Socialization of International Human Rights Norms:
The Bosnian Case

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AUTHOR'S DECLARATION

I, Justyna Janicka, do hereby declare that the work presented in this thesis is my own original work, except where appropriately referenced, and that this thesis has not been submitted previously for a degree at any university.

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ABSTRACT

The thesis starts with a look at the theory of norm diffusion and the factors influencing states to institutionalize international norms. I examine how norms become embedded in post-conflict zones and measure the extent to which they are embedded in state practice. The causal relevance of international norms may be defined in terms of the ability to change state behaviour. The process of norm diffusion is made up of ideas and discussions that change the identities in the post-conflict state that are connected with the behaviour of violating human rights. My argument is based on a constructivist approach to international socialization. The main theoretical approach to international norm dynamics and political change which will be considered in this thesis is the approach presented by the norms life cycle, concerned mainly with how a norm emerges, is established and finally becomes commonly accepted. It conceives of socialization as a process of change in violations and has two major components: (I) diffusion of norms prior to war; (II) violations; (III) socialization.

This thesis is an attempt to demonstrate a cause of foreign policy, 'norm-driven change', a domestic policy shift generated by the dynamics of the international normative environment. In accounting for Bosnian politics, this study highlights the causal role of international norms in affecting the domestic policy-making process. Unlike the mainstream international relations theories, which look into either the international material structure or domestic factors, this 'norm-driven change' model connects the international and domestic levels by examining the interaction between international norms and domestic policy-making.

DEDICATION

I would like to dedicate my thesis to my parents, Teresa and Stanislaw, who have always stood beside me in everything I have done.

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First of all, I would like to thank my parents for their love and support throughout my study.

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ABBREVATIONS

AP   Additional Protocol
BiH   Bosnia and Herzegovina
CR   Constitutional Reform
CCPR   Covenant on Civil and Political Rights
DPA   Dayton Peace Agreement
DRC   Democratic Republic of the Congo
EU   European Union
FRY   Federal Republic of Yugoslavia
HR   High Representative for Bosnia and Herzegovina
HRW   Human Rights Watch
ICC   International Criminal Court
ICJ   International Court of Justice
ICRC   International Committee of the Red Cross
ICTY   International Criminal Tribunal for the former Yugoslavia
IDP   Internally Displaced Persons
NATO   North Atlantic Treaty Organization
NDI   National Democratic Institute
NDC   Nansen Dialogue Center
NDN   Nansen Dialogue Network
NHL   International Humanitarian Law
OSCE   Organization for Security and Cooperation in Europe
PIC   Peace Implementation Council
RDC   Research and Documentation Center
RS   Republica Srpska
SDA   Stranka Demokratske Akcije
SDS   Srpska Demokratska Stranka
SIT   Social Identity Theory
TAN   Transnational Advocacy Networks
UN   United Nations
UNDP   UN Development Program
UNPROFOR   United Nations Protection Force
USAID   US Agency for International Development
YIHR   Youth Initiative for Human Rights

CHAPTER 1: INTRODUCTION

International human rights have been widely studied in international relations. The UN and its family of human rights agencies and nearly a hundred international human rights declarations and treaties have spurred considerable analytic attention to their origins and impact on states. The previous discussions on norms by the political community established and clarified our understanding of many important aspects of norms. Theories have been developed and accepted that explain how, and by whom, norms are created (Keck and Sikkink, 1998), how norms emerge (Finnemore and Sikkink, 1998), and actions that make the norm more likely to gain international acceptance (Klotz, 2002). In time, laws have been implemented to address the developing concerns related to human rights. As the concerns grew, so did the laws.

Growing research suggests that the international community is potentially crucial in inducing or coercing conflict parties in civil wars to refrain from committing atrocities against the civilian population. I examine how norms become embedded in post-conflict zones and measure the extent to which they are embedded in state practice. The causal relevance of international norms may be defined in terms of the ability to change state behaviour. My argument is based on a constructivist approach to international socialization. It conceives of socialization as a process of change in violations and has three major components: (I) diffusion of norms prior to war; (II) violations; (III) socialization. This thesis is an attempt to demonstrate a cause of policy, 'norm-driven change', a domestic policy shift generated by the dynamics of the international normative environment. In accounting for Bosnian politics, this study highlights the causal role of international norms in affecting the domestic policy-making process. I do this partly by using human rights norms to fill the gaps or areas left unregulated or very sparsely regulated by IHL, for example in regard of non-international armed conflicts. Unlike the mainstream international relations theories, which look into either the international material structure or domestic factors, this 'norm-driven change' model connects the international and domestic levels by examining the interaction between international norms and domestic policy-making. This approach enables us to attain a more comprehensive account of the policy-making process, which is typically based on both domestic and international concerns.

Human Rights Norms

One mechanism for ensuring norm diffusion and compliance with human rights is via the logic of appropriateness. Norm diffusion explains how "similar action by dissimilar actors in the absence of constraint" occurs (Finnemore, 1996, p. 6). In doing so, its explanations often, although not exclusively, encompass states as units of analysis and the social structures in which these units are embedded (such as the international system) (True and Minstrom, 2001, p. 33). In explaining "similar action by dissimilar actors," norm diffusion particularly focuses on the "transfer or transmission of objects, processes, ideas and information from one region or population to another", including principles, norms and rules (Checkel, 1999b, p. 85).

According to Martha Finnemore and Kathryn Sikkink, who elucidate the diffusion mechanism, once critical actors adopt a new norm and become norm leaders, these leaders diffuse the norm by socializing other actors to become followers, a process known as norm cascade (Finnemore and Sikkink, 1998, p. 901). Socialization is "the process of inducting individuals [or states] into the norms and rules of a given community" (Hooghe, 2005, p. 865). This socialization is usually done by states, networks of norm entrepreneurs or international organizations (Finnemore and Sikkink, 1998, p. 901). Generally, for norm cascade to occur, the norm has to be institutionalized in specific rules and international organizations (Finnemore and Sikkink, 1998, p. 900). Institutionalization correlates with norm cascade by specifying exactly what the norm is and what constitutes its violation (Ibid., p. 895). For example, Goodman and Jinks (2004) emphasized three classes of diffusion mechanism, leading to contrasting modes of diffusion, in order to explain the spread of human rights: (1) coercion leading to compliance; (2) acculturation leading to conformity; and (3) persuasion leading to habituation. Each class of mechanism entails different actors, levels of analysis and predictive assumptions concerning actor autonomy and behaviour, without denying the potential for overlap.

Constructivists acknowledge that this international socialization occurs via both coercion and persuasion (Landolt, 2004, p. 584). Coercive socialization follows the logic of rationalist explanations for norm diffusion, except that for constructivists, coercion takes the shape of social sanctioning (Checkel, 2001, p. 560). Persuasive mechanisms of socialization include discourse conferring international legitimacy and enhancing self-esteem (Keck and Sikkink, 1998). The strength of constructivist arguments depends on the shared understandings of appropriate behaviour. It is how

constructivists are able to explain diffusion of human rights norms and international humanitarian law when rationalist predictions fall by the wayside. Norms are intersubjective opinions about the social world which define actors, their situations and the possibilities of action. Norms are intersubjective in that they are convictions rooted in, and represented by, social practice. Intersubjectivity is filled with meaning. This represents shared understandings of appropriate behaviour. However, if there is contestation over what is considered appropriate behaviour, a regime can become ineffective.

The deliberate attacking of civilians and violations of human rights are important to both policymakers and scholars. It is important for policymakers because it calls into question their abilities to design effective policies for norm diffusion. It is also important to scholars because these acts cast doubts on arguments made by those who claim the significance of norms in explaining behaviour. Thus this thesis offers new guidance for understanding violations of human rights norms and possibly reducing their occurrence after the conflict is over through the socialization process. This thesis shows how norms of human rights became encoded in post-conflict culture despite the fact that its predecessor, a belligerent state, practised non-compliance with the protection of human rights.

Having a particular identity, therefore, shapes what kind of policy a state should pursue towards "us" and "others." The 'norm-driven change' model is built on the conviction of the causal relationship between international norms, identity formation, national interest construction and foreign policy outcomes. The model illustrates how the international normative environment affects the formation of a state's national interests and foreign policy decision-making process.

Research Questions and Significance

This thesis takes up the question of state socialization, applying it specifically to one state policy: state respect for human rights. Do human rights practices diffuse across the international system? How are human rights norms created, how are they institutionalized, and how are they enforced? Finnemore and Sikkink proposed a three-state norm life cycle. First, during norm emergence, entrepreneurs create or frame an issue. After a tipping point, there is a norm cascade wherein the norm is promoted and gains acceptance. Finally, the norm is internalised and becomes embedded in expected behaviour for states. While the norm life cycle offers a

generalised model of how norms are diffused, Risse and Sikkink offered a five-phase spiral model of human rights by a state (Risse and Sikkink, 1999, p. 22-35). Risse and Sikkink believed that the process by which international norms are internalized and implemented domestically can be understood as a process of socialization. The five phases of the spiral model consist of 1) repression and activation of network, 2) denial, 3) tactical concessions, 4) prescriptive status, 5) rule consistent behaviour. Stage 1 describes the repressive situation in the state where domestic opposition is oppressed. When the transnational network succeeds in gathering information on the repression in the "target state," provided by domestic opponents, then the process will move to Stage 2. Stage 2 puts the norm-violating state on the international agenda of human rights networks and serves to raise the level of international attention toward the target state. This process of lobbying usually involves moral persuasion and shaming. The denial phase means that the state refuses to accept the validity of international human rights norms and opposes the suggestion that its national practices in human rights are subject to international jurisdiction. Stage 3 describes a situation where the state seeks to pacify international criticism by temporarily making some improvement, although stable human rights conditions are not expected. If the transnational network is successful in forcing the state to make tactical concessions, the focus will shift to the domestic level. If the cycle is not delayed, the domestic opposition is likely to gain strength. However, this phase can temporarily break the upward spiral process if a government insists on repressing the activists. Stage 4, prescriptive status, refers to the point where validity claims of the norm are no longer controversial, and even the state continues to violate the rules. Finally, Stage 5 suggests that governments might accept the validity of human rights norms.

How, then, does identity change? I argue that identity change can be a slow process of gradual change in perception through increasing numbers of the population, and in increasingly important sections of the population, i.e. decision-makers. Normative evolution happens gradually because it has to change people's perceptions, and that, inevitably, takes time. It is through the operation of law that internalisation is achieved. Law is both the path to internalisation and evidence of it.

Social change takes place when actors are able to codify new norms and alter state behaviour. The question then becomes a matter of which actors can instigate such a change under what conditions. Alison Brysk noted that change is triggered by a combination of national and international factors, when "the relationship between civil

society and the state is mediated by the international system" (Brysk, 1993, p. 260). Consequently, change comes "from above and below." Keck and Sikkink (1998) agreed that domestic change can occur by applying pressure simultaneously from above and from below. The pressure from below is generated via domestic social movements which are supported and reinforced by a transnational advocacy network.

What can be done to increase the chances of all sides conforming to the basic principles of human rights law and international humanitarian law? I will review the theoretical basis of norm diffusion and the development of international law. I propose to adopt a constructivist approach that is based on internalization of norms.

To what degree does global norm socialization aid in the changing of interests (and therefore state policy) of states? There are several reasons why the answer to this question is important. From an academic standpoint, scholars have long argued that human rights practices are likely to diffuse through the international system, but few have provided theories explaining the means by which this diffusion may take place and fewer still have rigorously tested such theories. This thesis will establish causal mechanisms highlighting changes in the normative basis of international politics to the outcomes of state compliance with human rights and international humanitarian law, proposing the growing role of international law as a normative framework during armed conflicts. With constructivist theory, norm diffusion will depend on a state's long-term interest in the maintenance of a law practised by the international community. Therefore, this interest in turn depends on a repeated habit of obedience of law that remakes a state's identity so that it values rule compliance. In other words, the more a state adheres to the practice of rule compliance, the more it will be identified as a rule complying state, the more it will continue in compliance with rules.

At the heart of this thesis are questions about government respect for human rights and the international diffusion of human rights practices. I hypothesize that an international socialization pressure can accelerate Bosnia's socialization by international norms. My hypothesis is that socialization should, over time, lead to internalization of the norms as norms diffuse. States now begin to accept the appropriateness of the behaviour for which the new norm calls through the process of socialization. This claim is demonstrated in my case study of Bosnia in the pressures from the UN Security Council and court intervention, in a process that partly corresponds with the predictions of the spiral model.

Although norm diffusion has increasingly become a part of international law, we still lack an understanding of how much, and in what ways, the international community can successfully promote change within a war-torn state. This is crucial in view of the fact that the achievement of international law depends on how the state reacts to efforts of international actors to establish new social norms. The important point is that the process of norm diffusion is made up of ideas and discussions that change the identities in the post-conflict state that are connected with the behaviour of violating human rights. In post-conflict situations from Bosnia and Herzegovina to Iraq, international development organizations are investing hundreds of billions of dollars in order to fight non-compliance with human rights. Post-conflict societies have the greatest need for human rights norms in order to deal with all of the problems of a society recovering from war while facing abnormally high barriers to the already difficult task of democratic state-building.

This study seeks to make several contributions towards remedying the gap in scholarly and policy knowledge. Theoretically, these questions are increasingly of interest as a key dimension of state socialization. The study also seeks to contribute to development of legal theory in the area of state compliance with international rules, and the mechanisms by which international norms translate into domestic institutions, laws and practices.

This research is important for policy implications. The findings of this research are likely to be of interest to human rights, humanitarian groups and the media if it turns out that their actions play a central role in influencing what policy priorities party states choose in particular internal armed conflicts. Second, this research might shed light on the pattern or patterns of international initiatives to limit atrocities in internal conflicts. The inferences gained from the case can help us to make generalizations on what might work or not work in dealing with future conflicts. Third, the promotion of human dignity is necessary for future international cooperation and stability. Unfortunately, many civilians are still denied their rights to basic human dignity. The systematic and indiscriminate attack against civilian populations causes immense civilian death and injury. Unless we understand the non-compliance and socialization through norms, the denial of basic human dignity to millions of civilians will continue to block the development of peaceful societies.

Because norms are more likely to spread during periods of domestic turmoil and transition, "we should expect states to endorse international norms during periods

of domestic turmoil in which the legitimacy of elites is threatened" (Finnemore and Sikkink 1998, p. 906), so the starting point of the empirical part is the onset of war, state oppression and civilian victimization. Because these war-torn societies have experienced an external shock in terms of violent conflict and heavy violations of human rights, this might actually benefit norm change, particularly if there is heavy international presence. Despite advancements in preventive and repressive measures, however, insufficient respect for norms of human rights remains a problem. This results from the lack of political will or practical ability of parties to an armed conflict - the state in this case - to comply with their legal obligations. Efforts to improve the prevention of violations are important and deserve greater attention.

Methodology

Methodology has been part of the difficulty in my research into norm diffusion of human rights and international humanitarian law specifically. Methodologically, I will measure norm diffusion by relying on qualitative data, and on primary as well as secondary sources. The case study includes empirical work that links my theory with observed behaviour of the state (or subjective understanding of such behaviour, as constructivists would have it) (Simmons, 2007, p. 156). Beth Simmons summarised the problem: "as a result, it is difficult to show that a rule, commitment, or norm per se influenced governments to take particular positions that represent compliance" (p. 157).

Such study poses difficulty and may require a different strategy. Simmons suggested that "one option is to select cases in which there is evidence of a shift in state interests over time, rendering a previous commitment inconvenient or even costly to maintain, at least in the short run. The difficulty would be minimized to the extent that compliance with earlier agreements is delinked from obvious explanations of strong, narrow, and immediate 'interest-based' reasons to comply" (1998, p. 158). The alternative is to analyse the negotiation process as an integral aspect of the compliance and "taking a more constructivist approach to compliance, rather than worry about controlling for endogenous effects of treaty negotiation, one might incorporate its discourse elements into a fuller story of the compliance processes" (p. 158). Nonetheless, my thesis and case study design is important, as we are a long way theoretically and empirically from an understanding of the conditions under which governments become socialized (p. 158-159).

This thesis will be qualitative, explanatory and descriptive. Alexander George and Andrew Bennett pointed out that case studies are particularly useful in deriving new hypotheses and exploring causal mechanisms (George and Bennett, 2005, p. 20-21). First, case studies have the potential to achieve high conceptual validity by allowing the researcher to capture the contextual factors and pursue a detailed understanding of the case. This enables them to identify and measure indicators that best represent the theoretical concepts that are being evaluated. Second, case studies examine the causal mechanisms in individual cases in detail and are, therefore, a useful means for investigating the mechanisms hypothesized by a specific theory. Finally, case studies serve an important heuristic function: they are likely to foster valid new hypotheses because they allow researchers to inductively observe unexpected factors by virtue of the thorough attention to each case.

This view is endorsed by Stephen Van Evera, who pointed out that the method is effective for "inferring and testing explanations that define how the independent causes the dependent variable" (1997, p. 64). Researchers interested in identifying causal mechanisms in political events are often confronted by the complexity and uniqueness of each case. This is particularly true of cases of international responses to situations of internal conflicts such as those this thesis seeks to study. Case study analysis provides an important link to my research questions by helping to explain how norms become diffused. This project is structured around a revelatory case. Neither Bosnia nor the human rights law on which this study focuses is a critical case or an extreme or unique case. Nevertheless, the country chosen is revelatory for the following reasons. Bosnia is a modern, liberal democracy in the making. Historically, it has been generally welcoming or receptive of international legal trends and norms. All these conditions make it a fit case to study the process by which international norms diffuse and are adopted by developing nations with similar structural conditions.

In order for the analysis to reflect the most recent developments in armed conflict and international law, it was necessary for the case studies to meet some other criteria. First, the armed conflict had to occur sometime in the post-Cold War era. These conflicts are the most accurate representation for current and future application of international law. Second, the Bosnian war shares the characteristics definitive of internal armed conflicts. They involve the mobilization of the warring parties along ethnic or religious lines, they take place in weak states, and they entail horrific

humanitarian law violations with large-scale attacks on civilians, abuse of prisoners and attacks on protected places. In the Bosnia war, third party actors became involved. If third party states pay attention to regulation of violence through international humanitarian law in internal armed conflicts, it is in these kinds of cases that we would expect to find that evidence. Stephen Van Evera pointed out that the value in selecting cases with "proto-typical" background characteristics to test theories such as the ones chosen for this study is that they are likely to "travel" well and apply to other cases if the theory survives the test (Van Evera, 1997, p. 84).

This is a limited study that does not claim to apply to every case in the world. Instead, it will possibly be more relevant to cases that are similar to the one analysed here. In any event, a study like this can only be a small part of the larger project on how international law in general and international humanitarian law in particular operate in practice. If it succeeds in developing the proposed theory and the supporting hypotheses from the empirical studies, then the study will have fulfilled its objectives.

Like every method, however, the case study has its weaknesses. In particular, there is what George and Bennett called the "recurrent trade-offs" that those using the method must make (George and Bennett, 2005, p. 22). One of these trade-offs is the problem of case selection, which Johnson and Joslyn contend robs case studies of analytical rigor (Johnson and Joslyn, 1991, p.124). However, George and Bennett argued that this selection bias is overestimated and can be avoided with careful methodological attention (2005, p. 24). When done well, case studies can provide useful insights into political questions, since their findings "develop cumulatively contingent generalizations that apply to well-defined types or subtypes of cases with a high degree of explanatory richness" (Ibid., p. 31). As mentioned above, discussions about the fruitfulness of the case study as a social research methodology have been around for several decades (Lundberg, 1941).

To sum up, the biggest drawback of the case study is its low degree of external validity or generalizability. On the other hand, the most important benefit of the case study is that it allows for in-depth, rich and detailed exploration, explication and/or description of phenomena. The main drawback of case studies is generally overcome because case studies are not intended to generalize findings to populations: case studies are not samples. Therefore, the form of generalization in case studies is not statistical but analytical. That is, case studies aim at generalizing their findings to

theory.

An important challenge with case studies is finding the appropriate design. Other research methods have developed a menu of standard designs from which researchers can choose according to their needs. For example, some quasi-experimental designs include the randomized two-group design, the pre-test post-test two-group design and the Solomon four-group design (Judd, Smith and Kidder, 1991). Given the nature of case studies, ready-made designs are not available. Therefore researchers must develop their design according to their needs and goals. In any event, many of the criticisms against the case study method can be levelled against other methods. For the question that this thesis seeks to answer, the case study is an appropriate and useful method.

