

Impacts of International Human Rights Regime on International Relations after the September 11th Event*

Chih-Chieh Chou**

Abstract

One of the important developments in the post-Cold War global transformation has been the increased institutionalization of human rights as an important constraint on the behaviors of nation states through the emergency of international human rights regimes. This reflected a growing need to place further restrictions on the legitimate use of force on the international level. However, recent United States-led military operations against terrorism after the September 11th event have seemingly undermined this trend. Hence, this study assesses the effects of international human rights regime on international relations after the event by focusing on the relationship between international human rights conventions, the use of forces, and power realignment in the international relations. The analysis firstly argues that human rights will continue to play an important role in interstate relations because they constitute political legitimacy and a source of social power for some state actors, particular middle power states. Second, international interest in humanitarian affairs diminished after the September 11th event revealed the issue that international human rights norms allowed only for an extremely narrow definition of the terms by which the

* An earlier version of this essay was presented at the 2003 Annual Meeting of the Taiwanese Political Science Association, Soochow University, Taipei, Taiwan, ROC, December 13-14. The author notes with gratitude the advice of Dr. Claude E. Welch on the themes of this essay.

** Adjunct Lecturer in the Department of Political Science of the State University of New York at Buffalo and at Fredonia

use of force could be internationally legitimated and sanctioned. These terms constrained the actions of the hegemonic power (United States) to a large degree. Third, a tension is therefore emerging between middle powers and the hegemonic power, because the latter benefits from a weakening of human rights norms governing the legitimate use of force while the former benefits from their strengthening through multilateral processes within the structure of international human rights regimes. This tension will be continually dependent on each state's perceived security and geopolitical interests.

Keywords: International Human Rights Regimes; International Conventions; International Relations; International Organizations; the 9/11 Event; Multilateralism

Abstract

One of the important developments in the post-Cold War global transformation has been the increased institutionalization of human rights as an important constraint on the behavior of nation states through the emergence of international human rights regimes. This article reflects a growing need to place further restrictions on the legitimate use of force on the international level. However, recent United States-led military operations against terrorism after the September 11 event have seemingly undermined this trend. Hence, this study assesses the effects of international human rights regime on international relations after the event by focusing on the relationship between international human rights conventions, the use of force, and power imbalance in the international relations. The analysis finds a trend that human rights will continue to play an important role in interstate relations because they constitute political legitimacy and a source of social power for some state actors, particularly middle power states. Second, international law events institutionalized after the September 11 event have allowed revealed the issue that international human rights norms allowed only for an extremely narrow definition of the range of which the

An earlier version of this study was presented at the 2005 Annual Meeting of the American Political Science Association, American University, Washington, D.C., December 11-14. The author wishes to thank the editor of the *Journal of Peace and Democracy* for his/her comments on this study.

Abstract reprinted in the Department of Political Science of the State University of New York at Buffalo and e-Pedagogics.

Introduction

One of the important developments in today's global transformation has been the rise of the international human rights regime, whose capacity for institutionalizing human rights norms transcends national boundaries. In light of this development, Reiff notes that the last fifty years have seen the "precarious triumph of human rights" (Reiff, 1999: 36-41). It is a triumph since even the most optimistic observer right after the end of World War II could not have imagined the subsequent growth and influence of international human rights norms and conventions. In the world context, the international human rights regime is a distinct and central global institution in several ways. First, it is universal in aspiration, applicable to all human beings regardless of their citizenship or residency. Second, the rights involved are commonly seen as rooted in natural law rather than mainly based in the positive contractual specifications of a particular national or supranational constitution or legal system. Third, the regime is promulgated by and based in world level structures, such as international governmental and non-governmental organizations, international treaties and declarations, and international discourse (Boli & Thomased, 1999). Finally, the scope of application of the human rights regime has greatly expanded, covering many more domains of social life than was the case within nation states. Taken as a whole, the post-Cold War expansion of the international human rights regime has reflected a growing need to reexamine state responsibility in times of war and peace, and more importantly, to place further constraints on the legitimate use of force.

Optimism about the regime's political import thus brought

human rights to the arena of international relations. Yet this optimism was perhaps premature. While its overall impact continues to dominate much of international relations theorizing, the September 11th event invoked a sense that an era was about to end and give way to a new order - one in which international human rights would play a marginal role. As Ignatieff (2002) observed, "since the end of the cold war, human rights has become the dominant moral vocabulary in foreign affairs. The question after the September 11th event is whether the era of human rights has come and gone". Considering the weathering of human rights raises a series of related puzzles. Unfortunately, existing scholarship in International Relations cannot explain the relative standings of human rights at different points in history. Nor can it reveal whether or not the decline of the trend reflects a substantive change in the international order. As Ruggie asserts, "no shared vocabulary exists in the literature to depict change and continuity" in international relations (Ruggie, 1993: 140). In other words, the field is in a period of major theoretical reorganization precisely because change, whether in speed, organization type, or process, seems to be ubiquitous in the contemporary world. However we do not know what, theoretically, to make of it because there is no consensus on what we mean by change, not to mention how we identify it. Therefore, there is no account of the extent to which, and under what circumstances, nation states can deny claims to human rights in times of emergency.

