminary Press, 2001), 27.

94. Cf. Andrew P. Klager, "Orthodox Eschatology and St. Gregory of Nyssa's *De Vita Moysis*: Transfiguration, Cosmic Unity, and Compassion," in

Compassionate Eschatology: The Future as Friend, ed. Ted Grimsrud and Michael Hardin (Eugene, OR: Wipf & Stock, 2011), 248-49.

95. Archimandrite Sophrony, *St. Silouan the Athonite* (Crestwood, NY: Saint Vladimir Seminary Press, 1991), 222.

96. Sophrony, *St. Silouan the Athonite*, 123.

97. Fyodor Dostoevsky, *The Karamazov Brothers*, trans. Ignat Avsey (New York: Oxford University Press, 1998), 401.

98. Cf. Klager, "Orthodox Eschatology," 245-48.

99. Isaac the Syrian, Bishop of Nineveh, "Homily 28," in *The Ascetical Homilies of Saint Isaac the Syrian* (Brookline, MA: Holy Transfiguration Monastery, 1985), 141.

100. Thomas Hopko, "Foreword," in Sergius Bulgakov, *The Orthodox Church* (Crestwood, NY: St. Vladimir's Seminary Press, 1988), xiii.

101. *Sahih al-Bukhari* vol. 2, bk. 23, no. 399. Cf. Abu-Nimer, "Peacebuilding in Islam," 258. Corroborating the effectiveness of this hadith and related Islamic values, a young Muslim woman, participating in the Ekhlas Coptic Organization for Development's peace program, invoked this same hadith as an example of Islam's teaching of unconditional humanization and the legitimacy of full rights for Coptic Christians in a focus group I conducted in El Fashn, Egypt on 10 December 2012.

102. See Gopin, *Between Eden and Armageddon*, 78.

103. Yasmine El-Rashidi, "Egypt's Muslims Attend Coptic Christmas Mass, Serving as 'Human Shields,'" *Al-Ahram Online*, 7 January 2011, http://english.ahram.org.eg/News/3365.aspx.

104. Helen Kennedy, "Muslims Return Favor, Join Hands with Christian Protesters for Mass in Cairo's Tahrir Square," *New York Daily News*, 7 February 2011, http://www.nydailynews.com/news/world/muslims-return-favor-join-hands-christian-protesters-mass-cairo-tahrir-square-article-1.137961.

105. Helen Kennedy, "Muslims Return Favor."

106. Quoted in Osman, "God Is the All-Peace," 60.

107. *The Meaning of the Glorious Koran*, trans., Mohammed Marmaduke Pickthall.

108. Kadayifçi-Orellana, "Religion, Violence," 46-47.

109. Gopin, "Mennonite Peacemaking," 240.

Paul Mojzes. *Balkan Genocides: Holocaust and Ethnic Cleansing in the Twentieth Century*. New York: Rowman and Littlefield, 2011. ISBN 978-1-4422-0663-29 (Hbk). Pp. 299.

Paul Mojzes, a professor of religious studies at Rosemont College, Pennsylvania, and author of *Yugoslav Inferno* (1994), was born in Osijek (Croatia) and grew up in Novi Sad (Vojvodina). His book's title, *Balkan Genocides: Holocaust and Ethnic Cleansing in the Twentieth Century*, resembles David Bruce MacDonald's *Balkan Holocausts?* (2002). MacDonald was crucially influenced by his analysis of warring parties' victim-centred propaganda to the point of casting doubt on the existence of twentieth-century genocides. In contrast, Mojzes brings the topic down to earth by describing actual events to which he was a witness.

Considering the paucity of English language publications on this topic and era, Mojzes has taken upon himself a difficult task to write a comprehensive volume on major genocidal events of the twentieth-century Balkans. This he has accomplished with considerable success by giving a balanced account along with an assessment and interpretation of events. Of additional value is this volume's rather brief coverage of lesser known cases of genocide and ethnic cleansing such as the persecution of Jews in Serbia, the destruction of the Roma in Croatia, the ethnic cleansing of Turks and converts to Islam (*poturice*) after the Balkan wars, and the destruction of ethnic Germans in Vojvodina in 1945. With this range of cases of ethnic cleansing and genocidal massacres in the twentieth-century Balkans, Mojzes' work provides reinforcing evidence for Vladimir Dedijer's opinion in *Genocid nad Muslimanima, 1941-1945 (Genocide of Muslims, 1941-1945)* (1990): "It is in the tradition of Balkan ruling circles to use genocide in order to create pure ethnic territories" (xix).