Researchers interested in identifying causal mechanisms in political events are often confronted by the complexity and uniqueness of each case. This is particularly true of cases of international responses to situations of internal conflicts such as those this thesis seeks to study. In such contexts, the use of process-tracing in case studies is an effective "means of examining complexity in detail" (George and Bennett, 2005, p. 130). Through process-tracing, Van Evera argued: "the investigator explores the chain of events or the decision-making process by which initial case conditions are translated into case outcomes. The cause-effect link that connects independent variable and outcome is unwrapped and divided into smaller steps; then the investigator looks for observable evidence of each step" (Van Evera, 1997, p. 64).

Structure of the Thesis

Chapter Two is an analysis of a theoretical framework of norm diffusion and socialization. The focus of the thesis is on how international norms travel. As part of examining the external pressures, this study also analyses the "Spiral Model" by Risse and Sikkink, which explains a situation when domestic actors search out international partners, who will then put pressure on the state from the outside and force the target state to socialize the human rights norm. Constructivism's importance here is tremendous in that it (more so than other theories) emphasises the role of agency, the capacity of actors to redefine interests and preferences.

Chapter Three traces the evolution of international humanitarian law. I also discuss the normative theory of military understanding of norms as regulators of behaviour. The chapter then discusses the important role of norms associated with

protection of the civilian population. The ultimate goal is for international law to provide civilians with adequate legal protection. The principle of civilian immunity ultimately emerges as part of the problem rather than the solution: it enables the very practice it seems designed to restrain.

Chapter Four discusses the development of norms during abuse in the case of the Bosnia war. It briefly outlines the history of the conflict. I hypothesize that international normative pressure can accelerate a country's socialization by international human rights norms, provided dominant elites in that country interpret favourably the utility of norm compliance to the political survival of the existing regime, eventually leading to the internalization of the norm. What is being outlined in this chapter is the state's position on violations of human rights from the initial victimization during the conflict.

Chapter Five discusses the diffusion of the norm and internalization. It offers an explanation of norm diffusion that identifies how domestic politics and characteristics and international actors construct global norms. It also discusses internalization and reframing of the norm within the state in terms of military culture and formulation and practical application of law.

The concluding chapter aims to summarise the findings from both theory and case study and make recommendations. It will also elaborate on speculations about prospective research.

CHAPTER 2: Social Mechanism to Induce Compliance - Socialization

2.1. Introduction

This chapter lays the theoretical pillars for the thesis. In this chapter I will look at international socialisation. Norms have a highly significant role in international relations scholarship, largely because of the growth in regime theory and the surge in constructivist literature over the past few decades. Definitions have centred on norms as collective understandings of appropriate behaviour. There is, however, much divergence regarding the details of such a definition, as well as the expected influence of norms on behaviour. I argue that a constructivist approach is the most illuminating with regard to norms, and indeed takes into account a number of highly significant insights from the broader social sciences. While scholars have, for a long time, highlighted the importance of norms to social life, this chapter is predominantly concerned with how norms are characterised in the literature of IR and therefore focuses on the key perspectives of constructivism.

In this chapter, the socialization process is explained. As actors (including states) become "socialised", they can adopt new ideas and new norms. When socialization occurs, the state adopts the rules of the community. I also stress the importance of entrepreneurs, social movements, NGOs and international organizations in the diffusion of human rights.

2.2. International Norms in IR research

This section discusses the competing views on the expansion of human rights norms. The primary pillars of rationalist and constructivist theories will be laid out to provide a foundation for the case studies following the theoretical model. The theoretical debate on diffusion of norms is built upon the framework of the major contending schools of international relations theory. In international relations, the concept of norms is not a freestanding concept but one that is understood from a theoretical perspective; different theories therefore answer the questions in significantly different ways (Kingsbury, 1998, p. 350). One's answer to the diffusion of human rights question depends on one's understanding of international relations: that is, theory determines the relationship of legal rules to politics. Thus, various explanations have been postulated based on ideas of rationalist and constructivist schools.

This part of the chapter presents two prominent views advanced by scholars of international relations. First, the interest-based approach to compliance is helpful, but only applies to that subset of international agreements that express coordination problems. Second, norm-based approaches concentrate on the formal organizational norms and rules that guide the behaviour of actors. These perspectives are determined by the interplay between domestic and foreign politics, between comparative politics and international relations. Below, I categorize and introduce the main theories of state behaviour vis-à-vis international norms. While these categories are broad, and the lines between them not always clear or mutually exclusive, the categories capture the major distinctions in existing theories in a useful way.

2.2.1. Rationalism - Interest-based approaches

Classical realists assert that behaviour is a reflection of a country's pursuit of power and material interests. State interests refer to the state's preferences about outcomes. Realists, who theorise a world of international anarchy, do not expect international norms to have much of an influence unless enforced by powerful states or unless they secure national interests. Considering the distribution of power among states under anarchy as a chief determinant of state behaviour, realists regard norms merely as a reflection of that power relationship. International arrangements that rely upon common principles or norms "are only too easily upset when either the balance of bargaining power or the perception of national interest (or both together) changes among those states who negotiation them (Strange, 1983, p. 345). Because outcomes from international interactions largely reflect the interests and relative strength of the contending parties, norms are reducible to optimizing behaviour by sovereign, egoistic and strategic actors that calculate costs and benefits in the pursuit of basic goals. Norms are the products of interests, and a state's obedience to a norm is nothing but an epiphenomenon. International norms are merely rationalizations of self-interest.

Central tenets of this school of thought are that states are rational actors moving rationally to maximize outcomes. The most relevant features of states under neo realism are their rationality and ability to make calculations for their behaviour, and that states will make such cost-benefit decisions under the coercion of other, more powerful states. Coercion may be in the form of force, but more commonly it adopts the form of economic and trade sanctions.

Realism has serious limitations. How do states come define their interests and how can interests be redefined through certain political processes? Realists tell us little about these questions. From the rationalist perspective, interests are simply out there waiting to be discovered. There is no chance that states' identities and interests can be defined by prevailing ideas or norms.

Liberal theories, which are epistemologically rationalist, emphasize the role of internal or domestic policies and institutions in explaining variations in state behaviour. They argue that states with representative governments, constitutional protections for individual rights and market economies operate in an international "zone of law" rather than a "zone of politics" (Raustiala, 2000, p. 412). In Anne-Marie Slaughter's view, the "distinctive contribution of Liberal IR theory is its emphasis on interaction between individuals operating in society and the 'state,' meaning an aggregation of government institutions, and the way in which that interaction shapes state behavior at the international level" (2005, p. 96). Neoliberal institiutionalists (Axelrod and Keohane, 1985; Keohane, 1984; Krasner, 1983; Slaughter, 1994) consider norms to be more enduring and influential than do the realists. For Krasner, norms, which are considered one component of regimes along with "principles, rules and decision-making procedures," are defined as: "standards of behaviour defined in terms of rights and obligation" (Krasner, 1983, p. 3). Neoliberal institutionalists have granted only a limited role to norms, assuming that interests are still the key to state behaviour. Norms influence behaviour only when they help states advance their interests by resolving coordination problems with other states. According to Keohane (1984) states that benefit less from the rule will eventually break the given rule. The continued pattern of states' responding to norms and rules depends on whether the norm provides each state satisfactory benefit. In this regard, norms are intervening variables between material incentives and state behaviour.

Even though neoliberal institutionalists have underscored the importance of norms in world politics, their on-going relevance in cost-benefit analysis does not explain why states obey international norms even in situations where international norms provide no clear benefits to states. Because international norms are still seen as instruments whereby states eventually seek to attain their interests in wealth, military might, or some other material capability, non-functional norms such as human rights norms are hardly considered critical in understanding state behaviour. Human rights norms, from this perspective, only resolve coordination problems or advance the

common interests of states. In short, those explanations still return to interests-based motives. States adhere to international norms when norms offer material benefits or under the threat of sanctions.

2.2.2. Constructivism - Norm-based approaches

As a reaction to this rationalist view, constructivists suggest that many international norms do not serve clear functional purposes. While rationalists see norms as a reflection of the fixed preferences of states, the constructivist approach considers that norms play a role in determining those preferences. States adopt norms through a process of social interaction and learning. The constructivist theory of compliance emphasizes the "moral force" of rules.

Haas wrote that constructivist theory is particularly relevant when analysing human rights norms because "morality may play a larger role in human rights than other issues (…) because the very justification of the treaty is grounded on normative claims" (2000, p. 62). Norms are argued to influence the interests and actions of decision-makers through their regulative and constitutive effects on state identity. Therefore, a state changes its behaviour not only because of the economic costs of sanctions. It changes its behaviour when it is affected by other states and non-state actors and as the result they affect a state's understanding of its identity and its standing in an international community of states (Lutz and Sikkink 2001, p. 5; Also English School literature: Little, 2000, p. 395-422).

Under this broad approach of constructivism, the focus is on the strength and quality of international rules and norms. The adoption of new norms within states may lead to changes in state interests, identity and behaviour. Therefore, the role of socialization looms large in many norm-based accounts. State actions can also be influenced by international institutions, defined as "persistent and connected sets of rules (formal and informal) that prescribe behavioural roles, constrain activity and shape expectations" (Keohane, 1989, p. 3).

Norm-driven theories stress the function of socialization in diffusion of human rights and view state interests as socially constructed and thus amenable to change. They believe that socialization might elicit norm diffusion. For example, Wendt's argument (1999) is that the ideational structure has a constitutive and not a regulative effect on states. This means that states actors change their interest and identities in the

process of socialization and by interacting. According to Wendt, that is only possible when we think of the states as 'pre-social' actors with certain basic needs. Certain interests are not simply given prior to international interaction. Socialized beliefs are about what types of aims are worth pursuing. So, while individuals and states may have certain basic needs, how these needs are manifested in particular actors will be a product of social discursive practises (1999, p. 113-35).

German constructivists Henning Boekle, Volker Rittberger and Wolfgang Wagner define international norms as "those expectations of appropriate behaviour which are shared within international society or within a particular subsystem of international society by states, its constituent entities (Boekle et al. 1999, p.13). They argue that norms can be distinguished from other variables because they are intersubjective as opposed to ideas, beliefs or convictions which can be individually held; require a value-based expectation of behaviour; and involve a value reference which results in a counterfactual validity (i.e. if a norm is occasionally violated, its existence does not have to be called into question) (Ibid., p. 5-6). Finnemore and Sikkink also emphasised the intersubjective and evaluative nature of norms encompassing "oughtness and shared moral assessment"; they observe: "We only know what is appropriate by referencing to the judgement of a community or society. We recognize norm-breaking behavior because it generates disapproval or stigma and norm-conforming behavior either because it produces praise or in the case of a highly internalized norms, because it is so taken for granted that it provokes no reaction whatsoever" (Finnemore and Sikkink, 1998, p. 892).

The crucial difference from the previous perspectives is the inclusion of identity in the analysis of norms in international politics. It shows that more often than not, constructivism is related to a discovery or at least an appreciation of what role identity plays in international politics. One of the concrete mechanisms of identity creation is based on conscious efforts to change identity (Wendt, 1999, p.100). As the new identity can affect another state, this process is not only about changing behaviour but also about changing perceptions and interests. Constructivist theories have defined norms, at a basic level, as standards for appropriate behaviour for actors with a given identity. International norms are shared understandings founded in an international society, where members can judge the appropriateness of each other's actions (Risse and Sikkink, 1999). They are social as they are based on the agreement of other members, whether implicitly or explicitly, as to the dynamics of the norm, i.e.

what behaviours the norm covers and when it is applicable. International norms are understood, by constructivist scholars, as expectations that are in a sense produced by membership of international society. Constructivists do not deny that states engage in ends-means calculations in furtherance of their perceived interests, and that in the area of human rights, often actors' embracing of norms is originally strategic and instrumental. However, due to the fact that both national identities and national interests are "socially constructed products of learning, knowledge, cultural practices and ideology" (Risse and Sikkink, 1999, p.10), constructivists aim to uncover the process producing shifts in actors' identities and subsequently, interests. This approach recognizes the potential for positive transformational effects through interaction in the international system, but how norms and, more specifically, international laws become internalized is not well explained. My research will try to bridge this existing gap in constructivist theory.

As mentioned by Koh (1996), the constructivist state actors are interested in the maintenance of a law impregnated international society. Kenneth W. Abbot (2000) stated that it is important for them to maintain such a society because they are aware that their "shared subjective understandings and norms" will define their identity. He added that to the constructivists, all fundamental notions, such as those within international jurisprudence, are contingent, subjective, and perpetually at play. Vasquez wrote an analysis of reality as a social construction. He argued that whenever ideas are propagated and people act on them, part of the elements of these ideas are brought into light. Vasquez further pointed out that "as certain rules and norms are obeyed, institutionalized and enforced through a variety of social mechanisms, a reality comes into existence" (1995, p. 215). In an international context, this reality may mean having a law impregnated society for the sake of establishing a state's identity.

International relations scholar Martha Finnemore's constructivist approach resembles institutionalist ontology: "We cannot understand what states want without understanding the international social structure of which they are a part. States are embedded in dense networks of transnational and international social relations that shape their perceptions of the world and their role in that world. States are socialized to want certain things by the international society in which they and the people in them live" (Finnemore, 1996, p. 2).

From a constructivist perspective, international structure is determined by the international distribution of ideas. Nevertheless, an important point of departure is that constructivism assumes that the way in which global institutions shape state decision and policy is through persuasion about the value and legitimacy of international standards. For instance, Franck's approach (1988) relies on the idea that international rules will be observed because they are perceived as legitimate by those who apply them. One constructivist view is that the functionality of international human rights norms is determined by the process of socialization of these norms at the domestic level.

2.3. Why International Norms Matter

The 'norm-driven change' model articulates the causal mechanism of how the international normative environment influences domestic politics and foreign policy decision-making. Given an understanding of how international norms help states build an image of the world and construct their identity, the model further suggests that the resulting world image, as well as state identity, become unstable when the international normative environment undergoes a transformation. An uncertain normative environment is defined as a situation where there is a lack of a predominant governing principle, or the previously dominant principle starts facing challenges from other principles and begins eroding vis-à-vis others. For instance, when policymakers observe other states conducting policies based on various governing principles, rather than one, or when they recognize a disjuncture between its course and others, these conditions are perceived as an uncertain normative environment by policymakers.

There are several important political consequences caused by an uncertain normative environment. First, states are likely to engage in re-evaluating the environment as well as their identity in the changing world. An increasing number of domestic discussions regarding where the world is heading, i.e., new global developments, and the state's position in the emerging normative system, tend to take place. I call this re-evaluation process the norm selection process through which states construct their own version of identity as well as the environment. As a result of this process, a new set of national interests and a new foreign policy course is set.

2.3.1. The Norm-Driven Change Model

Norm-driven change is a sequential model, in which a high degree of systemic uncertainty leads to political change at the domestic level. The sequence of political change is divided into two parts. The first part of the sequence focuses on uncertainty in the international normative system, a systemic effect that triggers domestic political change. The international normative system consists of explicit and implicit values, ideas, and principles shared by the members of the system, typically states. The model suggests that the higher the level of normative uncertainty, the more likely it is that change in foreign policy orientation will take place. The systemic uncertainty primarily derives from the heterogeneous nature of the international normative system. The availability of multiple norms and governing principles within a system creates an uncertain environment. The degree of uncertainty becomes especially high under a heterogeneous and unstable normative environment, i.e., a larger number of norms are available within the system, and the relative degree of adherence to norms by states changes. Putting this into context, the interwar period is a prime example of a highly uncertain normative environment. Not only did a variety of norms exist, but the popularity of these norms and states' adherence to them were also in flux.

2.4. Socialization

In this section I develop a constructivist approach to international socialization. There are two kinds of socialization theory. One approach focuses on interactions among state officials at the international level. Norm-advocating states use persuasion and knowledge to influence policymakers of a norm-violating state. It is argued that in the process of interaction, violating state decision-makers are convinced by transnational actors to change their views and policies. For example, Finnemore pointed to the vital role of the UN in promoting educational systems in developing countries. Another approach, however, places emphasis on how transnational actors such as NGOs mobilise domestic groups in norm-violating states, who in turn put pressures on norm-violating governments to change their views and policies. For example, Risse and his research team explored the connections between international human rights norms and domestic political changes.

Although the two approaches emphasise different causal mechanisms in explaining the impact of human rights norms in bringing about domestic political change, one common theme is that they all tend to focus on how external factors

influence the violating state's behaviour. Social constructivists do not take the interests of actors for granted, but instead problematize and relate them to the identities of actions. Identities define the range of actors' interests considered as both possible and appropriate. Identities also provide a measure of inclusion and exclusion by defining a social 'we' and delineating the boundaries against the 'others'. Norms become relevant and causally consequential during the process by which actors define and refine their collective identities and interests.

Some constructivists stress the importance of transnational networks. This literature focuses on the networks of actors who organise to place certain issues on the global agenda, who in effect act as "carriers" of the principles embodied in international regimes (Keck and Sikkink, 1993). This approach to transnational politics conceptualizes the role of such actors as the internationalization of domestic politics, because they seek to influence decision-making on local, as opposed to foreign policy, issues. However, certain issues subject to transnational activism transgress the distinction between local and international issues. Human rights, for example, refer to state-society relations and have traditionally been considered a domestic issue. Nonetheless, the category of rights itself has been internationalized by the establishment of a global regime seeking to regulate behaviour on this issue. Transnational networks are formed by many entities, which can include international and regional organizations, international nongovernmental organizations, private agencies and foundations. These various individuals and agencies, operating at different levels of authority, are connected to each other by "shared values, a common discourse, and dense exchanges of information and services" (Keck and Sikkink, 1993, p. 2-6).

Political socialization is the process by which actors "learn to adopt prevailing norms, values, attitudes and behaviors accepted and practiced by the ongoing system" (Sigel, 1970, vii). Norms are cultural constructions that generate and maintain a collectively agreed upon standard of appropriate behaviour (Finnemore, 1996, p. 22; Schimmelfennig, 2001, p. 6; Checkel, 1999, p. 83). As such, normative standards create behavioural expectations between members. State socialization within international society occurs when norms are transferred to the national level in the form of new understandings, values, attitudes or types of behaviour. States can be impacted by socialization in either regulatory or constructive ways (Schimmelfennig, 2001, p. 10). In the first instance, norms constrain actor behaviour without affecting

deeper interests or identity (Johnston, 2001, p. 495). In the second instance, norms can provide actors with new understandings of their role or identity (Checkel, 1999, p. 84). At that point, norms have been internalized and the interests of actors have changed permanently. Regulation and sanctioning by an external institution is complemented or even superseded by internal sanctioning (Coleman, 1990, p. 293) which makes the violation "of an established norm psychologically painful" (Axelrod, 1986, p. 1104). As part of identity, norms assume a 'taken-for-grantedness' character and the gains from behavioural compliance are evaluated in abstract social rather than concrete and consequential form (Johnston, 2001, p. 495; Risse, 1997, p. 16). Identification between actors supports norm internalization. By identifying with the socializing agent, a focal actor takes the agent's interest as his own. Identification processes create similarity of interests through the need of one actor to associate with another. The need for association or affiliation is the fundamental objective that creates and sustains all social collectives. Like individual actors in families, peer groups or societies, states identify with one another to organize their knowledge about reality and their place within it (Druckmann, 1994). The psychological need to become or remain a member of the group will assure compliance with its principal norms (Axelrod, 1986, p. 1105). Thus, membership within a social group provides a normative context for what constitutes proper behaviour and attitudes (Flockhart, 2005, p.46). Social groups will control the behaviour of their members through social pressure.

State preferences and interests, generally taken for granted as exogenous and pre-determined in rationalist explanations, are, in fact, endogenous, dynamic and relational. These preferences are also inextricably linked to identities, which share these characteristics. Thus, constructivists do not deny that actors (even non-state actors such as NGOs) engage in means-ends calculations in furtherance of their perceived interests, and that in the area of human rights, often actors' embrace of norms is originally strategic and instrumental. However, due to the fact that both national identities and national interests are socially constructed, constructivists aim to uncover the processes producing shifts in actors' identities and subsequently, interests.