Additionally, a further problem surrounds the often-tenuous relationship between international law and international relations. The legal provisions for international human rights law are substantial and draw upon constitutional law, international customary law, treaty law, and international criminal law. Nevertheless, there remains a significant gap between the formal institutionalization of human rights and the strength of the

international human rights regime as a whole. This gap is obviously widening as many legal instruments and processes have been ignored or undermined since the September 11th event. All of these puzzles are especially curious considering that scholars such as Risse and Ropp only recently argued that “human rights have become constitutive for modern statehood; they increasingly define what it means to be a ‘state’ thereby placing growing limits on another constitutive element of modern statehood, ‘national sovereignty’” (Risse & Ropp, 1999: 236). The post-September 11th decline of international human rights clearly shows that the discipline of international relations lacks an explanatory framework for human rights in international relations.

Therefore, the purpose of this study is to assess the political impact of the existing international human rights regime on international relations in the post-September 11th era. By considering Jackson’s claim that “the legal status of human beings in international law, as expressed by the law of human rights, is something that has been erected by sovereign states and could also, at least in principle, be dismantled by them,” this essay considers whether international human rights regimes can indeed be dismantled in light of the September 11th event, or whether the institutional framework constructed since their inception will continue to play some role in shaping state behavior (Jackson, 1995: 111). An emphasis will be placed on the relationship between international human rights and the international norms governing the legitimate use of force. In the following analysis, a short overview of the institutional and legal framework for human rights will be sketched. This first section will map the processes available for the protection of human rights in international law. As with law in general, however, codification does not guarantee compliance or an effective legal

system. The second section will thus examine how the institutional and legal processes for human rights are employed in politics with considerations given to power and interest. By focusing on the case of the current "war in Iraq," the final section will draw implications for the state and the legitimate use of force in humanitarian interventions, and assess its potential influences on interstate relations. This study will conclude by offering implications for international relations theory as a whole.

The Evolution of the International Human Rights Regime

The nineteenth century saw the growth of an individualist social ontology and the recognition of the individual as a political actor. However, participation was limited to those social groups or classes who were reluctantly granted rights because of their contribution to nationalist projects (Meadvell, 2001). Therefore, rights were granted only to the nation state. This precept upheld the notion that sovereignty and non-intervention are absolute. Nevertheless, these suppositions were challenged significantly in the aftermath of World War II. As Cassese notes, "respect for human dignity thus came up against its first stumbling-block in [Nazi] Germany's firm stance that national sovereignty could not tolerate any international interference in international affairs" (Cassese, 1990: 21). The Holocaust highlighted the fact that many of the heinous acts carried out by nation states against their own citizens were not prohibited by international law. Perpetrators could legitimate genocide as a means of obtaining further national unification.

Institutionalization of International Human Rights

The advent of the United Nations (UN) system in 1945 thus marked a transformative moment in international relations. The UN Charter and the 1948 Universal Declaration of Human Rights fundamentally changed the political ascription of the individual in international politics. No longer were rights accorded to individuals via the nation state only. It was unanimous amongst UN member-states that “individuals were no longer to be taken care of on the international level *qua* members of a group (minority or particular category); they began to be protected *qua* single human beings” (Cassese, 1990: 289).

Moreover, the UN system introduced not only individual rights guaranteed by international law, but also the concept of criminal responsibility for state officials. The International Military Tribunal (IMT) at Nuremberg in 1945 and the Tokyo Trials of 1946 affirmed the principle that individuals have duties to other human beings that transcend those imposed by particular states. As Cassese contends, “state representatives (high-ranking officers, politicians, prominent administrators or financiers, as well as men in charge of official State propaganda) could also be made answerable in international gatherings for gross misconduct. Those men were no longer protected by state sovereignty” (Cassese, 1990: 64-5). Significantly, these crimes were tried against individuals rather than states or entire populations. The trials at Nuremberg and Tokyo thus illustrate the formative institutionalization of conventions against genocide, war crimes, and crimes against humanity that are designed to place constraints on the legitimate use of force.

However, human rights represent more than regulations governing the use of force. Human rights also expand the parameters of state responsibility. On a very basic level, human rights help to define the “rules under which people who pursue

diverse goals in a complex, rapidly changing and highly interdependent world might hope to live in dignity and peace” (Freeman, 1996: 358). The construction of an international human rights regime thus began soon after the advent of the UN system. According to Donnelly’s definition, “regimes are political creations set up to overcome perceived problems arising from inadequately regulated or insufficiently coordinated national action” (Donnelly, 1989: 210). Drawing from Keohane and Krasner, Donnelly further argues that the international human rights regime arose from a growing ‘moral demand’ within international society met by a group of states that were willing to ‘supply’ international institutions to regulate the behavior of states against gross violations of human dignity (Donnelly, 1989: 210-211). Regime construction was pursued as an attempt to formalize international affairs and regulate state behavior on human rights issues.

Since 1945, an international human rights regime has emerged, supported by regional and single-issue regimes. Functionally, these regimes range from mere declaratory regimes to promotional, implementation, and strong enforcement regimes (see Table 1 after the text). The regimes take the form of either the activation of transnational expertise in international nongovernmental and governmental organizations which define human rights principles and promote human rights policies (e.g., Amnesty International; Human Rights Watch; Freedom House) or much more grassroots activism utilizes world human rights discourse and world-influenced advocacy tactics to advance human rights and related agendas (Médecins Sans Frontières; Defense for Children International; Global Lawyers and Physicians Working Together for Human Rights)(McAdam &

Rucht, 1993: 56-76).¹ As Donnelly argues, “the most striking pattern is the near-complete absence of international human rights regimes in 1945, in contrast to the presence of several in all the later periods... we can also note the gradual strengthening of most international human rights regimes over the last thirty years” (Donnelly, 1989: 153).