Balkan Genocides contains thirteen chapters. The content describes major waves or currents of genocide in the Balkans: the Balkan Wars of 1912 and 1913, the genocides of World War II (1941-45), genocides or

politicides retaliatory to war-time enemies of 1945, and ethnic cleansings and genocides associated with the processes of the Yugoslavian disintegration (1990-95). Blessed with expert fluency in the Serbian and Croatian languages, Mojzes relies mainly on published sources (books, papers, and the press) and less on archival materials.

Selected theories of genocide are considered. Like Benjamin Lieberman, Mojzes draws a distinction between ethnic cleansing and genocide. In general terms, Mojzes describes ethnic cleansing as "an organized campaign to forcibly transfer a population out of an area" (6). For each historical event, Mojzes relies on United Nations data, the judgments of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law (ICTY), and his own assessment to determine whether a specific mass killing was a case of genocide. He clarifies the reasons and evidence he uses to justify the label genocide or ethnic cleansing, including a range of opinions as to the number of victims. Not everyone will agree with him, but he explains his conclusions clearly. In the case of the Srebrenica massacre in 1995, the author accepts the judgment of ICTY that it was genocide. In the case of the Croatian military campaign called "Storm" (*Oluja*) in 1995, his assessment is that it was a large-scale ethnic cleansing. The Kosovo conflict in 1999 was a case of ethnic cleansing. It is not quite clear in what sense the author uses the word Holocaust, except that in many instances he uses this word to describe the destruction of Jewish communities in Croatia, Serbia, and Bosnia. Although this term has a specific meaning, it could be applied to other groups such as the Ustasha genocide of Serbs, Jews, and Roma in Croatia during World War II. That genocide was fuelled by the same racist ideas, and the Croatian perpetrators worked in tandem with the Nazis as their allies. The numbers of victims were huge (close to 400,000), and to the victimized communities it was experienced as the Holocaust was to Jews.

Recalling the views of Ben Kiernan, Mojzes points out that the Balkan ethnic cleansings originated in nation-building processes that resulted from the decline of multi-ethnic and multi-religious empires such as the Ottomans and the Habsburgs. The author rejects as simplistic the popular journalistic explanations of "ancient hatred." He shares Henry R. Huttenbach's insights into the role of intellectual elites in the spread of extremism and hatred. The author hints at the collective responsibility of the common people through their willing participation and acquiescence to the genocide of targeted

victim groups (5). This is reminiscent of Daniel Goldhagen's emphasis on "Hitler's willing executioners" (1997), and Everett C. Hughes's stress on the prevalent cultural climate of racism in Germany ("Good People and Dirty Work," in *The Other Side*, 1964). Behind every ideology are specific social groups (strata, classes, or interest groups) that carry such ideas to benefit their striving and ambition. Like Noam Chomsky (1999) and David N. Gibbs (2009), Mojzes discloses the duplicity of the Clinton administration which used the Rambouillet Agreement to begin the attack on Serbia (at the time still called Yugoslavia, which included Montenegro and Kosovo).

Mojzes zeroes in on the role of modern ethno-nationalism and ethno-religiosity. However, by highlighting ethno-religiosity as an ideological driver toward genocidal action, he does not delve far enough into the social factors elucidated by the sociology of knowledge. As a result, we miss a social profile of the perpetrators or the motives behind their criminal behaviour.

Undoubtedly, this work is a reliable source of facts and information on the problems associated with genocides in the former Yugoslavia. It is written by an accomplished scholar making every effort to remain impartial in the controversies surrounding the modern history of Yugoslav ethno-religious communities. Thus, for an essential knowledge and facts, for instance, on the Srebrenica genocidal massacre (1995), the Bleiburg politicide (1945), the Ustasha genocide (1941-45), and the ethnic cleansing of Volksdeutsche in Vojvodina (1945), this book is an important first step and a reliable source.