While the scholarship that has addressed issues surrounding the conditions under which socialization and social learning are most likely to occur is limited, Jeffery Checkel's research in this respect offers an important contribution to constructivist literature. Constructivists have frequently described the process of

international norms influencing the preferences and behaviour of actors as a process of "socialization" or alternately "social learning" and "social interaction" (Checkel, 2001). The classical definition of socialization has been defined as the process by which "actors internalize the expectations of behaviour imparted to them by the social environment (Boekle, Henning et al., 1999, p.8). Checkel has discussed two types. On the one hand, a state may act appropriately by learning a role. This means that self-interested instrumental calculation has been replaced by conscious role-playing. Checkel called it Type I socialization. On the other hand, a state may do more than just play its role and imply that it accepts community norms as "the right thing to do". This is Type II socialization. There is growing empirical evidence to illustrate that what starts as strategic, reward-based cooperation within international institutions often leads at later points to preference shifts. For instance, Kelley (2004) found precisely this pattern in her work on the Baltic states, European institutions and minority rights. In several instances, she revealed that a highly strategic and self-interested process occurs at the beginning, as state elites cautiously calculate how to change laws to reduce pressure from the EU, EC and OSCE.

Internalization, a closely related concept, in turn takes place when norms acquire a "taken for granted quality" and become widely accepted (Finnemore and Sikkink, 1998, p. 904). When norms have been fully internalized, actors are "no longer choosing to conform in any meaningful way" and no longer thinking seriously about alternative behaviours (Ibid, p. 919). A classic example of such norm internalization at the international level can be seen in the way international political organization through the medium of the state is taken for granted. Koh also stressed different forms of internalization, which take place in each domestic setting, highlighting social, political, and legal internalization processes. Social internalization occurs "when a norm acquires so much public legitimacy that there is widespread general obedience to it," political internalization results from "elites accepting an international norm and adopting it as a matter of government policy" and legal internalization is the product of "international norms being incorporated into a domestic legal system through executive action, judicial interpretation, legislative action, or some combination of the three" (p. 2657). The relationship between the three forms can be quite complex but it is not uncommon for one form of socialization to spur, or for policy change to materialize when only one or two forms of socialization has occurred depending upon a variety of circumstances.

2.4.1. Complex Socialization

The analysis presented here is based on theoretical insights from Social Identity Theory (SIT) and particularly from a social constructivist framework called 'Complex Socialization', which arguably allows for differentiation between on the surface similar socialization processes (social psychology: Billig and Tajfel, 1973; Turner, 1987; IR: Druckmann, 1994; Mercer, 1995; Risse et al., 1999; Flockhart, 2004, 2005a, 2005b). The state socialization process is so complex that practicality often prevents consideration of all the factors that play a role in state socialization, and focus has in most cases been limited to the elite level. By applying SIT, emphasis is on the universal and continuous self- and other categorization processes taking place, in which the conceptualization of what/who constitutes the 'Other' and the 'Significant We' is seen as a major determinant for the outcome of the socialization process. By utilizing a social constructivist perspective and seeing the process as one of identity construction through socializing a specific norm set, it is certainly possible to agree with Dobbins et al. report for the Rand Corporation that "many factors influence the ease or difficulty of nation building" (Dobbins et al., 2003).

2.4.1.1. Domestic Socialization

Findings from social psychology and SIT suggest that identities are constructed through ongoing self- and other categorization processes in which individuals organise their perceptions of the physical as well as the social world (Dechamps, 1984, p. 543). The categorization processes take place between different social groups, each of which share a collective perception of themselves as a distinct social entity - a 'We' distinguished from other social groups (Turner, 1984, p. 518).

The process by which norm transfer takes place is crucial because it may have far-reaching effects for the prospects for successful internalization of the norm set. It seems that socialization based on reward and persuasion through reasoned argument is more likely to be successful than socialization based on force or "lecturing" (Checkel, 1999a) or a variety of negative forms for social influence such as punishment or shame (Johnston, 2001). However, not all methods of persuasion are suitable vis-a-vis the large group (a whole people) involved in nation-building, often leaving socialization strategies known as "social influence" as the only available option

(Ibid.).

It is possible for different processes of socialization and norm diffusion to take place simultaneously, which may well strengthen the overall diffusion process (Flockhart, 2004) and create domestically based socialisers, and thereby enable domestic socialization from the elite level to the mass level. The more channels of socialization are available, the more likely it is that the socialization process will be robust with great likelihood for success.

Socialization also takes place both within the international and the domestic structure. As the aim here is to investigate norm socialization into a domestic setting, which includes both an elite and a mass level, it is necessary to look in some detail at the structure of the domestic level. At the elite level, such considerations include domestic political structures and processes representing the relationship between state and society as well as the individual characteristics of the state, which are likely to determine the ease or difficulty in gaining access to opinion leaders and establishing the socialized norm as a "winning idea set" (Risse-Kappen, 1994, p. 185–214). At the society level, political culture and participation traditions need to be considered, as the less tangible aspects of state-society relations may prove influential in determining successful society-level acceptance and internalization of the socialized norm set. It is important to note that although a domestic society consists of a society and an elite level, it cannot be assumed that the two domestic levels have identical self- and other categorization processes, as they may each constitute separate social groups, which may have different salient self- and other categorization processes, leading to different perceptions of interests and political preferences, and different perceptions of what constitutes an external shock.

The connection between international and domestic norms has to be perceived as a dynamic relationship. Linked with this factor is the dynamic of international socialization, especially if "state leaders aspire to belong to a normative community of nations" (Cortell and Davis, 2000, p. 82).

2.4.1.2. Transnational Networks Model and International Socialization

In the model, states' interactions, communication and the international structure create shared expectations, understandings, knowledge, norms and frames of reference, which in turn shape actors' identities, interests, and ultimately behaviour. The constructivist literature often characterizes this dynamic as a "peer pressure"

among states linked to perpetual concerns with their reputations and identities.

Adherents to this socialization model tend to point to the important role played by one additional agent: international organizations. International organizations have been particularly effective "because the rational-legal authority they embody is widely viewed as legitimate and good" (Finnemore and Sikkink, 2001, p. 401). The case study focuses on the UN Security Council and International Criminal Tribunal for the former Yugoslavia (ICTY). Furthermore, international institutions also facilitate the formation of epistemic communities in which experts from around the world, working in specialized fields, meet repeatedly in less politicized settings to discuss norms and policy options. They frequently enter with shared world views and values, which are strengthened during the course of their work together. In the transnational networks model, emphasis is placed on the interactions between norm-violating states, liberal states, domestic groups (including NGOs and opposition groups), transnational advocacy networks or TANs (including international NGOs and international organizations). Although this chapter does not adopt a liberal approach, it is not in conflict with that school. Liberal theory stresses the importance of international institutions and their role in promoting state compliance. Liberal international relations theory also looks to the impact of ideas and norms, but grounds this impact in the resulting effects on the individuals and societal groups that create (mediated by institutions) state preferences. States as entities are not "socialized" in the liberal view; rather, individuals may be, then they act rationally and strategically to achieve political goal.

Ann Marie Clark's work (2001) traced how Amnesty International has helped to transmit international humanitarian practices norms to domestic settings, while redefining states' interests and practices. Clark argued that international non-state actors can help to diffuse human rights norms, often leading to consequential changes in states' practices. Beth Simmons (2000) likewise suggested that regional norms or regional networks may explain why states commit to international norms by acceding to treaties. Although Simmons asserted that rational calculations may motivate states in a region to accept a treaty, she concluded that a normative impetus could be responsible. For instance, leaders committed to democratic values may be able to bring compliance even if facing domestic opposition (for example, Nelson Mandela or Vaclav Havel). Some authors stressed the extent to which domestic institutions can have impact on the influence of international humanitarian rights norms. Jeffrey

Checkel (1999), for example, examined these factors in the context of European citizenship.

Studies of transnational networks that link international and domestic norms can offer a comprehensive approach, and Kathryn Sikknik has offered the most illuminating approach. Her studies link the international normative context of civil society, while stressing the role of socialization. From the perspective of international law, Harold Koh has highlighted how transnational legal processes can elicit human rights compliance. Daniel Thomas (2001) argued that human rights changes in Eastern Europe can be linked to Helsinki norms instituted in 1975. States become slowly socialized to identify with international society and comply with international human rights norms out of a sense of appropriateness. In the same fashion, Susan Burgerman's work (2001) on the work of the UN in encouraging human rights reform in Central America described five factors that account for the degree of human rights compliance: relevant international laws, the interests of a major power, transnational network activities, domestic allies in target states and political elites.

However, further empirical research is required to illustrate more specifically how troubled states are acculturated. In my view, sufficient evidence supports the proposition that states respond to global cultural forces, but this evidence says little about how this process works. Theoretical models exclusively can only partly explain the processes by which international humanitarian law is received into domestic legal systems. Case studies will provide findings that are both satisfactory and more useful if they develop mechanism-based explanations of observed outcomes. Also, case studies must look at both domestic and international levels that illuminate important global patterns.

The state that is socialized must establish a positive identity with the socialisers to which the law belongs. It also needs to express a desire to be included in that group. It is impossible to socialize actors who are strongly opposed to becoming part of the social group of the socialiser. Therefore, it would be right to apply the rationalist theories which stress the need for force or deterrence. The law is a particularly powerful method for internalizing new norms because breaches can be sanctioned. However, it also suggests that once the state starts to comply with norms, it can change its attitude and interests, and this is where constructivism is best applied to explain states' behaviour. This is especially true in post-conflict state building.

2.5. A Spiral Model of Norms

Diffusion is the temporally and spatially clustered process by which information is transmitted from one actor to another (Starr, 1991, p. 359; Elkins and Simmons, 2005). Scholars of diffusion processes emphasise the interdependence of actors within the international system, and the effects such interdependence has on the movement of principles, norms and policies across borders. The presence of one actor adopting a certain idea, norm or practice increases the opportunity that another one will follow in adoption (Elkins and Simmons, 2005). The term 'norm diffusion' is born out of the context of neo-institutionalism (Boli and Thomas, 1997; Meyer et al., 1997). The basic argument of this approach is that bureaucratic organizations do not rise and spread because they are functional, but because they are legitimated by a wider environment that supports rational bureaucracy as a social good. Accordingly, supposedly abstract functional principles such as rationality or efficiency have to be conceptualized as culturally embedded (March and Olsen, 1984).

Finnemore and Sikkink (1998) build upon these neo-institutionalist assumptions and create a model of global norm diffusion including concrete mechanisms and agents. They define norms as "standards of appropriate behaviour for actors with a given identity" (Finnemore and Sikkink 1998: 891), yet what is appropriate behaviour depends on intersubjective judgment. While there are "no bad norms from the vantage point of those who promote the norm", this judgment might not be shared by the majority. "Because norms by definition embody a…shared moral assessment, norms prompt justifications for action and leave an extensive trail of communication among actors" (Finnemore and Sikkink, 1998, p. 892). Starting from this understanding of norms, Finnemore and Sikkink develop a model of a "norm life-cycle", containing the three stages of norm emergence, norm cascade and norm internalization.

In the first stage, norm entrepreneurs with effective organizational platforms call attention to norms or create new norms. They try to persuade relevant actors and the general public to reconsider the dominant interpretation of a certain issue in accordance with the norm. This implies normative contestation, and persuasion strategies of norm entrepreneurs often use explicitly inappropriate means to redefine "appropriateness". The norm moves to stage two and "cascades" when it reaches a "threshold point": that this, when the norm entrepreneurs have persuaded a critical mass of states and when the norm has become internationally institutionalized to a

certain degree. From this point on, the forms of norm acceptance change: norm followers imitate norm leaders. These following states do not adopt a norm because they have been persuaded by pressure groups: instead, their motives are "a combination of pressure and conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem" (Finnemore and Sikkink, 1998, p. 895). Thus, the dominant mechanism in the second stage is international socialization through international legitimacy and esteem. In the third stage, the norm acquires a taken-for-granted quality. It is no longer a subject of public debate. Internalized norms can be both extremely powerful and hard to discern, precisely because they are not contested. The motive to follow the norm in this stage is conformity, and usually the norm is taken care of in specific institutions or bureaucracies.

While this model is a helpful construct to operationalize norm diffusion, it remains too static and too linear. In particular, the idea of a norm "cascading" over those states that are not entirely persuaded by it seems simplistic, as external motives of norm adoption may have consequences for norm internalization. Arguably, those states that seriously scrutinize the meaning of a norm and accept to behave accordingly may perform a much more comprehensive process of internalizing the norm than states that follow the norm because they are looking for international prestige. Further, even if a norm has become global in Finnemore's and Sikkink's sense, it still remains contested within some domestic contexts.

The study of Risse et al. (1999) brings new insights in how a "fit" between international norms and domestic understandings can be achieved. The research on transnational socialization is elaborated most fully in the *Power of Human Rights* (Risse et al. 1999). The Spiral Model is representative of the constructivist point of view (Risse 1999, 2000).[1] Inspired by the communicative action theory of Habermas, which conceptualizes norms as a forum or an institution for public debate where mutual understanding can be reached, Risse suggests a five-stage compliance model of human rights norms: repression, denial, tactical concessions, prescriptive status and rule-consistent behaviour. These five steps are distinguished mainly by the modes of communication between norm-violating actors and norm-monitoring regimes. The mode of instrumental rationality dominates the stages of repression and denial, where

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[1] An earlier alternative approach for understanding norm compliance behaviour is the "Life Cycle" model proposed by Finnemore and Sikkink (1998).

advocacy networks begin to expose the case in international society, and norm-monitoring regimes put the norm-violator on the international agenda. On the other hand, the norm-violating actor, in the examples Risse used, denies both the credibility of international critics and the validity claims of human rights norms. As pressure movements and social actors (both international and domestic) attempt to hold a target state accountable, the state may nonetheless undertake more concrete and compliant changes. Risse et al. argued that TANs, consisting principally of international NGOs like Amnesty International and Human Rights Watch, are non-state actors that play a fundamental role in socialization processes. First, TANs persuaded states with ideological commitments to human rights norms that they must engage in political dialogue and put pressure on norm-violating states.

This persuasion, dialogue and pressure directed from the TANs and foreign states results in norm-violating state actors making scattered tactical concessions. These concessions in turn open up space for domestic social actors (namely NGOs) and opposition groups seeking reform to bring international norms to the fore of domestic political discourse and render actors accountable for promises they have made. At the tactical concessions stage, the norm-violating actor begins to engage in rhetorical exchanges with advocacy networks and norm-monitoring regimes, and to make some changes in domestic politics in order to deflect overwhelming pressures, mainly from without. A prescriptive status indicates the harmonization of domestic legal frameworks with international norms by signing, ratifying and institutionalizing human rights conventions, although actual implementation of human rights norms remains lacking and violations are frequently reported. At this stage the norm-violating actor begins to shift the communicative pattern from rhetorical exchange to argumentative behaviour. Finally the stage of rule-consistent behaviour is achieved "when international human rights norms are fully institutionalized domestically and norm compliance becomes a habitual practice of actors enforced by the rule of law" (Risse, 1999, p. 538). At the conclusion of the process, states' new consciousness and new interests (usually accompanied by new identity formation) are internalized, which is seen in the case of Bosnia. This transnational social networks model makes constructivist theory significantly closer to developing a clearer picture of the diverse dynamics at play by illuminating the host of agents of socialization and the complex relationships and interactions that contribute to states' internalization of international norms.

What runs through the five stages is a constructivist premise not found in the rationalist account, argumentative rationality, which corresponds to the issue of legitimacy. In order to raise international awareness of norm-violating behaviours and mobilize support for sanctions, transnational advocacy groups must not only present the fact of abuses but also argue in a patterned way: that is, they must make a better argument by appealing to moral authority and agreed norms. On the other side, the defendant must find reasons for counterargument that may justify its allegedly abusive behaviour if its leadership chooses to remain as a legitimate member in the international society. In other words, broadened and deepened engagement in international socialization is conducive for mutual understanding. Finnemore and Sikkink (1998, p. 902) indicate that "states comply with norms (…) for reasons that relate to their identities as members of an international society. Recognition that state identity fundamentally shapes state behavior, and that state identity is, in turn, shaped by the cultural-institutional context within which states act, has been an important contribution of recent norms research." Risse suggested a phenomenon of self-entrapment in that "[t]he more norm-violating governments accept the validity of international norms, the more they start arguing with their critics over specific accusations" (1999, p. 543).

The five-phase spiral model traces what the authors label as the socialization process of human rights norms, focusing on the causal mechanisms that facilitate the internalization of norms and practices into domestic political arenas. Perhaps the greatest asset of the spiral model is its systematic demonstration of the process through which human rights norms become internalized into state practice by states with histories of human rights violations to induce compliance.

2.6. Conclusion

Constructivism diverges significantly from the perspectives of rational interest-oriented theories. Instead of limiting international norms to purely regulative functions, constructivists privilege the social nature of international norms, how they create identity (particularly state identity), and consequently the very interests of states. International norms are therefore fundamental to our understanding of international politics. From such a perspective, scholars are able to account for a greater range of compliance behaviours than the above positions allow.

In the realm of international relations, the role of norms is particularly

important because there is no formal institutionalized process for the formulation of international laws, much less any central enforcement authority. Since rules and norms are based on predictable and replicable patters of action such as custom and habit, they would be better than other interest-oriented rules in terms of stability and sustainability.

CHAPTER 3: Human Rights Norms

3.1. Introduction

This chapter provides an introduction to the genesis and historical development of the human rights norms, with a focus on diffusion mechanisms. It is not intended to be an exhaustive in-depth treatment of all technical, normative and political issues that may arise in the course of its operation, but seeks to address the principal design features that are relevant for an understanding of the system in operation and for the chapters that follow. The focus is on human rights law and the application of the international humanitarian law (IHL) (also known as the law of armed conflict), as it often seems to be too hopeful or naive for state practice and rules that can be enforced. In some contexts, especially in inter-state wars fought by technologically advanced military forces, the law appears to favour the use of force at least as much as it prohibits it, normalising and thereby legitimizing acts of violence that many people think of as morally wrong. In other situations, especially in intra-state war, there is the pressure from international lawyers and activists that the prohibitions of torture, persecution and abuse apply in these conflicts.

3.2. Definition of Human Rights

Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings…[they] allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection (United Nations, 1987, as quoted in United Nations, 1994, p. 4).

Human rights are those rights that, first, one has merely due to the fact that one is a human being and, second, are necessary in order for one to live a life of dignity (Donnelly, 2003). As a result, the list of internationally-recognised human rights covers a wide range of different topics. For instance, the International Bill of Human Rights, which consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), contains rights as

wide-ranging as the right to a fair trial, the right to be free from torture, the right to a decent standard of living and the right to rest and leisure. Each of these rights has been made a part of the international human rights regime, and violations of these rights by states that have ratified the international treaties codifying them can properly be seen as violations of international law. As such, any of these rights would be an appropriate target for social scientific inquiry.

3.3. Development of International Law

The contemporary understanding of modern human rights thinking was affirmed by the United Nations in 1948. Human rights law refers to the statutes that guarantee rights of individual freedoms, respect for human dignity, liberty and equality. Human rights laws oblige states to guarantee rights to all persons under their jurisdiction. During times of war, states tend toward exonerating themselves from these obligations. Thus, other safeguards are provided by international humanitarian law to protect personal liberties. Human rights law technically applies at all times, during peace and during conflict. Thus, it provides additional protection for civilians. However, international humanitarian law has historically been the main law of armed conflict. The Universal Declaration of Human Rights contains many of the basic human rights provisions that protect civilians during armed conflict. While it is not considered to be a binding treaty, most people agree that it has either become customary law due to its near universal acceptance or that it serves as a general principle of law because it is an official UN document. Even though the UDHR is not meant solely for times of war, it prohibits many of the common civilian abuses that occur during armed conflict. IHL only applies during armed conflict, while human rights law applies before, during and after conflict. Since this thesis considers the post-conflict period as part of the time when civilian abuse continues, human rights law is indispensable because IHL does not always apply after official fighting.

This section will explore the history of human rights and the current human rights provisions that apply to civilians. The law of armed conflict governs conduct during war and ensures humanitarian restraint. Modern humanitarian law first emerged in the mid-19th century. The Geneva Conventions of 1949 confirmed the foundation for rules of war in the early 21st century. A grasp of the origins of normative principles is vital to understanding their current operation; as Francois Bugnion notes, "It is impossible to grasp fully the sense and the scope of a rule

without first understanding the context in which it was first established and that in which it was supposed to take effect" (Bugnion, 2003, p.3). Without this historical grounding, attempts to fully understand the civilian immunity norm, and to determine whether intersubjectivity on its constituent elements exists, may fall short.