Although the Universal Declaration provided the nominal framework for subsequent human rights documents, the International Bill of Human Rights (which comprises the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights, and the 1966 International Covenant on Civil and Political Rights) was created to explicate the procedural definitions of human rights and to ideologically appease the rival superpowers of the Cold War. The International Bill of Human Rights was later followed by particular conventions on genocide, women’s rights, refugees, the rights of the child, and torture to name only a few (Center for the Study of Human Rights, 1994). Although the process was protected, the International Human Rights Covenants entered into practice in 1976 as legally binding for all party states. Their ratification led to the creation of the Human Rights Committee for the express purposes of monitoring the implementation and enforcement of the International Covenant on Civil and Political Rights.

Diplomatic Efforts and Redirection

These formal bodies are also supported by parallel developments in diplomacy. Established in 1946, the UN

¹ Also see Derechos Human Rights Links (www.derechos.net/links/ngo/all.html).

Commission on Human Rights remains the central forum for negotiating international human rights issues and official documents. During the 1970s, the US President Jimmy Carter linked human rights issues into bilateral foreign policy. While the Carter administration pursued human rights of its own volition, the administration largely normalized human rights in statecraft. The end of the Cold War instilled renewed vigor in this process. Shaken by the fall of the Berlin Wall and the decline of Cold-War bipolarity, events such as the reunification of Germany, the collapse of the USSR, democratization in Eastern Europe, Asia and Latin America, the Tiananmen Square Massacre, and the end of apartheid in South Africa led to an increasing belief in the global pertinence of the human rights project.² The office of the United Nations High Commissioner for Human Rights was established in 1993, giving the High Commissioner the mandate to deal directly with all governments on all issues relating to human rights in a personal capacity rather than as a state representative.

As previously noted, the end of the Cold War led to speculation that human rights were becoming constitutive of state sovereignty. Although the September 11th event has since challenged this assumption, optimism over the salience of human rights was nonetheless plausible given some of the developments in international law, particularly in the post-Cold War period. As Bassiouni argues, "traditional sovereignty-based arguments against the recognition or application of internationally protected human rights are no longer valid because of the vast array of applicable treaties, the customary practices of states, and the legally binding nature of general principles of international law which, in this context, represent the convergence of treaties,

² For further discussion, please see Wendt, 1992: 391; and Mueller, 1996: 2.

customs, national legislation, and *jus cogens*" (Bassiouni, 1993: 238). A variety of legal processes are thus available in international law to indict suspected perpetrators of human rights violations. The expansion of international criminal law is most notably illustrated with the near prosecution of Augusto Pinochet in a municipal court, and the trial of Slobodan Milosevic in The Hague. For better or for worse, these developments reflect a growing trend toward the 'externalization of justice' in the international sphere as the norm in ways that transcend traditional notions of sovereignty (Drumbl, 2001: 131-153; Sriram & Roth, 2001: 3-7).

The advent of the International Criminal Court (ICC) is one such development that attempts to avoid the problems previously associated with *ad hoc* tribunals. The ICC was launched with the adoption of the 1998 Rome Statute, although its foundations stem from the postwar trials at Nuremberg and Tokyo. The promotion of individual human rights is central to the Court's mandate albeit limited to prosecuting acts of genocide, war crimes, and crimes against humanity including sexual violence (Bolton, 1998: 60-71; Arsanjani, 1999: 22-43; Robinson, 1999: 43-57; Sarooshi: 1999: 396-401). As the statute falls under the domain of treaty law, the court acts as an extension of the international customary laws governing human rights protection (Nanda, 1998: 414). In the long run, the permanent court will be supposed to possess authority as well as the national judicial proceedings of any state party to the ICC and any state after direct referral by the UN Security Council (UN Department of Public Information, 1999).

Overall, the international human rights regime consists of unenforceable declarations and treaties, informal and formal diplomatic processes, monitoring and advocacy bodies, as well as enforceable treaties on international criminal law. The individual

has become a legal subject entitled to the procedural right to access international tribunals or initiate proceedings before an international body for the purpose of ascertaining whether the State in question has violated the treaty (Dacyl, 1996: 153). The entitlement of individual human beings to make claims in international law for legal remedy marks a novel development. However, despite this significant change in the legal order, violations continue as the international community proves only marginally more adept at coordinating efforts to enforce human rights in the post-Cold War period than in previous decades. Legal scholars and human rights experts have too often neglected how power and interest affect the constitution of the legal order and how legal processes actually function politically.