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Raymond C. Taras and Rajat Ganguly. *Understanding Ethnic Conflict*, 4th ed. Boston: Longman, Pearson Education, 2010. ISBN: 978-205-74230-1 (Pbk). Pp. 318.

Rarely does one pick up a textbook to find it engaging, instructive, and appropriately titled. Raymond Taras and Rajat Ganguly bring their vast teaching and research qualifications to the fourth edition of *Understanding Ethnic Conflict* and provide such a book. They offer and explore principal concepts needed to understand ethnic conflict, and by the end of the book,

have impressed the reader with their remarkable insight and capacity to understand ethnic conflicts.

Both authors are well-published in the field of ethnic conflict. Taras has held prestigious positions at universities across Europe and North America, including Stanford. His twenty books and one hundred scholarly articles include studies on leadership in authoritarian regimes such as Cuba, Sri Lanka, Chile, and Latin America. Ganguly is Program Chair in Security, Terrorism, and Counterterrorism Studies, and a senior lecturer in Politics and International Studies, at Murdoch University in the US. His four dozen book chapters, scholarly articles, books, and monographs analyse identity politics, terrorism, ethnic migration, autonomy and ethnic politics, and secessionism in Asia, India, Sri Lanka, South Asia. His forthcoming book is *Secession in World Politics* (Polity, 2013). The authors' expertise in the field of ethnic conflict and in creating relevant course material for university classrooms is well reflected in the book's structure and content.

The book's central thesis discards the traditional study of domestic triggers of ethnic conflict and declares that effective intervention requires a focus on international dynamics. Regional instability and conflict escalation, the authors argue, mandate emphasis on the links and gaps between nationalism, religious differences and ethnic conflict, and international politics. After providing information, application, and opportunities for analysis through case studies, the authors ask the reader to evaluate and envision ideal, yet realistic, intervention in "deadly ethnic and religious conflicts" (288) in the context of world power.

The authors lead the reader logically through a refreshing presentation of definitions and explanations, and clarify the core concepts of ethnic conflict, including how ethnic identity is formed and why ethnic conflict occurs. Each chapter contains key terms, current issues, and discussion questions that, combined, ultimately ask the reader to ponder the meaning of international intervention in ethnic conflict. Case studies of separatist challenges, nationalism, weak states, western military intervention, and state disintegration guide the reader through the dynamic nuances of ethnic conflict toward the final part of the book entitled "To Intervene or Not to Intervene?" The final chapter considers international interventionist tendencies. The book concludes with a powerful challenge to readers and policy makers to become more ambitious than merely to "do no harm" in matters of deadly ethnic and religious conflicts. The tragedies of these events "should

have no place in an international system that has otherwise kept the global peace since 1945" (288). Readers are asked to engage in "an international-ism that serves the interests of the community of nations while not being unduly shaped by the balance of power in the world today" (288).

University instructors will find in *Understanding Ethnic Conflict* an ex-cellent textbook. While scholarly and well-researched, the book is interesting and readable. The bibliography is substantial and extensive. Key concepts are highlighted throughout the text. Two tables of contents, one general and one detailed, facilitate a quick overview of the book. Supplemental instructor and student resources are available from the publisher. For the reader, the authors do not assume a sophisticated level of knowledge about world politics, international affairs, or conflict studies, and seem aware that their audience is likely from varied backgrounds, disciplines, and levels of understanding. Through this book's pages—truly rare in a textbook—the reader is equipped to explore the dynamic facets of ethnic conflict in a more comprehensive way than Political Studies has historically approached conflict.

The book is a strong resource for introducing and exploring the con-cept of ethnic conflict from a non-traditional perspective. The case studies encourage readers to explore other protracted conflicts more fully. In line with a foundational belief of Peace and Conflict Studies, the book asserts hope that even violent, prolonged, and protracted conflicts, when correctly understood, may be transformed peacefully.

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Suha Bolukbasi. *Azerbaijan: A Political History*. London: I.B. Tauris, 2011. ISBN: 10: 1848856202 (Pbk), ISBN: 13: 978-1848856202 (Hbk). Pp. 292.