The differences between international humanitarian law on the one hand and international human rights law on the other pose potential difficulties. International human rights law was designed originally to govern the state/individual relationship, with the state being the bearer of the obligation and the individual the possessor of the right. If international human rights law is to be applied directly in situations of internal armed conflict, this vertical relationship may require re-thinking, with non-state armed groups potentially being held subject to human rights obligations. International human rights law has been used in situations of internal armed conflict in a number of different ways. It has been used as an interpretational tool, to interpret provisions of international humanitarian law. For example, international human rights law concepts have been used to define similar concepts in international humanitarian law, as was the case with the definition of torture. More controversially, international human rights law has been used directly to regulate internal armed conflict rather than to inform regulation through international humanitarian law. International law norms may be said to be part of a broader regulatory framework ('post-conflict law'), which encompasses substantive legal rules and principles of procedural fairness governing transitions from conflict to peace. There is some evidence that the establishment of sustainable peace requires a collective bargaining process, involving a fair hearing of the interests of all parties to the conflict at the negotiating table. There is also a trend towards accommodating post-conflict responsibility with the needs of peace in the area of criminal responsibility. This specific tension did not receive broad attention in historical peace settlements, partly because the concept of international criminal responsibility was less developed, and partly because peace settlements were less frequently dedicated to the resolution of the problems of civil wars. Today, it is at the heart of contemporary efforts of peace-making. Modern international practice, particularly in the context of United Nations peace-building, appears to move towards a model of targeted accountability in peace processes, which allows amnesties for less serious crimes and combines criminal justice with the establishment of truth and reconciliation mechanisms.

3.3.1. The UN Human Rights Instruments

This section surveys foundational human rights instruments sponsored by the UN to improve the human rights situation globally. Most of the provisions have universal application and are binding to all state parties. The Universal Declaration of Human Rights is one of the basic sources of universal human rights and human rights law. On December 10, 1948, the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights. The UDHR preamble states that member states pledge themselves to the promotion of and universal respect for human rights and fundamental freedoms, reiterating that the Declaration is a common standard of achievement for all peoples and all nations.

The objective of this section is to establish the current status and content of one of the principles of the law of armed conflict and the focus is on non-combatant immunity (the discrimination principle). Such a study involves an analysis of both conventional and customary sources, as in 1977 the norm was incorporated into treaty law by the Protocol Additional to the Geneva Convention of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), non-combatant immunity is one of the cornerstones of the humanitarian law of armed conflict: "Abstractly stated, the norm requires parties to an armed conflict to distinguish at all times between civilians and combatants and between civilian and military objects and to direct their operations only against the latter" (Graham, 1993, p. 2). Along with the principle of proportionality (use of adequate means to ends) and rules deemed from the principle of chivalry (the prohibition on the use of perfidious and treacherous means), the non-combatant immunity principle describes the framework and much of the content of the *jus in bello*.

With the movement in the latter part of the last century and in this century for the codification of the law of armed conflict, the *jus in bello* has been divided into the law of the Hague and the law of Geneva (Pictet, 1985, p. XI-XX). The law of the Hague is the term used to describe the law of warfare: that is, the means and methods of warfare. The law of Geneva refers to humanitarian law whose purpose is to strengthen respect for human life in armed conflicts. "Non-combatant immunity is a fundamental component of the law of the Hague and has the potential to impose considerable restrictions on the means and methods of warfare" (Graham, 1993, p. 4). Non-combatant immunity evolved over many centuries of Christian theories of the 'just war'. There are many just war theories throughout civilizations (e.g. Sornarajah,

1985, p. 238). However, the Christian theory of the just war had a considerable impact on the development of the law of war, involving the principle of non-combatant immunity (Hartigan, 1967, p. 207). It is beyond the scope of this work to trace the development of just war theory and the evolution of non-combatant immunity in that theory.[2]

The growth of civil wars poses a problem for the principle of non-combatant immunity. The most significant problem is in determination in the practice of parties of differentiating between civilians and combatants in armed conflict. There has not been a comprehensive study of the development of the norm of non-combatant immunity from the emergence of the civil war of international law to the present day. A study of non-combatant immunity is of considerable importance because there has been uncertainty about the future of distinguishing between non-combatant and combatants. My next motivation for this kind of study is the formation of the principle of non-combatant immunity so that it has modern application to the civil war and can be embedded in the post-conflict context.

Although Rousseau provided the ideas of humanitarianism, it was events of the second half of the eighteenth century that provided the impetus for the rapid development of humanitarian law. The next section describes the nature, historical development and current provisions of international humanitarian law. It will conclude that law is necessary in controlling modern armed conflict. The descriptive analysis of the law of armed conflict is important because it specifically identifies how the non-combatant immunity principle is supposed to be upheld. Consequently, the case analysis in the second part of this thesis will heavily rely on the legal standards that are described in this chapter.

In the case of the United Nations Human Rights Treaties, the promotional dimension of the regime has become stronger as human rights norms form an "interdependent and synergistically interactive system of guarantees" (Donnelly, 1986, p. 607). This system started with the UDHR and has been further developed ever since, as the large number of specialized human rights treaties shows. The constructivist perspective makes it possible to look at human rights regimes as

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[2] Just War Theory originates from a Catholic tradition that can be traced to the writings of Thomas Aquinas. For more on Just War Theory see: Grotius (1625). The Laws of War and Peace; Walzer, Michael (1978). Just and Unjust Wars. Basic Books; O'Donovan, Oliver. (2003). The Just War Revisited. Cambridge: Cambridge University Press

contributing to and being shaped by a common international discourse on human rights: that is, they are not seen as independent procedures, but as part of a broader normative framework. As a consequence, human rights regimes' indirect and long-term influences on both international norms and domestic social change are also part of the analysis.

3.3.2. International Humanitarian Law

International humanitarian law is usually presented as a mix of "soft" customary law and "hard" treaty law. Customary law, rather than conventions, is seen as an instrument for the protection of human rights. For this reason, customary law may be firmer than conventions, the provisions of which can invite interpretative acts. In defending their wartime conduct, however, states often avoid customary law in favour of highly technical readings of treaty law (Smith, 2002). Relevant to this study is perhaps the debate over the development of human rights as part of customary international law. Custom is defined in international law as the "general and consistent practice of states…followed out of a belief of legal obligation (*opinion juris*)" (Roberts, 2001, p. 757). Thus, in a general sense, to establish an international legal custom, states must act or refuse to act on the grounds that the action or refusal to act is required by law.

Humanitarians argue that customary law fills any gaps left by treaties. The "Martens Clause" took its name from the Russian delegate at the Hague Conference in 1899, and is located in the Preamble to the Convention with Respect to the Laws and Customs of War and Land, or Hague II. The Martens Clause noted, "Until a more complete code of the laws of war has been issued (…) the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience" (Hague Convention, 1899). Respect of and commitment to the law of nations has become the solution to problems of cooperation. States' support for the rule of law shows, at the international level, the ability of a state to respect international rules. It creates incentives for states to avoid breaches of international norms that would damage their reputation (Raustiala and Slaughter, 2002).

The "Martens Clause" constitutes the most important statement of international humanitarian law. Human rights groups lean on custom and the

humanitarianism argument in order to align the laws of war with human rights law. Customs are binding on everyone in the conflict regardless of whether they participate in the treaty. Many states, however, assert that treaties manifest and even evolve customary law, and prefer to be bound only by rules that they have ratified. States, in this sense, rely on "black-letter law" as it exists on the books. However, states cannot be bound by law without their consent. Many human rights conventions include recommendations or guidelines or normative goals, not binding law.

Once a treaty is ratified, states may formally depart from their agreements, particularly "in time of war or other public emergency threatening the life of the nation," to use the language of the European Convention on Human Rights (Council of Europe, 1950, Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 15). Many humanitarian laws are considered norms of *jus cogens* (from which no derogation is ever permitted), which override general principles of international law, unlike *opinio juris* (an opinion of law or necessity) norms, which refer to the subjective element of custom as a source of law.

The 1948 Convention on the Prevention and Punishment of Genocide pronounced a very important humanitarian norm in the wake of the Holocaust: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish" (Art. 1). But committing to that obligation and even deciding that genocide is underway is left to the subjective judgment and political calculus of states. International humanitarian law may also present another problem. States may not be willing to risk interventions to stop atrocities while they are happening. They may prosecute criminals only after the fact.

In the early 1970s, the International Committee of the Red Cross (ICRC) addressed the hope of updating the 1949 Geneva Convention. In 1974, the Swiss Government invited the representatives of 122 governments and representatives from national liberation movements (Green, 1993, p. 48), to consider the proposals that had been prepared by the Red Cross. The meeting was titled the "Geneva Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts," and ended in 1977 with the adoption of two Protocols additional to the 1949.

Modern *jus in bello* specifies a humanitarian content, with particular concern for civilians who are not participating in the conflict. These civilians are described in

three main categories. In the first category are civilians or non-military personnel. This category includes any or all residents of an area in which an armed conflict is taking place. The second category consists of all those who have participated in an armed conflict and have been rendered wounded, sick or shipwrecked as a result of their activities. The third category consists of all members of one military force who have been taken prisoner by the opposing force. Schlogel (1970, p. 124) stated, "International humanitarian law starts from the premise that the individual has a legitimate right to be protected and given aid irrespective of the State to which he belongs." The primary regulations governing the maintenance of respect for these individuals are the four Geneva Conventions signed into being in 1949, with two succeeding Protocols added in 1977.

Referring to international law in terms of humanitarianism, rather than armed conflict, is a major shift in emphasis. It explicitly suggests that the 'legal community' has begun to favour the well-being of the victims who suffer the effects of armed conflict over and above the occurrence of the armed conflict itself. A change in terminology from the "'law of war" to the "law of armed conflict" allowed for the inclusion of organised violence that would not necessarily be described specifically as war. By doing so, the law could be extended to those conflicts, thereby providing its coverage. The goal of that coverage is to ensure that the protection in the law (the *jus in bello*) could be applied, while simultaneously providing a legal basis for the armed conflict itself to proceed (the *jus ad bellum*). The change in terminology yet again signifies the growing importance of the law's protections over and above the legalities associated with the *jus ad bellum*.

The most recent response to the problems encountered in war-torn countries has been the UN's International Commission on Intervention and State Sovereignty and its concept of the Responsibility to Protect. The Commission stressed that "prevention options should always be exhausted before intervention is contemplated" and these options "should always involve less intrusive and coercive measures," though it allows for military intervention under certain circumstances (ICISS, 2001, XI).

There is a dangerous balance, however, being maintained between the rights of sovereignty and the global responsibility for the protection of human rights. It is somewhat paradoxical in that law that is intended for all of humanity is dependent upon state consent (Kossoy, 1976, p. 40). As the need for humanitarian protection

increases in importance, the sanctity of the state is increasingly becoming an impediment. Nevertheless, since the state is also a vital requirement for the implementation of humanitarian law, the goals of international law cannot be properly achieved without it.

The main characteristic of humanitarian law is the conflict between the need to protect the human person and the requirements of the military or police. In this regard, humanitarian law is understood as a main body of legal code that is defined by two aspects: one outlined by the law of war, the other by human rights. These two aspects may be distinguished from each other, but as Bedjaoui (1986, p. 8) argued, are two parts that make up the larger whole. In contrast, Lavoyer (1995) treated the law of war and humanitarian law as indistinguishable. These somewhat separate viewpoints on the nature of international law, with respect to human beings in the midst of armed conflict, suggest a lack of consensus among scholars over the approach to this issue. A lack of consensus will slow the formulation and implementation of more comprehensive legal codes or rules. However, it also demonstrates the level of thought being given to the issue of humanitarian protection. Protection needs to be substantial if it is to increase in both effectiveness and applicability.

The hazy realm lying between states of peace and war, described in such terms as "hostilities" or "armed conflict," has the effect of freeing the situation from the more "traditional" ideas of war. The change in terminology from the 'law of war' to the 'law of armed conflict' suggests that the latter term is more specific to various forms of organized violence evident in the present time and space (Kossoy, 1976, p. 34-40). Determining when these rules are to be applied is almost entirely dependent upon the political or ideological goals of those involved (DePue, 1977, p. 75).

"Law of armed conflict" is more extensive in scope in order to place modern forms of violence under existing law. This manifested an effort to extend a system of legal codification created for a specific condition of DePue social interaction that may not exist any longer in its previous form. The problem of applying rules to intra-state conflict is summed up by the following: "As international law is always connected with relations between States, there is no place there for rebellion against the established power (Schlogel, p. 124). Schwarzenberger (1968, p. 240) also argued for the idea of weakness in international law in its application to intra-state conflict with the following: "…the law may have become so uncertain that it is no longer presentable as a coherent branch of international law. It may even be that the law is

reasonably clear, but that standard of law-abidingness of actual and potential parties to armed conflict has declined to a point where the applicable law is reduced to a state of utter ineffectiveness."

The qualifications arranged for the relative application of the Geneva Conventions to conflicts of a non-international character are so precise that very little of the violence taking place around the world today has any hope of qualifying (Green, 1993, p. 6). Also, the problem with Common Article 3 is that it presents an unclear definition of who is to be covered. During insurgency activities, "fighters by night frequently become farmers by day, and the civilian population often actively affords logistical or intelligence support to one side or the other (Ibid., p. 86). Protocols I and II make a much more precise definition of who must be covered by this legislation. However, even the addition of the Protocols fails to resolve a recurring problem between the law and civil war.

To sum up, the wounded and sick, prisoners and civilians must be respected and protected in all circumstances. Civilians must be treated humanely; in particular, violence to their life and person is prohibited, as are all kinds of torture and cruel treatment, taking hostages, and the passing of sentences without fair trial. The fighting forces must always distinguish between civilians and combatants, and between civilian objects and military objectives. These *jus in bello* rules are detailed and ordered, yet they fail to adequately restrain those participating in intrastate war. These rules and regulations also do not properly ensure the protection of those for whom they were designed.

3.4. Key Developments of International Law

This section addresses the attempt to shift the emphasis of the law of war to a more humanitarian approach. The principle of protecting and respecting civilians in armed conflicts is clearly institutionalized as an international customary norm. This section also details the reconstruction of the law following World War II. In that reconstruction, greater legal attention was paid to the status of non-combatants. The descriptive element of this thesis shows that international humanitarian law has a strong presence within the international community. The civilian immunity principle is vitally important. This section outlines human rights agreements and norms, and key developments in international law. The United Nations Charter in its Articles 55 and 56 required states to cooperate on human rights matters, while the December 10,

1948 Universal Declaration on Human Rights was the first intergovernmental statement in world history to approve a set of basic principles on universal human rights. "It proved much more consuming and controversial to translate the Universal Declaration into enforceable treaties" (Forsythe, 2006, p.41).

Before the Geneva Conventions of 1949, no international treaty had ever referred to the humanitarian conduct of internal armed conflict. The Geneva Conventions focused on civilian protections and its Common Article 3 was the first regulation of domestic armed conflict to be articulated in an international treaty. The Article stated that "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely" (Article 3(1) of the 1949 Geneva Convention). Specific prohibitions include "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages, (c) outrages upon personal dignity, in particular humiliating and degrading treatment; [and] (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples" (Ibid.). Article 3 stipulates certain restrictions when armed conflict occurs on a non-international basis. These restrictions involve demands that anyone in the area not taking active part in the hostilities is to be safe from attack by those who participate in the conflict (Roberts and Guelff, 1989, p. 172). In addition, allowances for the treatment of the wounded and sick, as well as the involvement of impartial humanitarian organizations such as the Red Cross, are to be guaranteed by either side of the conflict. Ground-breaking as the Geneva Conventions may have been, they still left many issues related to war's effects on impermissible targets unanswered. For example, Common Article 3 does not offer further guidance as to how to interpret the pivotal phrase, "active part in hostilities."

Protocol II, added to the Conventions, further defines the protection to be offered to victims of non-international armed conflict, ensuring the humane treatment of those victims of non-international armed conflict, whether civilians caught in the middle or fighters in combat (Ibid., p. 449-58). These protections were elaborated in Art. II of the Additional Protocol (1977) to the Geneva Conventions, usually referred to as "the law of war". Art. II aimed at "non-international" conflicts, unlike the Geneva laws that covered international war. The definition of conflicts was far from

complete, as one scholar observed "scarcely definable parties to wholly undefined conflicts" (Best, 1994, p. 178). It produced mixed results. Efforts to dissolve the distinction between domestic and interstate conflict failed; in some ways, the gap actually widened.

Among all the international humanitarian laws that have been created, one of the treaties that has recently raised concerns in terms of states' compliance with its provision is the United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. Although at the end of 2007, 145 states had signed and ratified it, there are still frequent violations of its provisions. This suggests that promoting international legal instruments and creating institutions that support them tells us little about the existence of an effective causal link between the provisions of the treaties and the way states actually behave. In particular, it is not just a problem of how to monitor compliance of the so-called "rogue states" with international legal standards. Studies (Goodliffe and Hawkins, 2006; Goodman, 2002) have shown that all states, democratic and non-democratic regimes alike, tend to depart from the behaviour dictated by international rules. States also tend to be supporters of international institutions that are unlikely to affect their status quo and to strongly oppose international bodies that can exercise some kind of jurisdictional power over them.

Therefore, understanding why states are really complying with international agreements is of great importance for a number of reasons. First and foremost, the development and acceptance of international humanitarian laws and the institutions that support them has always been particularly fragile. The widespread support of human rights, especially from states playing a central role in the international arena, has been a source of international legal legitimacy. Secondly, international humanitarian law is based on actual compliance of states that goes beyond just ratification and implementation. In this research, compliance is defined as more than ratification or implementation of international law, but as some kind of tangible compliant behaviour in which the ratifying state acts in accordance with the treaty's imposed standards. In particular, to understand the relationship between state behaviour and international law, it is important to consider states' evaluation of the costs associated with compliance. These costs are higher when states face threats to their security which could lead them to violate the terms of a given international treaty.

The Security Council of the United Nations was given primary responsibility for the maintenance of international peace and security. Forsythe argued that "On security issues the Council could take legally binding decisions under Chapter VII of the Charter. [T]here were economic, social, cultural, and humanitarian issues. On these issues the Council, like the General Assembly, could make recommendations under Chapter VI. Presumably human rights fell into categories other than security. But the Council was authorized by the Charter to take action to remove threats to the peace. Logically, threats to the peace could arise from violations of human rights" (2006, p. 59). From 1960, the Council began to deal more systematically with human rights issues: racism and human rights in armed conflict. The United Nations Vienna Declaration on Human Rights in 1993 reaffirmed "universal respect for, and observance of, human rights and fundamental freedoms for all… The universal nature of these rights and freedoms is beyond question" (Preamble, 1948, Universal Declaration of Human Rights). The problem here is the lack of a UN human rights court to enforce human rights.

A very strong statement came from the Tadic case.[3] The Appeals Chamber for the International Criminal Tribunal for the Former Yugoslavia delivered its ruling that rejected the defence argument that jurisdiction could not extend to internal warfare and denouncing the legal disparity between international and civil war:

> Why protect civilians from belligerent violence, or ban rape, torture or the wanton destruction of hospitals, churches, museums or private property, as well as proscribe weapons causing unnecessary suffering when two sovereign States are engaged in war, and yet refrain from enacting the same bans or providing the same protection when armed violence has erupted 'only' within the territory of a single State? If international law, while of course duly safeguarding the legitimate interests of States, must gradually turn to the protection of human beings, it is only natural that the aforementioned dichotomy should gradually lose its weight (Tadic §97).

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[3] Dusan Tadic is a citizen of the former Yugoslavia of Serb ethnic descent, and was a resident of the Republic of Bosnia and Hercegovina (Bosnia) at the time of the crimes with which he was charged. The decision represents a historical precedent in international law, for it establishes that an individual can be found criminally responsible for serious violations of the laws or customs of war and crimes against humanity, including persecution, in a fair trial before a truly international criminal court.

The International Court of Justice (ICJ) is the primary judicial organ of the United Nations. As Forsythe argued, however, the ICJ has "not made a major imprint on the protection of international human rights. This is primarily because only states have standing before the Court" (2006, p.71).