Power and Human Rights

Criticism from the View of International Law

Some criticisms have been launched pertaining to the general efficacy of the legal provisions for human rights. Legal criticisms are based on four main arguments: 1) procedural rights are not granted *a priori* but only through treaties which can only pertain to party states; 2) procedural rights of individuals' petitions are quite different from those under domestic systems, because the international bodies responsible for their adjudicating are generally not judicial in character although they may behave in accordance with judicial principles; 3) international proceedings are often hindered by limitations concerning the collection and admission of evidence; and 4) verdicts are often unenforceable (Cassese, 1986: 101-102). Despite these criticisms, Cassese argues that "the existing international systems for protecting human rights which depend on the initiative of the very beneficiaries of the right in question are no

less effective than other international devices for ensuring compliance with international law. One should therefore not be discouraged by the paucity of international mechanisms based on individuals' petitions" (Cassese, 1986: 102-103).

Moreover, legal claims can be made on the basis of international customary law that all states have international human rights obligations regardless of whether or not they are party to human rights treaties. The international customary process can support the argument that, by ratifying the UN Charter, all member states accept the general human rights obligations outlined in Articles 55(c) and 56 such that subsequent human rights treaties merely elaborate upon those obligations rather than transform them (Byers, 1999: 43-44). This debate is predicated on the role and definition of power in the international customary process. According to Michael Byers, "it is a debate about the exclusive competence which States have traditionally had to apply power in respect of all matters within their borders which do not affect other States, and the ability of international society to challenge the exclusivity of such applications through customary rules" (Byers, 1999: 45).

International Relations Perspective

Unfortunately, a divide has tended to stifle cross-disciplinary research between scholars of international law and international relations (Toope, 2000: 91). Since Hans Morgenthau's influential writings on the subject from the mid-1940s, subsequent theorists of the latter tradition have, on the whole, remained skeptical of international legal processes. In particular, Morgenthau believes in the weakness of the international legal order in the absence of centralized authority and the tendency of formal law to be

corrupted by power, and hence bear little association with political outcomes (Morgenthau, 1978: 279-288; Hurrell, 2000: 328). To Morgenthau, “international law is a primitive type of law resembling the kind of law that prevails in certain preliterate societies” because of its decentralized nature that renders it an ineffective mechanism in the struggle for power and peace in international relations. (Morgenthau, 1978: 281). This divide is fueled further by what Antonio Cassese and others call the “end of the magnificent illusion.” It became increasingly clear by the late 1990s that the UN Charter was unable to provide effective answers to the problems of international and internal conflict.

Yet these assumptions discount the influence of law on state behavior. International law is not a system of absolute legal rules that lack central authority and the means of enforcement. International law is instead a system of legal relations (Allott, 2000: 74). Thus, while international relations delves to some degree into the effect of power on legal processes, it often neglects the effect of law in shaping power relations in the first place. As Hurrell argues, “legal rules and relations are important, then, in so far as they constitute the game of power politics. But they are also important more directly in stabilizing and legitimizing the power of particular actors” (Hurrell, 2000: 330). Hurrell’s criticism is directed principally against realism. He argues further that:

Neo-realists fail to appreciate the importance of norms and of law to the analysis of power. They mistakenly view norms, rules, institutions, and values as mere reflections of material forces. Power remains central to the analysis of international relations, but power is a social attribute. To understand power we must place it side by side with other quintessentially

social concepts such as prestige, authority, legitimacy and legality. Indeed, it is one of great paradoxes that, because it so resolutely neglects the social dimensions of power, realism is unable to give a full or convincing account of its own proclaimed central category (Hurrell, 2000: 330).

While Morgenthau recognized the distinction between legitimate and illegitimate power, he perhaps did not take the implications of this distinction far enough. He states, for instance, that “legitimate power, which can invoke a moral or legal justification for its exercise, is likely to be more effective than equivalent illegitimate power, which cannot be so justified. In other words, legitimate power has a better chance to influence the will of its objects than equivalent illegitimate power” (Morgenthau, 1978: 35). Law must therefore not be measured in absolute terms, but by its relative effect on social power relations.

An analysis of human rights in international relations must consequently account for the role of the international human rights regime in shaping power relations between states. Needless to say, regime type is crucial in determining the extent to which it can shape power relations. Donnelly notes that promotional human rights regimes remain the rule while moving far beyond them has proven challenging. Enforcement regimes are particularly difficult to institute. As Donnelly explains:

Regime evolution may be gradual and largely incremental within declaratory and promotional regimes (and perhaps with implementation and enforcement regimes as well), but there seems to be a profound discontinuity in the emergence of implementation and enforcement activities.

Promotional regimes require a relatively low level of commitment. The move to an implementation or enforcement regime requires a major qualitative increase in the commitment of states that rarely is forthcoming. Most of the growth of international human regimes has therefore been 'easy' growth that does not naturally lead to further (Donnelly, 2002: 7-8).

While human rights are no less 'real' than material interests, state policy nonetheless tends to be based on objectives that are more readily tangible (Donnelly, 2002: 137). These insights do not suggest, however, that human rights make no contribution in shaping the power relations of international politics.

Indeed, historical examples show the contrary, as in the case of decolonization. Despite the Cold War tensions, "by the mid-1960s, Afro-Asian states formed the largest voting bloc in the UN. These countries, which suffered under colonial domination, had a special interest in human rights" (Donnelly, 2002: 7-8). Human rights were emphasized as justifications against colonial rule. Moreover, these trends led to the creation of the International Convention on the Elimination of All Forms of Racial Discrimination, which was opened for signature and ratification in 1965 and adopted in 1969. Human rights were clearly crucial in establishing a new post-colonial order and the international acceptance of the racial equality norm. Notable research conducted by Klotz demonstrates that this human rights principle has abetted the development of the international norm against apartheid in South Africa, which cannot be explained on purely instrumental grounds (Klotz, 1995). Human rights thus derive their import not from material resources, but from their ability to challenge on normative grounds the organization of

power and authority that ostensibly legitimates certain types and applications of violence.