Based on Russian, Azerbaijani, and Armenian scholarly and literary works, this book analyzes the political history until 1994 of Northern Azerbaijan, which regained its independence in 1991 at the time of the Soviet Union's disintegration. Bolukbasi's thoroughly documented analysis, useful for both political scientists and historians, largely omits Southern Azerbaijan,

which lies in northern Iran. In seven chapters and a conclusion, the author examines pre-Soviet, Soviet, and post-Soviet developments in the country.

Chapter 1 surveys the history of Azerbaijan up to the Soviet era and analyzes the intellectual movements in Azerbaijan under imperial Russian rule. Bolukbasi gives close analysis to the causes and consequences of the 1905 Azeri-Armenian intercommunal conflict and the effects of the 1917 October Revolution in Azerbaijan. The Soviet era is controversial, and Bolukbasi concludes his evaluation of contrasting scholarly views with remarkable balance.

Much of chapters 2 to 6 deals with Azerbaijan's relations with Armenia, particularly the conflict over the Nagorno Karabakh region. Highly critical of Armenia's irredentism vis-à-vis Nagorno Karabakh, Bolukbasi argues that the roots of the 1988-94 war over Karabakh lie in the Azeri-Armenian conflict of 1905, and deeper. This conflict was an internal problem of the Soviet Union, and intellectual fighting took place long before actual war broke out. Several Kremlin leaders supported Armenian secessionist sentiments that date back to the 1940s, and Armenians carefully prepared for decades to claim the Karabakh region. Further, in light of the legal and constitutional rights of the Soviet Union's constituting republics, Moscow and Yerevan severely compromised Baku's sovereignty.

In the February 1988 Sumgait Armenian killings, Armenians blame Baku while most Azeris accuse Moscow and Yerevan of instigating hostilities in order to justify the wholesale ethnic cleansing of Azeris in Armenia and Karabakh later that year. In 1989, after spontaneous ethnic cleansings in both republics, Moscow proposed new peace plans and introduced direct rule over Nagorno Karabakh. For Azerbaijan, this meant a *de jure* loss of its jurisdiction over the region. Moscow's deliberate political and military support for the Armenians was a crucial turning point in the conflict. Soviet troops caused the deaths of many Azeri civilians in Baku in the 1990 Black January events and, in the February 1992 Khojaly massacre, hundreds of Azeris in Nagorno Karabakh were murdered. After detailed analysis of the conflicting accounts and interpretations, Bolukbasi holds Moscow mostly responsible.

In chapter 7 Bolukbasi examines the transfer of power from the Azerbaijan Communist Party (AzCP) to the Azerbaijan Popular Front (APF), whose attempt quickly to recover Nogorno Karabakh failed. While the APF blamed Moscow's open support of Armenia for this, Bolukbasi maintains

that the APF underestimated the challenges of governing the country while fighting a war. Despite the initial attempts of Russia and the Conference for Security and Co-operation in Europe to mediate the dispute, the greatest blame, he says, falls to the AzCP for postponing the formation of a national army. The book captures both the brutality of the ethnic cleansing and the complexities of the political and military conflict.

In the conclusion Bolukbasi evaluates the complex 1994 ceasefire and negotiated settlement and the subsequent sociopolitical developments in Azerbaijan. In his view, Armenia's capture of Nagorno Karabakh and seven adjacent districts undermined the peaceful coexistence of the parties in the region. The difficulties in reaching and maintaining a negotiated settlement also damaged Baku's and Yerevan's endeavours to enjoy the fruits of independent statehood. Thus Azerbaijan's turbulent political history, including the conflict over Nagorno Karabakh, continues to obstruct political and economic cooperation in the entire region.

Bolukbasi's analysis of this intercommunal conflict is brilliant, but more attention should have been given to efforts made to resolve or transform the conflict. The author identifies several formal attempts to manage the conflict peacefully, but a separate and well-researched chapter that analyzes and evaluates the effectiveness of efforts made to resolve or transform this protracted conflict would strengthen the book.

Azerbaijan: A Political History offers a holistic picture of Azerbaijan's recent history in a way that will serve both specialists and the uninitiated. The book is especially valuable for its fresh analysis and re-evaluation of the complex period from the 1988 start of the Nagorno Karabakh conflict to the 1994 ceasefire agreement between Azerbaijan and Armenia. The author's balanced treatment and his concern for detail and accuracy is a great contribution to this field of study.