Although it is considered the leading edge in humanitarian law, the International Criminal Court is far from a law of war for internal conflicts. It does embody a consensus about the human rights violations that transcend the domestic-international divide; it does not challenge traditional standards for weaponry, targeting, military necessity and collateral damage.

The rationale behind common Article 3 and the subsequent Protocols is premised on an understanding that these conflicts, when they occur, involve clashes between the military forces of a government within a state and domestic factions motivated by a desire to rid their country of what they perceive as colonialism, racism, or the repression of a quest for national self-determination (DePue, 1977, p. 72). Whether that rationale adequately covers the phenomenon of intra-state war or not, the efforts of those formulating what works out to be an international law of non-international armed conflict have an almost entirely humanitarian basis. Kossoy (1976, p. 46) provided the following description: "Humanitarian law is the practical applications of at least the principles of human rights to human behavior in times of armed conflict. This is evident that – as opposed to human rights – such law is a part of *jus in bello* and that its present field of application is limited to armed conflict." Essentially, international law needs to adopt a more humanitarian approach. Plus, if international law is based more on such norms, there is a greater chance that these norms will trickle down into actual conflict, making combat less lethal. Within the context of norm-creation, military necessity may furnish – or fail to furnish, as the case may be – a reason for considering certain belligerent conduct legitimate. Still, military necessity in its material sense may weigh heavily in the way in which a given rule of international humanitarian law is formulated. Indeed, it is often said that military necessity and humanitarian considerations form the two main normative bases upon which modern international humanitarian law has evolved. This balance between military necessity and humanity pervades IHL in both a general and a specific sense.

The Fourth Geneva Convention

The Fourth Geneva Convention of 1949, ratified or acceded to by 194 nations, describes provisions about civilians in the time of war and introduces them as a new legal entity, in terms of the laws of war, which not only requires protection but also requires parties to conflict to hold responsible anyone who violates the terms of the convention (International Committee of the Red Cross, 2008; Convention Relative to the Protection of Civilian Persons in Time of War, 1949). Although holding belligerents responsible for abuses of a convention's provisions was not a new phenomenon, this was the first time parties were required to think about how they treat the civilian population. Under the Fourth Geneva Convention, civilians are persons who, at any moment and in any manner, fall into the hands of a party to the conflict of which they are not nationals.

Furthermore, the Fourth Geneva Convention makes distinctions as to the protection of certain persons, stating that nationals of belligerent non-contracting parties are not protected by it, and that nationals of neutral parties who are within the territory of a belligerent party, and nationals of co-belligerent parties, are not protected by it so long as their nation has normal diplomatic relations with the party under whose control they fall. While previous conventions enumerated prohibited acts of each legal entity, the Fourth Geneva Convention was the first to describe the character in which a civilian could lose entitlement to their protected status. Under its provisions, a civilian who is definitely suspected of or who has engaged in hostile activities toward the security of a belligerent contracting party shall not be entitled to the protection of the convention, if such protection is prejudicial to the security of that party. The terms of the Third and Fourth Geneva Conventions remained unchanged until supplemented by the First and Second Additional Protocols to the Geneva Conventions in 1977.

The First Additional Protocol

The First Additional Protocol (1977) to the Geneva Conventions, otherwise known as the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (1977), enumerated provisions for the protection of war victims in the specific cases outlined by the Third and Fourth Geneva Conventions and has been ratified or acceded to by 168 nations. In addition, the First Additional Protocol applies to situations where

people are fighting against colonial domination, occupation and racist regimes in the exercise of their right of self-determination. More specifically, it revised the definitions and qualifications of belligerents, prisoners of war and civilians, and likened belligerents to combatants and civilians to non-combatants. Furthermore, the First Additional Protocol defines belligerents as a new legal entity and acknowledges another legal entity, represented by a person who has taken part in hostilities and is not entitled to prisoner of war status. This distinction is important as it underlies the concept of the unprivileged combatant. This additional protocol reconsidered the definition of armed forces to include all organised armed forces whose groups and units fall under a command responsible for the conduct of its subordinates to a belligerent party, even if that party is represented by a government or authority not recognised by an adverse party. The armed forces must also maintain an internal system that enforces compliance with the applicable international laws of armed conflict. More important is the distinction made in this additional protocol that members of the armed forces of a party to a conflict are combatants (i.e., they have the right to participate directly in hostilities). This distinction is important because through the course of international law, the terms 'belligerent' and 'combatant' are often used interchangeably.

The First Additional Protocol also revised the definition of a prisoner of war, stating that any combatant who falls under the control of an enemy party shall be considered a prisoner of war. This protocol acknowledges the potential for military necessity to require members of the armed forces to operate at times without distinction from the civilian population. However, the armed forces should ensure that they wear distinctive uniforms throughout the course of their regular duties and operations in order to remain distinguishable from the civilian population. Civilians, under this additional protocol, are any persons not categorized as belligerents or combatants under the Third Geneva Convention or the First Additional Protocol, and are provided protection by the additional protocol unless they directly engage in hostile activities.

Furthermore, the First Additional Protocol defines mercenaries as a new legal entity (Article 47 of Protocol I). An important distinction made by this protocol is that mercenaries are not granted the right to be combatants or prisoners of war. Like the Fourth Geneva Convention, the First Additional Protocol enumerates specific prohibited acts despite legal classification of the acting entity of a party and states that

any such breach will be considered a war crime. This is significant, as it gives credibility to the need for an international prosecution. Many of the provisions outlined in the 1949 Geneva Conventions and the First Additional Protocol of 1977 remain current in terms of international armed conflict: the Second Additional Protocol of 1977 outlines provisions for non-international armed conflict.

The Second Additional Protocol

The Second Additional Protocol, ratified or acceded to by 164 nations, applies to all armed conflicts not covered by the First Additional Protocol which take place within the sovereign territory between its regular armed forces and dissident armed forces or other organized armed groups, so long as they operate under a responsible command structure and exercise control over a part of the party's territory. The Second Additional Protocol of 1977 does not apply to internal disturbances such as riots, isolated or sporadic acts of violence, and other acts not deemed armed conflicts. While this protocol did not revise the definitions of any particular legal entity described by previous conventions or protocols, it did specifically prohibit acts of terrorism against persons not engaged in direct hostilities. Although the protocol did not specifically define terrorism, this was the first time a multilateral treaty prohibited terrorist acts, and along with the inclusion of the prohibition of war crimes in the First Additional Protocol, it led to the inception of the Rome Statute, establishing the International Criminal Court (ICC).

AP II, which applies to both state and non-state armed forces in non-interstate armed conflicts, is much less developed than AP I (Gasser, 1991, p.8). While using the term "civilian," AP II does not offer a definition of it. For instance, Article 13(2) states that "the civilian population as such, as well as individual civilians, shall not be the object of attack," (Article 13(2), Additional Protocol) but does not define who is considered a civilian. Neither is there a definition of 'combatant'. Consequently, AP II fails to clearly lay out the core elements of the dominant distinction dichotomy. Both APs resemble language in Common Article 3 (1) of the Geneva Conventions. However, the less developed nature of AP II leads Frits Kalshoven to conclude that "provisions on the protection of the civilian population (…) hang somewhat in the air" (Kalshoven, 1987, p. 143).

Although the laws previously outlined provide a basic description of the legal entities concerned with the laws of war, there are other entities. For example, the

International Committee of the Red Cross recognizes three additional terms as pertaining to combatant status (International Committee of the Red Cross, 2005). The ICRC uses 'combatant' and 'belligerent' interchangeably, and states unlawful or unprivileged combatants as civilians who take part in direct hostilities, in line with the entity acknowledged by the First Additional Protocol as a person who has taken part in hostilities and is not entitled to prisoner of war status (Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977). In addition, the ICRC describes an enemy combatant in the same terms as a combatant under the above-mentioned conventions and protocols in either international or non-international armed combat. A further distinction made by the ICRC relates to captured individuals, and states that those captured outside of an armed conflict, who are thus not protected by international law, are subject to domestic and humanitarian law. It is imperative to note that the classification of a group as combatant, noncombatant, etc., for purposes of determining eligibility for prisoner of war status, does not necessarily result in the classification of their activities as lawful acts of armed conflict, war crimes or terrorism.

For example, although organized resistance forces, often referred to as guerrilla forces, are granted prisoner of war status if captured, the lawfulness of their activities is dependent upon their actions. If the opposition groups are engaged in armed conflict between belligerent forces as outlined in the Geneva Conventions, they will likely be considered combatants performing lawful acts of armed conflict; however, if their activities are conducted outside these requirements, they will likely be considered a non-combatant group, or unlawful or unprivileged combatants, engaged in acts of terrorism.

There have been many suggestions on how to improve existing law. The suggestions that have particular salience are those directed at improving enforcement and making the law more inclusive because those are the two specific causes of the law's ineffectiveness. Van Dongen suggested improving enforcement mechanisms, such as increasing the role of "intergovernmental human rights bodies" (p. 227). Others have suggested that including international human rights norms within national laws would improve the effectiveness of law enforcement (United Nations, 2003). Durr argued that the United Nations should be more responsible for "ensuring respect for IHL in armed conflicts" (1987, p. 271). Many scholars and practitioners suggest

improving enforcement through immediate measures to end impunity, including improving post-conflict justice and reconciliation (United Nations, 2003). Improving the capacity of domestic and international human rights mechanisms through increased material and normative support will automatically increase enforcement. Specifically, countries that already have a national human rights institution should provide more resources to these institutions. Additionally, more of the United Nations' funds need to be dedicated to law enforcement during and immediately after armed conflict. To guarantee that UN enforcement is adequate, the Office of the High Commissioner of Human Rights will need to take on a stronger role and increased gender training for UN Peacekeeping troops will be crucial. More incentives also need to be provided to the actual actors of the conflict to encourage enforcement. Positive incentives, such as removal of sanctions, should be given to actors who enforce the law, and negative incentives, such as punishment administered by competent judicial bodies, should be obligatory in every conflict. If necessary, international criminal tribunals could be developed in every area of conflict.

The discussion thus far has centred upon the creation of international humanitarian law, legal and political debates surrounding military necessity and non-combatant immunity, and the means developed to enforce human rights. As the above overview demonstrates, the civilian immunity norm imposes certain obligations upon belligerents toward civilians within the context of armed conflict. One such obligation is to distinguish between permissible and impermissible targets. Belligerents can only target the former. One of the assumptions of this work is that social change is expected with the norm-following actor. Social practices are central to the construction of meaning as a social outcome of the process. Constructivists share an increasing interest in developing robust approaches to assess precisely "how political actors produce the intersubjective understandings that undergird norms" (Barnett, 1999, p. 8; Payne, 2001, p. 38). Interaction takes place in different contexts in which either competition over types of norms or competition over meaning takes place. I will examine the changes in the normative structure of world politics, looking at my case studies and UN Security Council strategies and international criminal legal institutions.

According to Payne (2001), the "social context of norm development" (p. 40) and the setting of implementing norms is distinguished according to the location of the political arena, the legal framework of violations, international presence and

community formation. Tannenwald's (1999) evaluation of norms suggests that norms can have impact on states: by restraining states through enforcing punishments; by engaging the state to form an identity referred to as a constitutive effect; by coordinating state actions on the issues that will be identified within the norm, called permissive effects. A state will start to act in accordance with international norms if a norm creates an identity and an understanding of the behaviours of what actions to engage or not engage in. This understanding will show costs involved with the violation of the norm, either based on identity or reputation costs or through tangible costs to states for non-complying.

This process of global interaction provided the legal reference frame for war-torn states. The ideas must be framed "in such a way that they resonate with relevant audiences" as this is a "central element of successful persuasion" (Payne, 2001, p. 39). However, it is accepted that during war a norm is accepted due to "coercion or some other mechanism, rather than persuasion" (Payne, 2001, p. 40). Schimmelfennig pointed out that "in order to get access to these resources, the actor adopts the constitutive beliefs and practices institutionalized in the social environment and taught by the socialization agency" (Schimmelfennig, 2001, p. 117). This adoption of beliefs and behaviour is defined as a process of socialization discussed in Chapter Two in which interaction is observed between the socializing agency (i.e. the norm setter) on the one hand and the norm follower on the other hand (Finnemore and Sikkink, 1998).

These processes represent attempts to induce compliance from the international community. This reflects the fact that there are new opportunities for compliance based on a state's reputation, role and redefined interests. In the civil wars, the actors are not often even states. It may be implausible that they will voluntarily comply. Therefore, they need an incentive to comply. At the same time, these actors are militarily weak, often not socially cohesive, which gives the international community the capacity to first force them to comply with IHL, second to integrate international norms into their domestic systems, and finally to gradually embed the norms into their domestic systems. When the international community thinks of enforcement, it tends to think in terms of the apparatus and penalties for noncompliance specified in the articles of a legal document. Efforts to improve compliance, therefore, are tied to efforts to enhance the enforcement mechanisms within the framework of an agreement.

3.5. Conclusion

The promotion of human dignity is necessary for future international cooperation and stability. Unfortunately, many civilians are still denied their rights to basic human dignity. The ultimate goal of the international humanitarian law is to create legal standards that are effectively transferred from the international level to the state level. In proposing Non-Combatant Immunity as a normative ideal, this chapter makes a claim about what the desired state of the world should be, entering into the larger debate about international relations theory about norms. Theories of *jus ad bellum* and *jus in bello* have generally been treated separately. This thesis offers to limit the bridge between the two from a normative point of view. IHL experts and belligerents currently hold different understandings of who can and cannot be targeted in armed conflict, and thus interpret the distinction principle differently.

Human rights must be encouraged within law enforcement mechanisms. For example, national human rights institutions and international criminal tribunals should be created with the goal of spreading human rights. The concept of humanitarianism should be included within the mandates of these mechanisms. Adding an additional protocol to the Geneva Conventions that emphasizes the importance of civilian immunity could have a significant impact on the way the international humanitarian law is applied. The effectiveness of international law in promoting human rights is based on the concern that government elites hold for the state's international reputation and the belief that a bad reputation will somehow results in sanctioning by other states. Unless immediate changes are made within the current post-conflict environment, the denial of basic human dignity to millions of civilians will continue to block the development of peaceful societies.

Modern practice displays a stark tendency to move from a conception of conflict termination to peace-making, uniting affected parties, neutral actors and private stakeholders in their efforts to restore sustainable peace. This process lends new support to an old postulate, namely the idea of connecting the concepts of *jus ad bellum* and *jus in bello* to considerations of fair and just peace-making (*jus post bellum*). The articulation of a body of law after conflict would identify legal rules that ought to be applied by international actors and clarify specific legal principles which serve as guidance in making legal policy choices in situations of transition. It would build a bridge between the 'pre-' and the 'post'-conflict phase, which is lacking in the contemporary architecture of the law of armed force. The recognition of rules and

principles of post-conflict peace would establish a closer link between the requirements of the post-conflict responsibilities. Under a tripartite conception of the law of armed force, international actors might be forced to consider to a broader extent the impact of their decisions on the post-conflict phase. Such application can enhance the scope of protection offered to individuals as one body of law can influence the application of the other to fill in gaps that may arise; for example, with regard to the right to life, fair trial or the prohibition on torture. One fact is becoming increasingly evident: the development of rules and principles of post-conflict peace should form part of the agenda and the table of contents of international law in the 21st century.

In the next chapters, the discussion of the Bosnian war will demonstrate how the interpretations of the meaning of norms change over time and contribute to social change. The link between compliance and the civil war provides an important part of the explanation of how the socialization of states improves compliance. Compliance with rules, from this perspective, is achieved when rules are viewed as appropriate, in the sense that acting in accordance with the rules matches the conception of the self. Most importantly, identities of actors and their derivative preferences are not prior to social interaction but constituted by such interaction. The way to influence behaviour is thus to recognise the constitutive nature of rules and identities and explore the ways in which they may be transformed. This requires an enormous normative shift.

I propose to adopt a constructivist approach to reputation that is based on relational concepts, associations, feelings and social cues. It is important to note that the realist approach will also be tested, but to a lesser extent. In order to determine the relevance of these two theories to compliance behaviour and to develop a theory of compliance, constructivist and rationalist theoretical approaches will be applied to compliance behaviour in the case of the civil war in Bosnia. This case study will discuss: 1. the development of human rights norms during abuse and the diffusion of the norms; 2. the internalization and reframing of the norms within the state.

CHAPTER 4: Development of Norms During Abuse

4.1. Introduction

Of all the internal conflicts that threatened the peace and security of entire regions of Africa, Asia and Europe in the post-Cold War period, none concerned members of the international community more than the regional and international implications of the dissolution of the Socialist Federal Republic of Yugoslavia. The break-up of the Yugoslav state raised important questions about the conflicting principles of the protection of human rights. Careful examination of the formal record of the UN Security Council demonstrates disunity between Security Council Members over the cause and nature of the Bosnian conflict. Security Council actions, however, emphasized the important link between the protection of human rights and international security by establishing with its authority under Chapter VII of the Charter an international criminal tribunal for the prosecution of violations of international humanitarian law.

The situation in Bosnia and Herzegovina (BiH) is quite a precarious one. The country lies in the heart of the war-torn Balkans and even today, its ethnically divided population is a reminder of the atrocities of the past. Though the war in Bosnia and the siege of Sarajevo ended years ago, the country is still struggling to form a new identity, a European and international identity, and progress toward consolidated democracy has been slow but steady.

With the aim to describe the socialization process, I recognise that compliance is the result of pressures from below (civil society influenced by transnational networks) and from above (international organisations). To clarify the conditions under which states may improve their records of compliance with norms, the second part of this study presents three war tactics of civil wars to provide potential examples of socialization and how norms are internalized: treatment of prisoners of war, displacement and forced migration.

In order to trace the connections between international pressure and elite decision-making, UN Security Council documents are examined. I also look at the leaders (their motivations and need for justification of their actions), NGOs, judges and courts' representatives to negotiators (on norm diffusion). Documentary evidence of abuses during war and internationally-based human rights activity are supplied by

published reports and statements of the UN, courts and NGOs. I surveyed document archives from major international actors, including Intergovernmental Organizations (such as the United Nations and the North Atlantic Treaty Organization), major states and Nongovernmental Organizations (Human Rights Watch, International Federation of the Red Cross).

What is being explained in this chapter is the change of a state's position on violations of human rights, from victimization to socialization. This chapter proceeds in three parts. I first examine the history of repression. Secondly, I look at the development of norms during abuse and tactics employed in war. Thirdly, I evaluate the methods of international human rights pressure imposed on Bosnia and pressure from the outside.

4.2. Stage 1 - Repression

The attention devoted by the Security Council to the Bosnian crisis far exceeded that given to any other conflict on its agenda. For example, between 1992 and 1995, the United Nations Security Council met formally more than 130 times to discuss the conflict in Bosnia-Herzegovina. The Council passed more than 70 resolutions and nearly 60 presidential statements directly relating to the situation in Bosnia-Herzegovina; and 145 non-elected Members of the United Nations participated in formal Security Council meetings between 1992 and 1995. The resolution of the Bosnian crisis meant resolving moral dilemmas about the application of principles of international law.

Human rights violations against civilians perpetrated by warring factions in the Bosnian war have been extensively documented. The evaluation of the conflict will specifically look for any general problems of the law that can be applied to the entire system of international humanitarian law and human rights law.

4.2.1. The Disintegration of Yugoslavia

Multiple wars were fought in the various regions of the former Yugoslavia during the early 1990s as the Yugoslav state disintegrated. Conflicts occurred both within and between the republics of Yugoslavia: Serbia and the autonomous region of Kosovo (1989-1999); Serbia and Slovenia (1991); Croatia and its minority Serb population backed by Serbia (1991-1993); and in the territory of Bosnia-Herzegovina (1992-1995). In Bosnia-Herzegovina, conflict occurred in multiple stages, beginning

with a Serbian invasion, followed by a Bosnian Serb conflict with the allied forces of the Bosnian Muslims and Bosnian Croats, and finally conflict among and between Bosnian Serbs, Bosnian Croats and Bosnian Muslims, with the former two receiving active support from the states of Serbia and Croatia respectively.

The policy of ethnic cleansing included forced population transfers and the systematic use of violence against civilians, including murder and rape, for the purpose of acquiring territory. Media images of Bosnian Muslims behind the barbed wire of concentration camps, pictorial evidence of summary execution and forensic evidence of mass graves fostered international outrage. States addressing the Security Council made frequent references to the outrage of their populations, who viewed efforts at ethnic cleansing as similar to the Holocaust against the Jews in Europe or "what the Nazis called the 'Endlösung: final solution'" (United Nations Security Council Provisional Verbatim Record, 1993, S/PV.3200, 1993, p. 28).