This is not to say that human rights can be divorced from power. Indeed, the growth in the international human rights regime has been achieved only through incremental gains and setbacks in the bargaining process between numerous political actors over several decades. Power, interest, and political will have been involved at every stage. As witnessed during the Cold War, human rights were even subject to periodic manipulations by the powerful states. Power and inequality place strain on the international legal order because large and powerful states have options. They have the power to shape the agenda of international law and international institutions and to use direct coercive power in support of their own interests. Yet these considerations do not license the claim that human rights have lost all meaning simply because they are susceptible to periodic manipulations of power and interest. Human rights regimes remain a source of legitimacy from which the victims of oppression and brutality can assert legal claims against alleged perpetrators. By limiting certain forms and applications of coercive power, human rights narrow the range by which states can legitimately exercise force. Even powerful states are thus constrained by the 'settled norms' of international human rights obligations (Frost, 1996: 105).³ States must endorse and abide by these obligations or at a very minimum, pay lip service to and provide justifications against them.

Therefore, the question after the September 11th event is not whether the era of human rights has come and gone as Ignatieff asks, but whether human rights will play a role in shaping

³ A 'settled norm' exists where any argument or act which contravenes or opposes the given norm is commonly regarded as requiring special justification.

legitimate state action. More than a question of measuring mere compliance with international human rights standards, this is a question about the political will within international society to enforce international human rights law. It is a question about whether the regime on the whole can help mitigate the use of force and whether or not a dismissal of the human rights regime will have any significant security implications. Analysis must consequently turn to how human rights will impact the behavior of certain types of states.

Human Rights Regimes, Legitimation, and the Use of Force

In many ways, international relations theorists had scarcely enough time to adjust to and make sense of the post-Cold War interregnum. An attempt to challenge the dominant realist paradigm that was launched by constructivists and other contending theorists of international relations such as neo-utilitarianism proved unable to explain significant events such as the end of the Cold War, various attempts at humanitarian intervention, and the strengthening of human rights norms. However, human rights have virtually disappeared from United States (U.S.) foreign policy after the September 11th event. State authority today is apparently legitimated less by compliance with international human rights conventions than prior to the event. The “return of the state” and state-centered security issues ostensibly lend themselves to a vindication of realist principles (Dunne, 2002: 93-102). Nevertheless, such a statement is perhaps as premature as a dismissal of constructivist insights. While human rights may have disappeared from the discourse of

everyday statecraft, the institutions and legal processes of the international human rights regime remain intact. Thus, it is insufficient to argue that the international human rights regime has disappeared as well. The regime may have been ignored or undermined after the September 11th event, but it is important to assess *why* states have chosen to ignore the legal instruments and progresses available to them to deal with terrorists and perpetrators of crimes against humanity.

Therefore, it is curious that no international criminal tribunal has since been used for indicting alleged perpetrators of crimes against humanity or war crimes in the global war on terror. The Israeli-Palestine case illustrates this point. A recent Human Rights Watch report has documented and condemned Palestinian suicide bombings against Israeli civilians as crimes against humanity (Human Rights Watch Report, 2002). Nevertheless, legal options for prosecuting alleged criminals under the international customary process appear to be sidestepped. Instead, the Israeli military has pursued policies documented and condemned by Amnesty International as war crimes in their incursion against civilians in the occupied territories (Amnesty International Report, 2002). Both of these reports have garnered little international attention. Similar findings can also be drawn from other conflict regions.

A plausible answer to these puzzles centers on the norms governing both legitimate political authority and the legitimate use of force. Human rights have always challenged the meaning and legitimation of political authority under the context of sovereignty. Since its inception, the concept of sovereignty has acquired its universal currency because it delineates between distinct bodies of political authority over specified domains of territory (Walker, 1993: 169-174). As Barkin notes:

The international normative structure defines states' legitimate social purpose. Change in the accepted constitutional arrangements of legitimate sovereignty is most likely in the aftermath of major international events such as systemic wars, events so cataclysmic that they significantly alter the distribution of capabilities in the international system, while at the same time highlighting new ideas of the role of politics and the state (Barkin, 1998: 234).

The social constitution of sovereignty was thus challenged by human rights first in the early post-World War II period and then in the post-Cold War period, as political legitimation could no longer be grounded according to the strategic and ideological affiliations of the Cold War.

Redefining the Legitimation for Use of Force?

A prime determinant of change in international relations therefore concerns the configuration of social power in the international system as determined by the legitimating factors for political authority and the use of force. As such, it appears that the legitimation of political authority after the September 11th event is distinct from previous periods. The U.S. is driving the process to define legitimate political authority according to affiliation in the military operations against terrorism. Beyond political authority, however, the war against terrorism is changing the parameters for the legitimate use of force. International human rights law has been ignored by the most powerful state after the September 11th event because human rights conventions only allow for a narrow definition of the terms by which the use of force can be internationally legitimated and sanctioned. These

terms constrain the hegemonic power to a larger degree than middle-powers, weak states, or quasi-states.