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David Livingston Smith: *Less than Human: Why We Demean, Enslave, and Exterminate Others*. New York: St. Martin's Press, 2011. ISBN: 978-0-312-53272-7 (Hbk). Pp. 326.

Why and how do some people end up hating and killing on a massive scale? What leads us to develop categories that dehumanize segments of humanity? Why have race and ethnicity in particular been modes of thought that have led to extreme forms of systemic violence? What can we learn from acts of genocide to prevent their recurrence? These are among the daunting questions raised and explored by David Livingston Smith in *Less than Human*. He leads his readers into an in-depth and cross-disciplinary analysis of dehumanization; his goal is to "bring dehumanization out of the shadows . . . and to paint a portrait of dehumanization and the forces and mechanisms that sustain it" (3).

Smith is Professor of Philosophy and director of the New England Institute for Cognitive Science and Evolutionary Psychology at the University of New England, Maine. He is the author of *The Most Dangerous Animal: Human Nature and the Origins of War* (2009) and *Why We Lie: The Evolutionary Roots of Deception and the Unconscious Mind* (2007).

In nine chapters he draws upon a broad variety of sources such as historical records of mass violence and genocide, emerging findings from evolutionary sciences about homo sapiens' capacity for violence, and research from social psychology and anthropology. Smith critically examines the ways in which we humans turn upon each other while creating theories and conceptual schemes that justify and promote hatred, indifference, and otherness which reduce capacities for compassion and empathy. Smith argues that dehumanization is a synthesis of aspects of human biology, structures of the human mind, and culture, and that we need to examine all three elements.

"Dehumanization is aroused, exacerbated and exploited by propaganda" (21). Providing well-documented but horrifying examples such as the Hutus' depiction of the Tutsis as cockroaches, the Nazis' portrayal of the Jews as vermin, and World War II American propaganda showing the Japanese as plague-carrying insects, Smith provides his readers with historical and contemporary examples of propaganda used to transform designated enemies into a veritable menagerie of the most reviled creatures in the animal kingdom, and to evoke forms of disgust rooted in our evolutionary past. Yet, by the conclusion of the book, Smith has avoided platitudes

and a one-dimensional view of human nature as innately cruel, selfish, and violent. While acknowledging and outlining the complex biological and cultural forces that so often have led to mass killing and genocide, Smith offers a nuanced view of human nature.

The book includes a philosophical-historical critique of forms of psychological and philosophical essentialism and deeply embedded forms of racism. Those engaged in teaching and research in Peace Studies will find references to Jane Addams, Las Casas, Mark Twain, Sam Keen, and J. G. Gray. Thoughtful reflections on the long-standing philosophical debate on the capacity of human beings for hatred and empathy, for violent conflict and cooperation, are compelling. Numerous citations refer to research conducted with war veterans traumatized by sustained exposure to violence and often haunted by visions of killing and mutilation.

Most importantly, this is a humane and well-researched polemic. By the conclusion, the reader has been taken through a sustained, complex analysis of the dynamics of dehumanization—identifying the characteristics dehumanized people are alleged to lack, learning what it is about the human mind that allows us to conceive of others as less-than-human, understanding how dehumanization works and what functions it serves, and examining the ways in which this unethical impulse is universal or culturally and historically situated. Taking his cue from David Hume but criticizing Richard Rorty, Smith concludes that rationalism is insufficient to transform the capacity for dehumanization and the violence that inevitably follows. Narratives of inclusive humanization and peace-building must be accompanied and informed by multi-dimensional analyses of dehumanization rooted in human nature and in cultural and historical circumstance.

Although some discipline-based scholars are likely to raise questions about selected references and eclectic citing, the strength of Smith's work lies with its broad interdisciplinary scope and its narrative flow. Drawing upon literature, history, current events, and recent findings in evolutionary psychology, neurosciences, and human biology, Smith has skillfully interwoven diverse sources and methods, always returning to his guiding question: Why do we demean, enslave, and exterminate others? Moreover, Smith does not shy away from a reasoned normative approach that acknowledges the contributions of the sciences essential to understanding human nature, the mind, and human capabilities. He does make the case that moral and political arguments must be made vigourously in opposition to dehumanization—and

all that follows.

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