In making sense of the crimes against humanity committed in Bosnia, many writers and scholars have stressed the role of ethnic identity, but I think a better place to start would be with the political culture of single party Communist states. As with all of the Eastern European countries that fell under Soviet influence after World War II, Yugoslavia adopted the Stalinist model of political leadership. All competing parties were banned from the political process, and vocal dissent from the Communist Party line was punished in a variety of ways, ranging from the loss of jobs and opportunities for advancement to torture, imprisonment and murder.

The republics were unified under the authority of a single government, single party rule, and in an authoritarian fashion. Under this system, "[while] it sought to accommodate the national interests of most of Yugoslavia's peoples in a federal system, it also assumed an unchanging unity of interests" (Judah, 2000, p.136), which turned out not to be the case in subsequent years. In the 1960s, there began a series of debates at the national level over political and economic issues that eventually reopened ethnic fault lines. There were many signs of nationalist sentiments, starting in the universities in Belgrade in 1968, in Pristina in 1969, and during the "Croatian Spring" of 1970-71. All of them were inspired by student movements in other parts of the world. There was a plan for the decentralization of political authority and economic planning within the country, ending in the changed 1974 constitution, which, among other things, created a rotating presidency of the country which would not allow a single republic to dominate the rest of the country and which gave

considerably more autonomy to the regions of Kosovo and Vojvodina. Finally, Yugoslavia's policy of non-alignment allowed Muslims in Bosnia-Herzegovina to make contact with fellow Muslims outside of the country (Judah, 2000, p. 154-155). Even with these manifestations of ethnicity and the moves taken toward decentralization, efforts toward ethnic separatism were still discouraged and often punished.

A number of Serbians responded to these changes with dismay and anger, and they began to perceive discrimination directed at them from the federal government as well as from other ethnic groups. In the early 1980s, stories appeared among the Serb population that Serbs were being subject to discrimination, abuse, and even murder, although most of these stories were later shown to be without foundation (Glenny, 2001, p. 623). There were also a number of outbursts of violence between Serbs and Yugoslav state authorities as well as increased emigration of Serbs, particularly from the province of Kosovo; this led to a general government crackdown on all nationalist protests.

Tito[4] had divided the republics according to nationalistic lines, because he thought it would solve the problems between the different nationalities. Tito's reign was oppressive and replete with unresolved issues that were allowed to fester and intensify into the 1980s and 1990s. The severity of the repression under Tito was not conducive to good relations among the different nationalities. National identities, except for the Yugoslav identity, were oppressed under his regime, as Tito and the Communist Party leadership were not interested in tolerating "negative local patriotism" (Judah, 2000, p. 140). Relations among the ethnic groups or nationalities started to become tense during the later 1960s, and quickly deteriorated after Tito's death in 1980. The death of Tito, political deadlock created by the 1974 constitutional arrangements, perceived discrimination and national debt in the 1980s all created a volatile situation (Ibid., p. 625). The following two years were important for Yugoslavia. There were many protests in Serbia regarding the status of Kosovo. A Serbian Communist Party official, Slobodan Milošević, took advantage of these protests to engineer his own rise to power and to increase already existing Serbian nationalism. He was able to capitalize on an incident in which Kosovo police violently

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[4] Josip Broz, who eventually became known as "Tito," reigned as president of Yugoslavia from 1945 until his death in 1980.

attacked a crowd of ethnic Serbian protesters and which led to the resignation of Serbian President Ivan Stambolic in April 1987; Milošević assumed the Presidency the following year. Once he did so, he began what came to be known as the "anti-bureaucratic revolution," in which staged protests against the parliaments of Kosovo, Vojvodina and Montenegro led to the replacement of their presidencies with allies of Milošević. This increasingly popular rise of Serbian nationalism greatly contributed to the growing self-consciousness of other ethnic groups within Yugoslavia; the assertion of Serbian identity forced other groups to define themselves in relation to Serbian nationalism.

Bosnia's first multiparty free elections were in December 1990. Three nationalist parties representing each of the three main ethnicities won the largest shares by far. They formed a coalition government, but with very different views of the future. The main Serb party, the *Srpska Demokratska Stranka* (SDS), was initially hoping Federal Yugoslavia could be maintained (under Serb dominance), but preferred to annex portions they dominated to Serbia than live under an independent Bosnia. This party, led by Radovan Karadžić, was allied with Milošević's party in Serbia. The largest Bosniak party, the *Stranka Demokratske Akcije* (SDA), led by Alija Izetbegović, was struggling to maintain a peaceful and intact Bosnia (Velikonja, 2003, p. 236). It did not wish to remain in a rump Yugoslavia which would be even more heavily dominated by Serbs. As relations were souring in Croatia, Bosnian Serbs began to secure autonomous Serb regions inside Bosnia, with the federal army helping to arm them, and ultimately securing the borders of these areas, again as a "peacekeeping" force.

4.2.2. Bosnian War

By 1991, several regions of Yugoslavia began to seek independence. Their demands were very clear: they wanted sovereign rights and their own internationally recognized borders. These demands became recognized and supported by the international community and sparked conflict over rights to succeed and ethnic division. Serbia claimed that the seceding nations had no right to break off from Yugoslavia, and that the recognition of such a right based on ethnic divisions represented a breach of international law. In spite of this, political representation was not the primary contributor to the conflicts. Instead, ethnically based grouping was the cause of political boundaries. This hatred manifested itself through violent siege, rape,

murder and political persecution. One's past history with one's neighbours mattered little, and friends gave ethnically based reasons for hunting down and killing their former neighbours.

The international recognition of independence for Croatia and Slovenia in January 1992 finally forced the Bosniaks to act. A referendum on independence was held on February 29 - March 1, 1992. The referendum overwhelmingly passed amongst Bosniaks and Croats, but the Serb party boycotted it and prevented ballot boxes from entering areas it controlled. The Serb nationalists promptly declared the formation of an independent Republika Srpska in a large area along the eastern and northern borders. When Bosnia initially declared its independence in October 1991, Karadžić and the Bosnian Serb Nationalists established a government in the Serb-populated territory of Banja Luka in northern Bosnia. Karadžić declared himself president of the Republika Srpska, which he announced was now part of Serbia Yugoslavia. General Ratko Mladic was given immense authority by Belgrade to prosecute an armed campaign in Bosnia. Being an insider within the JNA, Mladic was well aware of how to prosecute this campaign without implicating Belgrade's role in the Bosnian war. Full-scale war erupted in Bosnia a month after the referendum (Judah, 2000).

By December 1991, the United Nations was able to deploy a protection force inside of Croatia, and in January 1992, a successful ceasefire was put into place. The forces of the Yugoslav Federal Army withdrew, although fighting continued on a smaller scale between these two groups throughout 1992 and 1993. The European Community finally gave recognition to both Slovenia and Croatia. As the conflict between Croatia and Yugoslavia was winding down, problems began to rise between Yugoslavia and Bosnia-Herzegovina, which declared its independence in April 1992. War broke out immediately, and ethnic cleansing began again throughout the territory, particularly in the Croatian Republic of Herzeg-Bosnia and in the Serb-dominated Republic of Srpska. The United Nations extended its Protection Force Mandate to Bosnia shortly after this, in order to protect the airport in the city of Sarajevo. The following year, a number of peace plans were put forward, including the Vance-Owen plan and the Owen-Stoltenberg plan, both of which sought to divide Bosnia into ethnic regions; both were rejected by the Bosnian government. The United Nations Security Council passed resolution 827, which created an International Tribunal to try war crimes and crimes against humanity committed in the conflict. A successful ceasefire

was finally declared in February 1994 between Bosnia and Croatia, and NATO established a no-fly zone over Bosnian territory. In March, the Washington Agreement was signed, ending the conflict between Bosnia-Herzegovina and Croatia; the Serbians in Krajina agreed to the ceasefire as well, and American and German negotiators pressured Bosnia and Croatia to form a confederation, but the latter was rejected.

Later in the year, the forces of Serbian Krajina renewed the conflict within Bosnia. The Croatian military intervened a number of times, attempting to encircle the Republic of Krajina. The Contact Group, consisting of the United States, Russia, Britain and Germany, put forward another peace plan in October 1994, which sought to divide Bosnia-Herzegovina into two entities, the Federation and the Republika Srpska. In July 1995, a massacre at Srebrenica took place, carried out by Bosnian Serb forces under Commander Ratko Mladic: over 8000 Bosnian Muslims were killed. In August, Croatian forces took over most of the Krajina region, leading to the ethnic cleansing of 200,000 Croat Serbs. That same month, NATO began a bombing campaign in Bosnia against the Bosnian Serb forces.

The final configuration of Bosnia and Herzegovina was determined by the Dayton Peace Accords, which were initiated on November 21, 1995 and formally signed in Paris on December 24, 1995. The new constitutional structure was the conception of two entities within the Republic of Bosnia and Herzegovina: the Federation of Bosnia and Herzegovina and the Serb Republic of Bosnia and Herzegovina. In the meantime, the region formerly called SFR Yugoslavia, or what was left of it, pronounced a new entity - the Federal Republic of Yugoslavia (FRY), which consisted of two Republics – Serbia and Montenegro.

4.2.3 Norms in Bosnia

The disintegration of Yugoslavia is a case of both national aspirations destroying a chance of resolving conflicts peacefully within an existing legal framework and a legal tradition being undermined by decades of communist rule. Essentially, there was no rule of law in a liberal understanding in the communist countries. Bosnia is in many ways a perfect laboratory for studying the effectiveness, consequences and potential of norm diffusion. It is the country that suffered more than any other in the Yugoslav conflict. Its population was decimated, its cities and villages ravaged. Cultural sites, archives, museums, galleries were destroyed. These buildings

were not just caught in the crossfire of military engagements. In the north-western city of Banja Luka, the demolition of over fifteen mosques had nothing to do with fighting at all: they were blown up in the middle of the night and bulldozed the following day. The majority of Prijedor's Muslim population joined other Muslims and Croats from the area in one of four concentration camps, where an unknown number lost their lives. As in other towns across Bosnia, in Prijedor municipality a "Serbianization" took place: the names of villages and streets were changed, new signs were rendered in the Cyrillic script (implying that they might belong elsewhere, perhaps in the Federation or Croatia). For those who wanted a united, multi-ethnic Bosnian state, the presence of a large refugee population was a continuous argument and demand for international intervention for their proper settlement in their pre-war homes. This was only heightened when hundreds of thousands were repatriated from Western Europe. The war has left a traumatic imprint on Bosnian society, which is still trying to come to grips with what has happened to its country. The Srebrenica massacre, today legally codified as genocide by the ITCY, spread the international action to end the Bosnian war (ICTY, 2004, Prosecutor v. Radislav Krstic).

Several international treaties addressed human rights in the former Yugoslavia. The Republic was a signatory to several treaties, such the United Nations Charter; the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention); the 1949 Geneva Conventions and the 1977 Protocols; the 1966 Covenant on Civil and Political Rights (CCPR); the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention); and the 1989 Convention on the Rights of the Child. Because of that, under generally accepted principles of international law, the new states or entities which emerged from the former Yugoslavia, as well as the participants in these processes, remained bound to observe multilateral treaty commitments[5] (Vienna Convention on Succession, 1978, arts. 34, 35). With respect to the armed conflict in the former Yugoslavia, at a minimum, common Article 3 of the Geneva Conventions applies. Furthermore, Protocol (II) Additional to the Geneva Conventions also applies (Protocol II, supra note 4, art. 1(1)).

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[5] It specifies that existing treaty obligations apply to the new or newly independent state, unless the "states concerned" agree otherwise.

The war in Bosnia and Herzegovina could not be viewed differently than as a part of the Yugoslav war. In fact, having in mind all the circumstances of the Croatian conflict and the political influence of the authorities in Croatia and the still formally existing SFR Yugoslavia, the Bosnian war was a continuation of the Croatian war, with the addition of one more party to the conflict – Bosnian Muslims. The Serb nationalists advocated the creation of a Greater Serbia (Cigar in Oberschall, 2000, p. 983). According to Kalyvas and Sambanis, in the case of the Bosnian war, "ethnic cleansing can be seen as the perverse effect of the process of "twin secession", where "the Yugoslav state could not prevent the Bosnian Muslims and Croats from seceding from Yugoslavia, while the Bosnian Muslims and Croats could not prevent the Bosnian Serbs from seceding from Bosnia" (Kalyvas and Sambanis, 2005, p. 224). Kalyvas and Sambanis described the Bosnian war as a "symmetric nonconventional" war (Kalyvas and Sambanis, 2005): a "type of war characterized by a mix of regular and irregular forces fighting in territory defined by clear frontlines and a political context shaped by state collapse" (Ibid, p. 212). The conflict between these forces differed from conventional warfare in important ways. First, much of the fighting was local, involving regular and irregular fighters operating close to their homes. Second, a central objective of the conflict was the use of military means to target civilians, in a process that came to be known as "ethnic cleansing". Third, although several hundred thousand men were engaged for three and a half years, and although several tens of thousands of combatants were killed, the conflict was more often one of attrition, terror, gangsterism and negotiation than it was of high-intensity warfare.

4.3. War Strategies

One of the characteristics of the war in Bosnia was the use of extreme violence against civilians, by carrying out of a campaign of ethnic cleansing. The consequences were devastating. The Research and Documentation Center in Sarajevo published the Bosnian Book of the Dead in June 2007. It included the names of 97,207 victims of the war from Bosnia and Herzegovina who were killed or who disappeared (Ahmetasevic, 2007). As ICRC says, 200,000 people were killed and 2.2 million people were displaced. Other consequences of the war are the health problems resulting from the violent conflict, leading to the destruction or deterioration of physical and mental health, destruction of families, massive population displacements, the inflicted poverty, vast economic losses to the country and damaged infrastructure.

As Dragnich (1995, p. 163) said, "…Bosnian soil has been the scene of the greatest bloodshed in that (Yugoslav) war".

In many formerly communist nations, there existed an extensive underground economy that provided access to otherwise unavailable Western goods, and this economy became visible after the fall of communist regimes in the rise of criminal gangs and organized crime in the absence of authorities. In a few instances, political leaders created their own militias within certain regions. The military analysis of the conflict in Bosnia shows that the military armies and groups were commanded "independently" of Belgrade or even of major Serb commanders on the ground. This allowed those major leaders to deny complicity in those groups' actions, even while they were committing atrocities with the leaders' active participation. This marked a new stage in military deception. Bassiouni (1994) said: "You break units down into smaller groups. Then, in the next logical step, you recruit within those non-formal structures people who are most likely to do the worst things. Then you separate them from the army so there is no control" (Geyer, 1994, p. 11). Many of these atrocities during the Yugoslav wars were committed by paramilitary units known as the "Scorpions", whose members were drawn from Serbia's criminal underworld (Mills and Brunner, 2002, p. 72).

Reporting on the camps at Omarska, Keraterm, and Trnopolje served as one of the catalysts to the UN effort to investigate war crimes committed in the conflict. In the summer of 1992, pictures and film footage of emaciated men herded behind barbed-wire fences circulated throughout the world and caused an international outcry. The final indictment for war crimes in both Bosnia and Croatia did not emerge until December 2001, six months after Milošević had been deported to the Hague. The indictment in Bosnia charged Milošević with the commission of genocide as well as "grave breaches of the Geneva Convention, and violations of the customs of war". After investigations by the International Criminal Tribunal at the Hague, Milošević was held responsible under international law for war crimes committed by the Yugoslav military under his direct control.

4.3.1. Treatment of Civilians and Prisoners of War

During the Bosnian war, there were different forms of violence. Sometimes the warring parties were fighting to gain control over the territories. However, also in such areas where there was no fight for control, "ethnic cleansing" was carried out (Human

Rights Watch/Helsinki, 1994, p. 2). Violence included arbitrary killings, arbitrary detention, burning of houses (United Nations Commission on Human Rights Exceptional Session, 1992; Human Rights Watch /Helsinki; 1994), looting (Maas, 1992) and deportations (Amnesty International, 1995). As Human Rights Watch described it, among non-Serbs there was a "general climate of terror" in the regions of Bosanska Krajina and Bijelina (Human Rights Watch, 1994, p. 29). Reports pointed to the existence of a "general lack of safety" for the civilian population and a "general state of fear" (Amnesty International, 1994, p. 10). For example, in Sarajevo, people were exposed to sniper fire on their way to get fresh water (Dahlburg, 1993).

During the spring and summer of 1992, the Bosnian Serbs also established many so-called detention camps in which as many as 10,000 people were eventually killed. All warring factions used detainees for forced labour (Doyle, 1993). Of 381 prison camps corroborated by the UN, where many people were raped, tortured or killed, at least 200 were under Serb control (for 99 the controlling forces are unidentified) (United Nations, 1994). The conditions in detention camps caused serious health problems. Often these camps were overcrowded and the inmates underfed. Beatings, torture, sexual assault against both men and women, and murder of individuals and groups of detainees occurred repeatedly. However, it was not only Serbs who operated camps in which many atrocities were committed. Croatian and Muslim forces also killed, tortured and otherwise abused captive Serbs and others in a number of camps.

There were threats such as the continuation of arbitrary arrest, detentions of persons (2nd Report, paragraph 43, 4th Report, paragraph 60), the exchange of detained persons (3rd Report, paragraph 58, and the lack of full cooperation with the International Tribunal for the Former Yugoslavia in handling over indicted war criminals (6th Report, paragraph 82). Women and leaders of ethnic communities were specifically targeted by violence. Violence against women, including rape and other sexual abuse, was frequently used during the war (Nikolić-Ristanović, 2001). In Bosnia, women were targeted by sexual violence as a means of 'ethnic cleansing'. Women were exposed to rape, sexual slavery (Jennings and Nikolić-Ristanović, 2009, p. 10) and forced pregnancy (Nikolić-Ristanović, 2001, p.76). Girls and women were raped in their homes when their towns and villages were attacked by paramilitary units, often in front of parents and other family members. Other women were sexually assaulted while being interrogated by police and confined in detention camps. Gang

rape was common. In a number of camps, women were held captive for extended periods of time and used as sex slaves. According to one study, these rapes took place on orders from Serb authorities and in many cases with the explicit purpose of impregnating the women. Beverly Allen (1996) argued that such rape served the Serbs as one more means of destroying the Bosnian Muslims and, hence, was a tool of genocide. Community leaders and intellectuals were also specifically targeted by violence. They could be killed or detained (Human Rights Watch/Helsinki, 1994, p.36).

The violence against civilians was especially strong in the eastern half of Republika Srpska, along the Serbian border, where many Bosniaks lived before the war. Of civilians killed and missing over the course of the war, 45 percent resided in eastern Republika Srpska. Of civilians killed and missing in this area, 95 percent were Bosniaks. The most infamous location is Srebrenica, where 8,945 people died over the course of the war, 95 percent of whom were Bosniak. Most of these deaths occurred when the UN-protected area was overrun in July 1995, and about 7,000 Bosniak men and boys were killed by Serb troops, at least 5,585 on July 12 alone. Nearly all of these were massacred while prisoners. The primary site of deaths in western Republika Srpska is Prijedor, where 5,209 people died.

4.3.2. Displacement and Forced Migration

The consequences of the war were that more than 1.2 million people fled from Bosnia-Herzegovina (Latal, 1994). There were mass deportations. There was also a civilian population that was evacuated; for example, mainly the elderly and children were evacuated from Srebrenica. As a refugee, Envera Herenda, said: "The worst thing (when) being … (a) refugee is that nobody takes you as a citizen, as a human being….They turn their heads away from me on the street, like I am some sort of hillbilly or dirty animal" (Latal, 1994). In 1996, some 300,000 refugees from Croatia and a further 250,000 from Bosnia and Herzegovina were residing in the Federal Republic of Yugoslavia. The European Union, for example, hosted an estimated 584,000 refugees from Bosnia by 1996 (Black at al., 1998). Germany singlehandedly accepted an estimated 28 percent of the refugees (Kebo, 2006). According to 1996 data, there were 419,879 displaced persons on the territory of the Republic of Srpska (Marjanac, 1998). They were predominantly individuals of Serbian nationality, as in Serbia itself, where Serbian refugees from Bosnia and Herzegovina make up more

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than 85 per cent of the total number of refugees from Bosnia and Herzegovina (UNHCR, Serbian Commissariat for Refugees, and ECHO, 2002).