The war against terrorism thus licenses the hegemonic power to use force in a manner that breaks with previously established norms. Declaration of war commonly provides the precept for a temporary suspension of some legal processes. This is likely to be the case in a war on terror in which the adversary is defined as a non-state security threat while no clear criteria exist for determining how victory or defeat is achieved. The war on terror has additionally provided the U.S. with the leverage to successfully attain a UN Security Council exemption from prosecution in the ICC for any war crimes committed by peacekeepers abroad. Thus, the international human rights regime does not seem to meet the demands or interests of great powers concerning the exercise of coercive force.

Utilitarian models of political behavior dictate that great powers seek to change the norms governing the legitimate use of force if it suits their interest. However, such an alteration is potentially dangerous for two main reasons. First, reconstituting the norms governing the legitimate use of force threatens the established conventions that define common standards of appropriate behavior in the treatment of individuals. The dismissal of the international human regimes thus invites division or instability in the international order. The regime's decline therefore poses significant security implications. Bell's comparative legal study of civil and religious conflict has shown that those peace accords which have ultimately failed are those that have made little or no allowances for human rights provisions (Bell, 2000). The Israeli-Palestine conflict is one example of failure that she draws upon. While more empirical work undoubtedly needs to be done on the subject, it is reasonable to

hypothesize that blatant disregard for human rights by both sides, as documented by the Human Rights Watch and Amnesty International reports, has only served to exacerbate the conflict. Pursuing multilateral, legal options for the persecution of alleged war criminals and perpetrators of crimes against humanity may therefore be a more viable long-term avenue for mitigating escalation. As Krasner notes, “conventions, even though they are entered into voluntarily and even though they have no provisions for enforcement, can alter domestic authority structures by introducing external sources of legitimacy” (Krasner, 1999: 121). Indicting alleged perpetrators in an international court will provide this external source of legitimacy, and can therefore alleviate the costs of coercion and help to bring domestic actors into congruence with international norms.

Furthermore, the potential disregard for the international human rights regime has additional security implications, because it could lead to the diversion of military resources and media attention away from gross violations that could make concerted international intervention unlikely in the event of another Rwanda-like genocide. If the international community was reluctant to prevent the Rwandan genocide in an era when adherence to international human rights standards was seen as a source of legitimate statehood, then the chances of a successful intervention occurring in the age of global terrorism is highly improbable. Such massive violations of human rights have security implications in terms of the sheer number of deaths, cross-border refugee problems that could lead to regional instability, as well as the problem of post-conflict reconciliation and state building.⁴

Second, a reconstitution is potentially destabilizing for the

⁴ See United Nations Department of Public Information, “A United Nations Priority: Human Rights and Conflicts.” [<http://www.un.org/right/HRToday/>]

international order because it forces a division between the hegemonic power and middle powers. In other words, a reconfiguration places strain on the international legal system as a whole, as well as on the prospects for multilateralism. International law provides stability and order to international relations by imparting a framework for action and expected outcomes by which interests may be pursued (Arthur, 2000: 5). As Charney states, "the international community has a need for rules to impart a degree of order, predictability and stability to relations among its members. The rules of the system also permit members to avoid conflict and injury, and promote beneficial reciprocal and cooperation relations" (Charney, 1993: 532). Thus, Hurrell emphasizes that all political actors including "strong states need law and institutions to share burden and to reduce the costs of promoting their interests by coercion. Even imperfectly legitimated power is likely to be much more effective than crude coercion" (Hurrell, 2000: 344).

Implication of the War in Iraq

Multilateral regimes, including those governing human rights, can supply middle power states with a forum to better overcome perceived problems of inadequately regulated or insufficiently coordinated unilateral action and to pursue perceived interests and demands. A division thus appears to be forming between the hegemonic power, which seeks to be free of multilateral conventions that limit its ability to exercise force, and middle powers, which seek to pursue their interests through multilateral mechanisms. This division unfortunately has appeared in the different attitudes and responses towards the U.S. action against

Iraq in 2003. The War in Iraq has not only exposed the disparity between the reality of U.S. global primacy and the formally multilateral structure of various international institutions, most notably the UN and other international human rights regimes, but also implicated a potential turning point of the international system after the end of the Cold War. Moreover, the case reflected a tension that the foreign policy redirection of the George W. Bush administration and its increased emphasis on unilateralism, coercive diplomacy, and pro-active military operations has agitated a converged opposition among most middle powers (China, France, and Russia) in the UN Security Council. In the short term, some states have chosen to stand with the more assertive U.S., but countervailing trends are already evident. First, middle powers will increase their efforts to balance their influences against U.S. power and prerogatives. Second, multilateral cooperation in security affairs and human rights efforts will suffer a unilateral U.S. agenda.