The Dayton agreement increased further population movements and displacements. The return of refugees and displaced persons was slow, and the majority of returns were to areas where the refugees belonged to the ethnic group that was in majority in the area. A problem with return was the fear of persecution of those who had served in the military. Changes in amnesty laws were needed for their safe return (1st Report, paragraph 63, 2nd Report, paragraph 31, 4th Report, paragraph 63). Insecurity hindered the return of refugees and displaced persons (OSCE, 1997, p. 2). There was general fear and mistrust at the end of the war (2nd Report, paragraphs 82, 31). By the late 1990s, Germany had returned 347,419 people to Bosnia, a number that exceeded 70 percent of the total returnees to the region. Often, returnees did not return to their places of origin, but instead remained internally displaced, partly because many would have been returned to regions where they were considered members of a minority: for example, Muslims who initially lived in the República Srpska.

4.3.3. Ethnic Cleansing

The UN Security Council used the term 'ethnic cleansing' for the first time in United Nations Security Council Resolution 771 of 13 August 1992. The term 'ethnic cleansing' entered the popular language of politics during the Bosnian war. The phrase is a literal translation of the Serbo-Croatian/Bosnian phrase *etnicko ciscenje* (Preece, 1998, p.821). It was believed to be part of the Yugoslav National Army's military vocabulary to describe its policy of expelling Muslims and Croats from the territories it conquered. In its interim report in January 1993, the UN Commission of Experts, pursuant to Security Council Resolution 780, confirmed that each of the Republics was bound by the constraints of the 1977 Protocols to the Geneva Conventions as well as by other agreements (Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780, 1992, at 13 para. 38). The majority of violations of human rights in former Yugoslavia appear to correspond to crimes against humanity, given that they were a systematic attack on the civilians. All sides of the conflict committed some violations, and there were a large number of victims belonging to the different nations. Helsinki Watch was the first NGO to define the situation as genocide. Further, it is significant that genocide was

recognized in Article 4 of the Statute of the International Tribunal for the Former Yugoslavia.

The Srebrenica enclave was home to 40,000 Muslims and was declared a UN safe area in the spring of 1993. The UN hoped that a significant number of peacekeepers would be deployed in order to deter Serb attacks. However, the United States refused to contribute ground troops to Bosnia, and the Europeans had already contributed 5,000 peacekeeping troops and were reluctant to deploy more (Rigby, 1994). In March 1995, the President of Republika Srpska, Radovan Karadžić, signed a directive whereby he instructed the military to isolate Srebrenica from Žepa. Known as Directive 7, it ordered them to:

> "complete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica" (ICTY, 2001, Prosecutor v Radislav Krstic, p. 10).

The Bosnian Serbs attacked Srebrenica in July 1995. The Bosnian Serb leaders proceeded to separate the men and boys of Srebrenica from the women. The men were taken out into fields and were executed. Some who resisted had their throats slit. Seven thousand Muslim men and boys were massacred in Srebrenica. The women were taken on buses on a two and a half hour journey from Potocari to just outside Tuzla, another Muslim-held safe area, and were frequently raped on the roadside on the way to the destination. The Serbs either killed or expelled the entire population of 40,000 Bosnian Muslims in Srebrenica (Andreatta, 1997, p. 30).

4.4. Stage 2 - Denial

After investigations by the International Criminal Tribunal at The Hague, Milošević was held responsible under international law for war crimes committed by the Yugoslav military under his direct control (Cigar and Williams, p. 20-21). As predicted by the spiral model, Milošević responded to accusations about violating human rights mainly with denial. When Milošević was interviewed by the BBC in 1995, with regard to the bloodbaths occurring in the former Yugoslavia, he emphatically stated: "There is no one who can believe what is mentioned as an organized genocide, even organized from Belgrade, even organized by me! It is really out of consideration!" (Simon, 2009). With responses such as this and Milošević's

continual denial of having committed any atrocities, the International Criminal Tribunal declared that it was an important strategy to investigate cases committed by the military or civilian leaders, who planned and organized these genocide war crimes in Bosnia and Croatia, and were therefore able to build a more extensive case against Milošević, rather than the initial investigation, which considered only actions committed by the Serbian military in Kosovo (Cigar and Williams, p. 3). From 1991, large scale attacks of the civilian population erupted. Since these victims were protected by the laws of war, "the civilian and military authorities, who were responsible for the commission of atrocities, were required to abide by the laws and customs of war" (Cigar and Williams, 2002, p. 23-24). Bosnia and Croatia were constantly attacked by paramilitary groups, who committed ethnic cleansing in these territories. Milošević downplayed the impact of these groups and denied that he was involved in any way with them. Many paramilitary officials and military officers publicly announced that if they were indicted, they had documentary evidence linking Milošević to paramilitary organizations and war crimes (Ibid., 29). These paramilitary groups committed some of the most horrific atrocities in Bosnia: "these groups were fully financed and supported by the Serb military under Milošević's control" (Ibid., 96).

On October 29, 2001, the pre-trial hearing was reconvened and Milošević's indictment was by the registrar. At that time, Milošević was charged with "crimes against humanity, breaches of the Geneva Convention, and violations of the customs of war". The charges against Milošević concerned three different wars in Croatia, Bosnia and Kosovo, in which nine hundred ethnic Albanians died, as well as thirty-two counts of war crimes. Milošević was also charged with sixty-six counts of crimes against humanity that violate the laws and regulations of war (Magliveras, 2002). Milošević's defence was that he was protecting the Serbian people and wanted to bring peace to Yugoslavia. Many of those affected by war still struggle to make ends meet and remain far from reconciled with their former enemies. He declared that these indictments were absurd, and that he should be credited with peace in Bosnia and not war, and that "the responsibility for the war in Bosnia is with the forces that broke up Yugoslavia and their agents in Yugoslavia and not the Serbs and Serbian policies" (Kelly, 2005, p. 99). On June 13, 2003, Milošević was linked to the massacre in Srebrenica, which occurred in July 1995. This massacre linked the charge of genocide to Belgrade. There was now sufficient evidence to prove that Milošević was the Serb

staff commander who ordered four police units to enter Srebrenica "to crush the enemy offensive being carried out from the safe area of Srebrenica". He could now be charged with genocide (Ibid., p.109).

Denial and lack of acknowledgement are related to competing truths and competing victimization. There is a tendency for each group to deny its own wrongdoing and prioritise the harm done by other groups. The pain resulting from denial and lack of acknowledgement leaves many angered and disheartened.

4.5. Conclusion

Though the research presented here focuses on Bosnia, the theoretical and practical political issues it raises resonate with the internal turmoil in East Timor, Rwanda, Burma, Sri Lanka and other contemporary conflicts in which unsettled histories of past repression continue to form much of the terrain for contemporary power struggles. Conflicts are not static; hence, conflict resolution could be possible only through healthy transformation of the issues, actors, rules and structures. Civil wars result from fragmentation of social structures and political actors. Conflict resolution requires a political space in which actors, interests and mutual relations can be reorganized.

Bosnia's recovery from war has been slow but steady, with no relapses into widespread violence and little reason to fear such in the future. Civic politics is the basis for liberal democracy; the subjects of civic politics need to be converted from the ethno-politics of post-conflict environment. The legal system and civil society must pursue the goal of moralizing and socialising public life, so that a system of international justice will prevail. The global community with the support of the UN and the International Court can assist in fulfilling this aspiration. However, today it has become obvious that the ethno-nationalist division and delicate political balance in Bosnia, a result of Dayton, can only be maintained through the continued strong presence of the international community in the region. Progress, economic and otherwise, can ultimately only be made when the region's political problems are resolved. Thus, Bosnia and its population, which includes hundreds of thousands of refugees and internally displaced persons (IDPs), will remain dependent on an activist role of the international community in the foreseeable future. The next chapter addresses the problem of global norm diffusion in Bosnia. Rather than understanding

norm diffusion as a linear top-down process, I will try to demonstrate that the reception of civilian immunity has evolved in a far more dynamic way.

CHAPTER 5: The Diffusion of the Norm and Internalization

5.1. Introduction

This chapter focuses on global norm diffusion in international relations. The focus of this chapter is on the end point of the norm diffusion process, i.e. the empowerment of transnational norms in new national and organizational contexts. Norm diffusion takes place in the context of a match between transnational norms and local culture. In such circumstances, transnational norms are readily accepted and the process is one of social learning by the target community, in this case elites. With radical norm diffusion, transnational norms clash with existing local norms, and diffusion only occurs following a process of political mobilization whereby the target community is pressured into adopting new ways of thinking and doing. The chapter will try to demonstrate that the reception of human rights and civilian immunity specifically has evolved in a dynamic way. I offer an explanation of norm diffusion of how global identities construct domestic politics. There is an emerging international discussion over the right or the responsibility to look at civilian immunity objectives. This illustrates the widening and deepening of the normative scope of international law.

After mass atrocity, most victims and perpetrators must find a way to live together again, at least as fellow citizens. The term that describes this process, 'reconciliation', is one of the most promising and contested words in post-war peace building, yet it has been used so loosely that it has been rendered almost meaningless. Because of this ambiguity, practices designed to achieve reconciliation too often bear little relation to peace building goals. In the second part of this chapter I argue that compliance with international norms is a function of the learning that comes from socialization and exposure to NGO activity and/or from civil society development, but also from International Tribunals and Courts that offer society the process of reconciliation and construct global norms in order to make them fit with domestic beliefs and identities.

I measure the degree of a country's socialization by examining norm-induced changes, behaviour in domestic legal institution-building and foreign policy with respect to the rapprochement with the international human right community (including the UN human rights instruments). I evaluate the methods of international human

rights pressure imposed on states and the development of norms during abuse and pressure from the outside. Finally, I describe the internalization and reframing of the norm within the state. It is something more fundamental about identity formation in terms of the recognition of the violation of norms in the wartime context. Walzer discussed the ethics of war in terms of having a common language to talk about war in moral terms – that this does not prevent the violation of norms, but that we, collectively, know violations when we see them and have a shared language for arguing about them.

In demonstrating the causality between international norms and foreign policy, I develop a theory of norm-driven change to explain how a shift in governing norms at the international level can induce domestic policy transformations. International norms not only trigger a cycle of norm-driven change, but also have an impact on domestic politics during the norm contestation process. Relatively dominant international norms can empower one domestic group at the expense of others by providing legitimacy and political resources to the group adhering to the norm. Pressures "from below" (domestic political opposition and human rights NGOs, which searched for international allies to bring outside pressure on Bosnia) and "from above" (transnational humanitarian advocacy networks of NGOs, social movements and governments) combined and cooperated in order to bring a change in Bosnian policies.

5.2. Stages 3 and 4 - Tactical concessions and prescriptive status

As predicted by the spiral model, once some concessions are made, governments may find it harder to step back. We have witnessed intense pressures from human rights networks and an increasing domestic discourse of protecting human rights. The idea of listening to all sides and giving voice to all victims underlies a regional initiative that has been underway since 2006 and has recently come into focus with the Regional Commission for establishing the facts about all victims of the wars waged on the territory of the former Yugoslavia in the period 1991–2001 (RECOM/REKOM). REKOM is a civil society initiative designed to establish the truth about the recent past and ultimately create a path for reconciliation. Unlike the failed truth commissions (Marko-Stöckl, 2008, p 6.), REKOM is designed to be inclusive and regional; it is not focused on listening to the victims of only one side, but on giving all victims a chance to have their stories heard. REKOM relies

largely on consultations - on processes designed to give ordinary people and members of civil society (e.g. victims' groups, NGOs, etc.) a chance to participate in the process of dealing with the past. The initial organizers of REKOM include Nataša Kandić of the Humanitarian Law Center (HLC) in Serbia, Mirsad Tokača of the Research and Documentation Center (RDC) in Bosnia and Herzegovina and Vesna Terselić of Documenta in Croatia. The idea behind the regional approach of REKOM is to incorporate stories of victims into a coherent whole so that something close to a common understanding of the past can be achieved. It is not a judicial process; it is a non-judicial social process designed to address cycles of blame and denial in the societies of former Yugoslavia. However, emotions still have a stronger influence on attitudes and behaviour of the people than rational cost-benefit analysis. In light of the fact that consequences of war are still visible throughout society and that the memory of wartime is still fresh, one can conclude that it will take considerable time to overcome the past.

Regarding human rights and the protection of minorities, Bosnia has ratified all major UN and international human rights conventions, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms. Yet, actual implementation of these instruments still needs to improve. The presidential and parliamentary elections at State, Entity, Canton, and Brcko district level on October 1, 2006, were the first elections since Dayton which were "fully administered by the authorities of BiH...and [also] conducted generally in line with international standards" (Commission of the European Communities, 2006, p. 13). However, the elections again underlined the ethnic cleavages that persist throughout Bosnian society (Ibid., p.7). Nationalist rhetoric both from Serbs and from Bosniaks dominated the pre-election period and had an adverse effect on overall reform implementation (Freedom House, 2006). In that sense, Bosnia still suffers under the legacy of the Dayton Peace Accords and under the inadequacy of the Bosnian Constitution. Even though the Entities have been weakened and central institutions have been established, the central government is not strong vis- à-vis the Entities. Complex political structures prevent timely decision-making and reform. Further efforts to enhance central competencies at the state-level and to create "a more democratic and efficient state" have failed so far (Commission of the European Communities, p. 6). However unsatisfactory the velocity of progress might be, it is unlikely that norm internalization

will fail in Bosnia in the long run. Peaceful means of dealing with conflict have become widely accepted, and Bosnia has reached the status of a nascent democracy.

In Western foreign policy circles, it was argued that the Dayton Agreement provided for the kind of deep socio-political intervention and significant latitude needed for international institutions to implement the defining features of the post-Cold War world, democracy and the transition to a market economy. This would take place through free and fair elections, the growth of civil society, the development of an open media space, respect for and compliance with international human rights standards, the marketization of the economy, the privatization of socially owned property and businesses and the eventual integration of Bosnia into common European institutions like the Council of Europe, OSCE, NATO and even the European Union. Post-war reconstruction would have to do double time as post-socialist transition, carried out by an army of NGOs and aid organizations, financed by western and Islamic states, and overseen by the international institutions like the OSCE, NATO and the UN, which had already begun to see Bosnia as their new *raison d'etre.*

At the same time, however, the Dayton Agreement provided for mechanisms meant to undo precisely that ethnically divided status quo, perhaps most prominently the return of refugees, but also an institutional and legal architecture meant to secure the human rights and political participation of individual citizens regardless of their ethno national background. It is telling that most of that architecture was put under the jurisdiction of foreign rather than local bodies, for it was precisely these aspects that Bosnia was understood to be lacking and that therefore had to be brought from outside.

Indeed, from the beginning of the war through its post-war peace, the question of refugees (creating them, placing them, caring for them, returning them) has linked the international community to Bosnia. For instance, the internationally sanctioned logic and grounds for partition directly affected the placement of ethnically-marked refugees during the war, such that they were used to settle areas under one or another authority in order to strengthen the control of the Bosnian Serb or Bosnian Croat forces, or the Bosniak dominated government of BiH (Kumar, 1997). The Bosnian refugee population outside of Bosnia neared one million within one year of the war's start, and Bosniak and Bosnian Croat early insistence that the right to return be maintained for refugees dovetailed nicely with the goals of European Community countries burdened by so many displaced. Refugee questions were central to the

various peace negotiations (c.f. Holbrooke, 1998), ranging from the right of return to where refugees should be allowed to vote.

Refugee return also offered the international community a vehicle through which to promote further elements of socialization. The privatization of socially owned housing, the promotion of transparency reforms in budgeting practices and municipal services, the privatization of those state firms still in operation, extensive electoral engineering and constitutional change all promoted return. This included a massive property repossession project, hundreds of millions of dollars worth of housing reconstruction, and the creation of new positions of political representation in order to make the return of refugees sustainable.

The case of Bosnia also shows that those opposed to the ICTY in post-war Bosnia and who were forced to comply with the norms of the ICTY began to utilise the language of human rights. This process of socialization occurred precisely in the way existing paradigms would predict. In post-war Bosnia, some elites opposed to the ICTY cooperated inconsistently and strategically, and only when the costs of not cooperating were too high. This new discursive practice, however, like civil society leaders, alter their attitudes and rhetoric to fall in line with views voiced by those elites. The ICTY, international society and international courts could be considered as examples of channels of political socialization. In 2006, the Hague transferred a dozen cases to the domestic courts. As one law student at the University of Sarajevo stated, "It is time for justice to come home. It's time for us to do some of this ourselves" (Smith, 2006).

International trials led to the creation of local judicial capacity, through the transfer of cases (discussed in previous chapter). As observed by Lutz and Sikkink, a justice cascade occurred as a "result of the concerted efforts of a transnational justice advocacy network, made up of connected groups of activist lawyers with expertise in international and domestic human rights law" (Lutz and Sikkink, 2001, p. 17). This cascade resulted in the local prosecution "transitions" that implied that countries were moving to another type of government.

Interests and inducements clearly play a significant role in the diffusion of the transnational military norms. States may meet certain military standards of behaviour in order to be accepted into the international community. The point is that international acceptance may bring concrete as well as emotional benefits, and in this sense it is instrumental to seek it. In terms of norms of conventional warfare, this is

most evident for communities aspiring to statehood. Thus Bosnia is creating a conventional army which will be more vulnerable than guerrilla forces, but which will nevertheless legitimise their respective bids for statehood. NATO conditionality led to defence reform in Bosnia and Herzegovina (Aybet, G. 2010, p. 20). Conditionality is also a way for international institutions to extricate themselves from the role of external state-building and assume a more advisory capacity through encouraging domestic action. NATO launched a large peace-building operation and subsequently established a single, integrated armed force, a centralized command and a central state level Ministry of Defence. Defence reform was therefore a success in terms of transferring authority from Bosnia's two entities to central state-level institutions, and hence a success in state-building. NATO conditionality works through a process of socialization. It works through a reputation confined only to the military sector through the incentives to get the mark of approval for professionalism (Aybet, G. 2010, p. 26). The standards also had an impact in depoliticizing defence reform from the wider civilian politics in both entities: an important consideration because at the end of the war, power had shifted from military to civilian resources, which is why there was less resistance to defence reform at the entity level than there was to reforming other sectors, such as the police.

Post-war Bosnia seemed like a perfect candidate for norm acceptance. The memory of the brutal conflict was still fresh. The victims shared the same state with perpetrators, and the need for reconciliation seemed urgent if the Bosnian state was to survive. Recently, some political leaders have regarded reconciliation as something that is necessary for the future of the region. These political leaders tend to focus on reconciliation at the collective level among nations. In recent statements, Boris Tadic provided: "Reconciliation is to us a moral imperative, and in order for that to happen the truth has to be told without embellishing it. It has to be based on facts, truth and bloodshed that must never happen again in this region" (B92, 2010, May 31a). Ivo Josipovic has emphasized: "the hard but necessary work of reconciliation": "It's easier to find an excuse but it's much harder to offer a hand of reconciliation, start constructive dialog and finish it" (B92, 2010, June 1).

5.2.1. Bottom-Up Approach: Domestic Level

The strength of international norms is important in determining domestic policy outcomes. Norm diffusion is a main feature of the norm-driven change model. Multiplicity in the international normative environment drives and shapes political change, especially in periods of uncertainty. Under uncertainty or armed conflict, where the pre-existing identity and interests undergo political scrutiny, international norms play a critical role in determining the next course of policy outcome. They help states to reduce uncertainty by providing possible interpretations of the changing environment, and hence narrowing the possible courses of action states can take. After national interests are reconstructed, international norms continue to influence the policymaking process while different groups compete over various policy options. A particular governing principle can reconfigure the dynamics of domestic politics by favouring a domestic group and providing it with the legitimacy to strengthen its position vis-à-vis the other groups. The mechanism of norm-driven change and domestic norm selection is a continuous process and is dynamic in nature. The social practices of states and interactions among states continuously reproduce the intersubjective meanings and actors' identity. As Campbell (1992) asserted, states are always in a process of becoming, because states, or more precisely the people within them, are continuously learning about governing norms through direct contact with other states, as well as through observations of other states interacting. Studying the nature of this recurrent political sequence by scrutinizing Bosnia's history enables the establishment of a causal linkage between international norms and foreign policy outcomes.