Decline of Multilateralism

The U.S. action in Iraq has shaken the foundation of trust and mutual restraint on which America's cooperative efforts with other states depends, and also marked a watershed in post-Cold War international relations. It is evident in the dogged opposition by three permanent members of the Security Council (plus Germany) and the inability of the U.S. to sway a majority of the Council, despite all manner of inducements, threats, and hectoring. Accompanying this middle power opposition was an upsurge of anti-Americanism on a scale not seen since the end of the Cold War. Middle powers strongly opposed the option of going to war by adopting "soft power" - expressed through international

regimes, law and organizations such as the UN.⁵ In other words, the U.S. seems intent on exercising extraordinary prerogatives in pursuing a unilateral vision that presses hard against the vital interests and concerns of other states. Hence, accommodation by other states can be only tactical and temporary.

In the long run, we might expect more states to move on a parallel track-seeking and developing ways to counter-balance American hegemonic power. Except in a few cases, the goal will not be to pose a security challenge to U.S. interests. Instead, the goal of most counter-balancers will be to retain their relative power position and compete with the United States for influence. As Sciolino predicts, "'Old Europe' will become a more self-consciously defined cluster and the core opponents of the Iraq war—France, Germany, and Russia—will seek ways to better coordinate their interests. One barometer of the continental appetite for counter-balancing will be the resources invested in the new 4-nation plan for defense cooperation involving Germany, France, Luxembourg, and Belgium" (Sciolino, 2003). China and Russia might be able to find more common ground, with U.S. troops firmly lodged at their Central Asian backdoor. U.S. military activism has added true urgency to their efforts at economic stabilization and military reform.

⁵ The theory has been propounded by Joseph Nye, a former Pentagon official in the Clinton administration. Soft power is an "indirect" way to exercise power. To Nye, this is the power to set a political agenda and the framework of debate. "If I can get you to want to do what I want," he writes, "then I do not have to force you to do what you do not want to do." Soft power is the ability to entice and attract, and its success is measured by acquiescence or imitation. The proposition explains why no other states seemed willing to employ traditional tools of international politics—in the form of military force or economic restrictions—to constrain the US hegemonic power. The rest of the world, and Europe in particular, had turned to "soft balancing," employing soft power to limit the American exercise of hard power. See Nye(2002).

Impact on International Human Rights Regime

The war in Iraq has likewise weakened international norms in governing the state's use of force and international cooperation on human rights issues (Amnesty International News Service, December 2, 2002; Khan, 2002). Support for such efforts depends on their being clearly separated from attempts to advance the unilateral interest or agenda of any particular state (Human Rights Watch, March 5, 2003). Their legitimacy depends on the consistent application of existing conventions and standards, some guarantee of due process and proportionality, and the existence of an authoritative institutional framework. Otherwise, humanitarian interventions can easily become just another form of power politics and interstate competition between the hegemonic power and middle powers.

Moreover, the U.S. partly based its rationale for war and regime removal on Iraq's abysmal human rights record and its failure to fully or faithfully abide by UN resolutions. Although these rationales stand outside the discourse on defensive war, the UN Charter does make some provisions for broader rationales in the use of force. Under Chapter VII of the Charter, the Security Council can prescribe forceful action to deal not only with an "act of aggression" but also (and more generally) with a "threat to the peace" or a "breach of the peace." This, with the aim of maintaining or restoring "international peace and security," is a more diffuse goal than the one of defending against aggression. Chapter VII has provided the framework for several military interventions that were meant to address genocide, other gross

human rights abuses, serious breakdowns in civil order, and humanitarian crises exacerbated by civil conflict (Farer, 2003: 53-89; Steiner & Alston, 2000: 118-131). While these exceeded the narrowly defined goal of self-defense, they were related to critical collective security and stability goals. More importantly, the Charter gives the authority for ordering such interventions to the Security Council. Thus, while options for the legitimate resort to force are expanded under Chapter VII, the authority to order or allow such exercises of force is embedded in a multilateral institution and process. This is meant to insure against individual states assuming an expanded right to use force unilaterally. It is meant to constrain the temptation of states to forcibly pursue their national interests under cover of "universal" principles. In other words, every state has a legitimate right to self-defense, but only representative international agencies are empowered to order broader police actions.

Overall, the task of future studies will be to ascertain the extent to which the division and the subsequent tension resulting from the war in Iraq will remain a fixture of the relationship between the U.S. and middle powers. Part of this tension may indeed prove to be fuelled by each state's perception of the emergency security imperatives in the post-September 11th world.

Concluding Remarks

Individual rights emerged during the nineteenth century in Europe amidst revolutions in government and science that gave way to an individualist social ontology. Individual rights during this period were reluctantly granted to groups of individuals as a

result of their demonstrated sacrifices on behalf of nationalism. Human rights proper arose in the aftermath of World War II, precisely to replace the nationalistic foundation of rights. This latter set of rights, which gives credence to the notion of national self-determination and the homogenous nation-state, culminated in the destructive horrors of the Holocaust. Human rights were thus constructed to help mitigate international devastation and instability by instituting rules which granted rights to all individual human beings regardless of civil, political, social, or economic disposition. The advent of human rights under the UN system hence introduced the idea of sovereignty as responsibility.

The findings of this essay suggest that a main determinant of change in contemporary international relations concerns how international norms governing the legitimate use of force determine social power relations. Human rights regime will continue to play an important role in international relations because of the way in which they constitute political legitimacy and a source of social power for middle power states. Middle power states ultimately pursue their interests through multilateral processes. This is in contrast to the hegemonic power, the U.S. The decline of human rights in U.S. foreign policy after the September 11th event can be explained in large part because the international human rights regime allows only for an extremely narrow definition of the terms by which the use of force can be legitimized in international society. These terms constrain the hegemonic power significantly more than other states.

Tension has therefore emerged between the U.S. and middle-power states, as middle powers stand to benefit from a strengthening of multilateral processes and institutions while the US stands to benefit from a weakening of the multilateral conventions governing the legitimate use of force. U.S. power tends to derive from material resources as well as the leadership

of specific administrations. Middle powers derive their influences generally from fast-track multilateralism and interstate diplomacy. As previously mentioned, the task of future studies will focus on this tension between the hegemonic power and middle powers, whether or not it is dependent on each state's perceived national interests and security imperatives after the September 11th event, and whether or not any residual differences in how each state conducts its foreign policy will cause security relations to converge or diverge as time progresses.

This essay also offers several implications for international relations theory. A conflictual position between the US and middle-power states illustrates that different types of states derive legitimacy and power from different sources. Rather than providing a vindication for neo-utilitarian theories, this insight lends itself to the reflectivity foundations of constructivism. It provides evidence for a relational basis of power. Moreover, the analysis throughout this essay has shown that micro-level phenomena such as the creation of institutions or patterned interactions between actors can cause system-wide changes that place constraints on the use of force and hence mitigate international anarchy. The creation of the international human rights regime has had such an effect. Thus, Waltz's proposition for an inflexible dichotomy between hierarchy and anarchy in international political theory may not actually be useful (Waltz, 1979). Wendt may therefore be right in asserting that "anarchy is what states make of it" (Wendt, 1992: 391-425). Finally, the theoretical puzzles highlighted here and the practical problems concerning how the hegemonic power and middle powers pursue their national interests leave various themes for future research.

**TABLE 1: Change in International Human Rights Regimes
(1945-2000)**

	1945	1960	1975	1990	2000
<i>GLOBAL HUMAN RIGHTS REGIMES</i>					
Global Regime	None	Declaratory	Promotional	Strong Promotional	Strong Promotional
Norms	None	Guidelines	Standards with Exemption	Global Norms with Exemptions	Authoritative Global Norms
Procedures	None	Weak Promotion	Promotion	Strong Promotion/ Monitoring	Strong Promotion/ Monitoring
<i>REGIONAL HUMAN RIGHTS REGIMES</i>					
European Regime	None	Promotional/Implementation	Implementation/Enforcement	Enforcement	Strong Enforcement
Norms	None	Guidelines/ Regional Norms	Regional Norms	Authoritative Regional Norms	Authoritative Regional Norms
Procedures	None	Promotion/ Monitoring	Regional Decisions with Exemptions	Regional Decisions	Binding Regional Decisions
Inter-Americas	None	Declaratory	Promotional	Strong Promotional	Strong Promotional
Norms	None	Guidelines	Standards with Exemptions	Regional Norms	Authoritative Regional Norms
Procedures	None	None	Promotion/ Monitoring	Monitoring/ Very Limited Regional Decisions	Monitoring/ Very Limited Regional Decisions

Table 1 (Continued)

	1945	1960	1975	1990	2000
<i>REGIONAL HUMAN RIGHTS REGIMES</i>					
Africa	None	None	None	Declaratory	Declaratory
Norms	None	None	None	Guidelines	Weak Standards with Exemptions
Procedures	None	None	None	Weak Promotion	Weak Promotion
Asia	None	None	None	None	None
Middle East	None	None	None	None	None
<i>SINGLE-ISSUE HUMAN RIGHTS REGIMES</i>					
	1945	1960	1975	1990	2000
Worker's Rights	Promotional	Strong Promotional	Strong Promotional	Strong Promotional	Strong Promotional
Norms	Limited Guidelines	Standards with Exemptions	Strong Standards with Exemptions	Strong Standards with Exemptions	Strong Standards with Exemptions
Procedures	Promotion/Monitoring	Promotion/Monitoring	Promotion/Monitoring	Promotion/Monitoring	Promotion/Monitoring

Table 1 (Continued)

<i>SINGLE-ISSUE HUMAN RIGHTS REGIMES</i>					
	1945	1960	1975	1990	2000
Racial Discrimination	None	None	Promotional	Strong Promotional	Strong Promotional
Norms	None	None	Standards with Exemptions	Strong Standards with Exemptions	Strong Standards with Exemptions
Procedures	None	None	Promotion/Weak Monitoring	Promotion/Weak Monitoring	Promotion/Weak Monitoring
Torture	None	None	Declaratory	Strong	Strong Promotion/
Norms	None	None	Guidelines	Standards with Exemptions	Global Norms
Procedures	None	None	Promotion/Monitoring	Promotion/Monitoring	Promotion/Monitoring
Genocide	None	Very Weak Declaratory	Very Weak Declaratory	Very Weak Declaratory	Declaratory/Ad Hoc Enforcement
Norms	None	Guidelines	Guidelines	Guidelines	Authoritative Global Norms
Procedures	None	None	None	None	None/Ad Hoc Enforcement
Children	None	None	None	Declaratory/	Promotional
Norms	None	None	None	Promotional Guidelines	Standards with Exemptions
Procedures	None	None	None	None	Promotion/Weak Monitoring

(Excerpted from Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2002, pp.130-31.)

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