As Bosnia emerged from violent internal conflict, its nature and being was fundamentally altered. Issues such as whether or not the state emerged from the conflict with new political elites in power, what has been the population dynamic at the end of the conflict, and whether or not there are pre-existing functioning institutions need to be given critical attention as strategies are formulated to deal with the post-conflict reconstruction and recovery. The protracted civil war in Yugoslavia was characterised by the blatant disregard for human rights and by large scale ethnic cleansing. Yet, human rights principles are a component of a forward-looking complex of arrangements aimed at putting the state and its entities on a track towards restoration of civility and normality.

According to Vesna Pesic (2000), a possible transition to a truly multi-ethnic federal structure was closed off with the 1974 constitutional changes that introduced a multi-national system to Yugoslavia. Post-1974 Yugoslavia consisted of particular nations and national institutions defined on territorial-political bases (Kymlicka, 1995). The full and free development of the peoples (i.e. not of Bosnian people, but of Serbian people) was permitted. Yet, with the exception of Slovenia, none of the republics had mono-ethnic structures. Yugoslavia could not manage to reconcile a collective state identity with the narrower national identity since it lacked the necessary institutional limitations of a civil state with constitutional rights. With the constitution of 1974, the unitary authoritarianism was replaced by a decentralized authoritarianism. The new system placed Tito as the arbiter of national problems, around whom a national mythos was created. Yugoslavia became an 'agreed' state between the republics and provinces. As a result, the sovereignty that had previously rested in the centre was dispersed in symmetry between the republics (Dindic, 1988).

The collapse of Yugoslav federalism at the end of the 1980s led to each locally dominant people to seek its own representative state. None of the constituent nations specified in the 1974 constitution had prior experience with democratic institutionalism, or with centralized, inter-regional institutions. After their respective declarations of independence, these new states had to ground their representative institutions in the core ethnic people as the easiest path to follow. The quest for self-determination is often strengthened by myths. The Serbian myth of Greater Serbia not only legitimated the use of violence to protect the Yugoslav (Serbian) state, but also appropriated the thinly disguised support for the atrocities committed by Serbian paramilitaries in the neighbouring countries of Croatia and Bosnia Herzegovina after 1991.

The economic and political passivity of the former socialist system was also accused of putting the people at the receiving end, not the earning. Popov underlined three inseparable aspects of Yugoslav modernity: de-structuring of society, the disorganization of the state, and the depersonalization of the personality (2000, p. 99). The changes on the global and regional level furthered the uncertainty of everyday life, which, instead of opening ways to democratization, led to an escape from modernity. Fear of the government led to withdrawal from politics. So when the system that looked omnipotent and eternal collapsed, everyone behaved like victims of party clashes, war, revolution and various campaigns against the enemy. A deadly

synthesis of victims on the national level was created. The fusion of groups and classes was replaced by a chaotic desire for an organic unity of blood and soil. The whole nation was declared to be the victim of another nation. From there, collective vengeance was one step away. Nationalism is connected to feelings of injured dignity. Various injuries found a common denominator in national wounds and revenge. Radovan Karadžić, a psychiatrist by profession, succeeded in connecting the individual psyche with the collective soul. According to Karadžić, the crouching soul of the Serbs should be freed from the state of being suppressed over the land that is Serbian, such as the Republika Srpska. Karadžić also had the support of the spiritual authority, the Orthodox Church, which helped the resurrection of the crouching soul. Thus, violence conducted by the Serbian paramilitaries was the fault of the others resisting the realization of the mission as the word of the God.

> In Croatia and in former Bosnia Herzegovina, the enemy made so many mistakes that it led us straight to the path of the complete renewal of the Serb kingdom, the renewal of the Serb state, so our way was actually a reaction to the challenges set for us, and to the need forced upon us by our enemies, and actually it all came out as the way God commanded (Karadžić, 1995).

The set of problems associated with the remnants of the war indicate a common perception among the respondents that the impact of the conflict in the daily lives of Bosnians is still present. If anything could change the negative peace in Bosnia, it is reconciliation and coming to terms with past crimes committed by all parties to the conflict.

The process of constitutional reform (CR) needs to be understood in this context, as both a response to the relatively failed record of the state building process and a renewed attempt to address the key institutional deficiencies inherited from Dayton. In order to signal to domestic and international observers that they are credibly committed to human rights, states must be able to show that their professed commitments to human rights are more than cheap talk. One way in which states are able to make this commitment credible is through their domestic institutions, and particularly constraints on the executive. In fact, the rationale for CR revolved around two basic premises: (1) the Venice commission's critique of the Bosnian constitution, which called for the creation of a more efficient government and the protection of human rights in line with the European Convention of Human rights (Venice

Commission, 2005); and (2) the process of EU accession, especially in relation to the provision to the state of the necessary powers to comply with the EU criteria.

According to Ronald Dworkin (1996, p. 7), contemporary constitutions are repositories of moral principles and should be read and enforced in a particular way, which he calls the "moral reading." The clauses of the American Constitution that protect individuals and minorities from government – found mainly in the Bill of Rights and the amendments added after the Civil War – are examples of such abstract moral principles. The moral reading proposes that everyone – judges, lawyers, citizens – interpret apply these abstract clauses on the understanding that they invoke moral principles about political decency and justice. In the case of BiH, there are two distinct, although related, sets of abstract clauses which invoke moral principles. The first concerns the protection and promotion of basic human rights and fundamental freedoms (as enumerated in Article II, 3 of Annex 4), and by extension, emphasizes the crucial axiom in the moral perspective.

Those moral principles, conceived as limits on solidification of the situation that came about through massive violations of human rights – ethnic cleansing and genocide – have often been interpreted as articulating an imperative to re-establish the kind of multi-ethnic society and multi-national polity that had existed prior to the war without ethno-territorial separation of society and state.

The constitution of BiH, found in Annex 4 of the DPA, is specific not only about which specific basic human rights are to be enforced in BiH, but also about the territorial reach of these rights (as set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols). The constitutional context, through Annexes 4 and 7, strongly articulates the "equal protection" and the "non-discrimination" principles. The positive duty of protection is le III.2.c of the Constitution (Annex 4): "The Entities shall provide a safe and secure environment for *all person*s in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for the internationally recognized human rights and fundamental freedoms referred to in Article II above [European Convention] and by taking such other measures as appropriate."

The right to property, freedom of movement and residence is expressly referred to in connection with the return of refugees and displaced persons, and specific measures are outlined in respect of the duties of protection and non-

discrimination. Thus, under Article I.1 of Annex 7, "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensate for any property that cannot be restored to them."

Being able to live together in post-conflict societies is one of the biggest challenges of the immediate post-conflict stage. BiH seems to have gotten over this challenge after years. People belonging to all three constituent peoples significantly demonstrated their willingness to live together with neighbours of other ethnic origins. This should be understood as an important phenomenon since it displays an increased tolerance toward the other given they remain the majority. The Dayton Framework was an acceptable starting position towards the endeavour "to transform Bosnia into a liberal democracy on the assumption that doing so would reduce the likelihood of renewed fighting" (Paris, 2000, p. 99).

Before the establishment of the Bonn powers (1997), the international community could only pursue a limited 'stick and carrot' approach against potential spoilers of the peace and democratization process. Thus, the first High Representative for Bosnia and Herzegovina, Carl Bildt, had a relatively weak position and relied primarily on the good will of Bosnian political elites to cooperate in Dayton's implementation. The result was often non-compliance or only selective implementation (International Crisis Group, p. 4). First, as concerns the Dayton Peace Accords, there are many opinions about the strengths and weaknesses of the Accords and especially about the Bosnian Constitution. In retrospect, the agreement seemed to be the best solution possible at the time of its creation, and also for the initial post-conflict phase. The Dayton Peace Accords were the result of compromise. The primary interests of the international community and the aim of the comprehensive contract were to stop the fighting and to prevent further violence in the region, not to tackle the root causes of the conflict, or to create the most favourable conditions for democracy.

The Dayton Peace Agreement was signed in Paris in December 1995. It put an end to the fighting. A Peace Implementation Council (PIC) was set up and various international bodies were tasked with overseeing and managing the implementation of the Agreement. The Dayton Peace Agreement (DPA) sets the guidelines for post-conflict reconstruction efforts with a clear focus on state-building. The Agreement is

composed of annexes, each of which regulates one aspect of the post-conflict restructuring/state-building process, such as the creation of a united Bosnian Army (Defense Reform), constitution, human rights monitoring and training, police mentoring and monitoring (Police Reform), etc.[6] Different international organizations were tasked with each of these functions under the coordination of the Office of the High Representative. The ability of the international community to empower human rights norms depended heavily on the HR. At this time, the real power was with the almost 60,000 North Atlantic Treaty Organization (NATO) troops, who were vehemently opposed to becoming involved in anything outside of its narrow military mandate. While the military aspects of the peace agreement were implemented according to the detailed schedule included in the Accords, political and social reforms were impossible in this period. Elections were indeed held, but they were not truly free and fair. Physical reconstruction began, but freedom of movement remained limited. However, after two sets of elections (general and municipal), which were won by the wartime nationalist parties, the Peace Implementation Council in December 1997 determined that progress had been too slow and granted the High Representative greater authority to pursue implementation of Bonn Powers.

The period 1998–2002 witnessed a phase of reforms. As a result of the Bonn Powers, both Carlos Westendorp and Wolfgang Petritsch, the second and third High Representatives, had strengthened capacities to remove obstructionist politicians (spoilers) and to impose reform. The Bonn Powers were used more frequently, and reforms began to make tentative progress. Important regional events finally occurred when Milosević was first ousted from power in October 2000 and then taken into custody at the Hague in June 2001 for his involvement in war crimes in the wars of Yugoslav succession. A State Court was established in November 2000, an important

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[6] Annexes 1A and 1B of the DPA include Military Aspects of the Peace Settlement and Regional Stabilization. Annex 2 covers Inter-Entity Boundary Line and Related Issues, whereas Annexes 3, 4 and 5 deal with Elections, Constitution and Arbitration, respectively. Annex 6 deals with the Human Rights violations and Annex 7 covers possible problems with the rehabilitation and return of the Refugees and Displaced Persons. Annex 8 sets up a Commission to Preserve National Monuments and Annex 9 aims to establish joint Bosnia and Herzegovina Public Corporations. Annex 10 establishes the guidelines for the Civilian Implementation of the Peace Settlement, whereas Annex 11 introduces an International Police Task Force under a UN Mandate to tackle organized crime and illegal trafficking.

state strengthening measure both practically and symbolically. And the constituent peoples' decision in 2002 was crucial in guaranteeing BiH citizens rights rather than simply constituent peoples' rights in certain territories (ICG, 2002).

Paddy Ashdown came to the position carrying the high hopes and expectations of many who hoped for a continued and robust approach to peace implementation and reform, and he consistently spoke of the need to ensure that BiH was on an irreversible road to Europe. A state-level Ministry of Defense and single armed forces was established, replacing the entity forces, a law on Indirect Taxation and the introduction of the state-wide value added tax took effect, giving the state a role in the country's revenue collection and distribution for the first time, and a concerted effort to reform the country's divided education system was initiated, with the passage of a state-level Framework Law aimed at breaking down the segregation in the fragmented school system. There was a sense of change: that BiH was making process in moving toward meeting requirements to begin European Union (EU) membership talks. However, there were also problems. The education system is one of the most contested aspects of post-conflict BiH. "Two-schools-under-one-roof" is perhaps the most fitting example of segregation in the primary schools of BiH. Although assimilation is common practice in schools throughout BiH, due to the presence of the multi-ethnic biased curricula, the continuation of the "two-schools-under-one-roof" system presents an exaggerated form of divisions in the BiH education system. In many divided schools, Bosniak and Croat children, as well as their teachers, do not have any mutual contact.

After Ashdown's aggressive tenure, the appointment of Christian Schwartz-Schilling as the fifth High Representative ushered in a new period of peace implementation (Human Rights House Foundation, 2006). He asserted openly from the beginning that domestic ownership would be the priority of his term and that he would not interfere in any domestic affairs unless they dealt directly with threats to the stability of the country or war crimes compliance with the International Criminal Tribunal for the former Yugoslavia.

Within a week of signing the agreement in December, a very robust NATO-led Implementation Force, including Russian forces, began to deploy throughout Bosnia. Whether because of this massive peacekeeping force or the peace agreement, or simply exhaustion with war, there was no significant further violence. Along with the troops came a tremendous contingent of IGOs, foreign government aid agencies and

international NGOs to help with every aspect of implementing the peace agreement. Several large IGOs were given important responsibilities under the peace agreement. Police monitoring and training was assigned to the UN (later handed to the EU). Much of the political implementation, including running elections and monitoring human rights was assigned to the Organization for Security and Cooperation in Europe (OSCE), which developed other democratization programs as well, including civil society development. Many other IGOs, international NGOs and foreign government aid agencies, such as the UN Development Program (UNDP), the National Democratic Institute (NDI) and the US Agency for International Development (USAID), also implemented substantial civil society development programs. Among the different practices and activities aimed at reconciliation, a few stand out as particularly interesting. These include grassroots initiatives focused on vulnerable populations, e.g., young people in divided communities and war veterans, as well as initiatives that operate at higher levels.

In Bosnia, small investments in civil society yielded numerous benefits, such as helping to develop a culture of tolerance and interethnic moderation. The OSCE, the U.S. Agency for International Development, and scores of international NGOs have worked to promote civil society, largely through financial support for grassroots NGOs. Promoting internalization of norms can be found in the work of local NGOs, e.g., Nansen Dialogue Center (NDC),[7] and the programs they run throughout the region. There are a number of local NDCs operating throughout former Yugoslavia. Though they are part of the Nansen Dialogue Network (NDN), each centre has its own unique approach and is independent of the other centres. The centres utilize similar tools for dialogue, peace building and reconciliation, but customize their approach to the local population they are working with. In Bosnia and Herzegovina, for example, there is a focus on building dialogue in war-torn areas, such as Srebrenica, Bratunac and Mostar, with decision makers and local community leaders.

A number of NGOs have also focused on the role of interaction and cultural exchange in creating a path toward reconciliation among society. The NGO Youth Initiative for Human Rights (YIHR), for example, has a visiting program (2010) wherein YIHR brings young people on weekend visits to another city/town in the

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[7] Nansen Dialogue Network (NDN) is comprised of a number of local centers (NDCs) throughout former Yugoslavia. See http://www.nansen-dialogue.net/component/option,com_frontpage/Itemid,1/

region (frequently where they will be in the minority). Examples include young people from Belgrade visiting Pristina and Sarajevo. The idea behind the visiting program is for young people to confront pre-existing images of people and places they have never been exposed to.

The Igman Initiative has a unique approach to reconciliation: it focuses on promoting regional cooperation among leaders. It is tailored to local leaders and decision makers, youth groups, and cross-border cooperation. Examples of Igman Initiative projects include encouraging dialogue and cooperation among leaders in different communities in different states, e.g., Trebinje in Bosnia and Herzegovina, Dubrovnik in Croatia and Herceg Novi in Montenegro. In this example, these three communities (Trebinje, Dubrovnik and Herceg Novi) have been linked for years through a common water source. With the help of the Igman Initiative, leaders from all three communities found a way to communicate and facilitate proper water flow.

Bosnia is a good example of a highly tense and polarized social context where some successful encounters have had to be carefully mediated and developed over time. As Nikolić-Ristanović (2008) has noted, meetings between members of different ethnic groups who have suffered similar types of victimization can be an important first step in this long process. There have been meetings between relatives of missing persons hosted by the Civil Society Initiatives program run by the International Commission for Missing Persons in Bosnia. Although the participants are all victims of the war, they often regard each other with mistrust and as enemies because of their ethnic identity. Through a series of meetings over a considerable period of time, these individuals become aware that they share similar suffering and loss, and the same goal of finding their loved ones, thus promoting mutual understanding (Zinbo, 2006). Halpern and Weinstein (2004, p. 578–579) reported on a similar case of two mothers of different ethnicities from the former Yugoslavia, who lost their sons in the war and who have developed trust and empathy through the sharing of their suffering and of their commitment to finding the missing.

5.2.2. Top-Down Approach: International Level

The normative approach, particularly regarding socialization, is an important hypothesis to consider, especially in the context of the UN Council, where states are often involved in a complicated web of interaction and have many opportunities for socialization and for adopting the norms of the community. The UN Security Council

Members unanimously condemned the practice of ethnic cleansing, with many Council Members drawing specific parallels between the savagery of the crimes against civilians in Bosnia and the crimes against humanity of the Second World War. In her testimony before the Council in November 1992, the United Nations High commissioner for Refugees indicated that "rarely have the violations of human rights and humanitarian law, violence and destruction reached the levels we are currently witnessing in the former Yugoslavia" (United Nations Security Council Provisional Verbatim Record, 1992, S/PV.3106). The representative of Belgium argued that the conflict in Bosnia-Herzegovina has reached a scale and savagery not seen in Europe for forty-seven years. It has thus brought back the worst memories of anything Europe has known this century: the extermination of innocent victims and the forced displacement of populations, on the basis of ethnic and religious criteria, in grave violation of all human rights Conventions (Sadako Ogata in United Nations High Commissioner for Refugees, 1992, S/PV.3134, p. 31).

Both permanent and elected Members of the Security Council disapproved of these atrocities by making explicit references to the violation of international humanitarian laws, including the Geneva Conventions, the Helsinki Final Act, the Charter of Paris and the United Nations Charter during formal meetings. Eventually, the Council condemned violations of international humanitarian law in a series of presidential statements and resolutions. For instance, in an August 1992 presidential statement, the Security Council condemned the imprisoning and abuse of civilian populations in concentration camps and requested immediate access to all detainees by the International Committee of the Red Cross. The Security Council also reaffirmed that all parties were responsible for complying with the Geneva Conventions of 12 August 1949 and that perpetrators would be held individually responsible for breaches of international humanitarian law (United Nations Security Council Provisional Verbatim Record, 1992, S/PV.3103). Security Council resolution 771 (1992) subsequently condemned the practice of ethnic cleansing and reiterated its demand for compliance with international humanitarian law in Bosnia-Herzegovina. Resolution 771 (1992) also called on all States to make available to the Council evidence of violations of international humanitarian law (United Nations Security Council, 1992, Resolution S/RES/771). Security Council concern with the human rights aspects of the Bosnian war were the focus of numerous resolutions and statements, including: resolution 798 (1992) which condemned the "organized and

systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina"; resolution 808 (1993), which established a Commission of Experts to examine international humanitarian law violations; and United Nations Security Council Resolution 827 (1993), which established an international criminal tribunal for the prosecution of war crimes and crimes against humanity in the territories of the former Yugoslavia. Expert testimony given to the Council highlighted the centrality of human rights violations as an objective of the conflict rather than its by-product. The Special Rapporteur on former Yugoslavia appointed by the United Nations Commission of Human Rights remarked to the Council,

> In the context of the conflict taking place in the territory of Bosnia and Herzegovina, which may expand to other areas of the former Yugoslavia, one cannot examine the human rights questions separately from the development of the political and military situation in the area. The issue at stake is the fundamental right to life, which is totally threatened…Profound changes in the world have led to the recognition that respect for human rights has become a crucial element of international security. The former Yugoslavia constitutes, in this respect, one of the most serious, and, at the same time, most tragic challenges faced by the international community and intergovernmental organizations, primarily by the United Nations (United Nations Security Council Provisional Verbatim Record, 1992, S/PV.3134, p. 39).

Security Council members indicated by the passage of these resolutions that the protection of human rights and respect for international humanitarian law were intricately linked to the maintenance of international peace and security. Global human rights norms were shaping state conceptions of national and international interest.

Cape Verde argued before the Council that the violations of human rights happening in Bosnia were crimes committed against international law and all of the international community and not just the Bosnians because "they violate our very decency and human dignity." Japan similarly noted that grave implications of the conflict extended beyond the region of Europe to the entire international community. Venezuela defended its vote in favour of imposing sanctions against Serbia and Montenegro "for reasons that are basically humanitarian", stating explicitly, "respect for the norms and principles of international law is a prerequisite for peace and security in the world. Any State that violates them must be condemned" (United

Nations Security Council Provisional Verbatim Record, 1992, S/PV.3082, p. 27). But not all Council Members agreed that human rights considerations had a place in Security Council decision-making. India, China and Zimbabwe denied the linkage between human rights and international security. India, for example, expressed its strong reservation about the appropriateness of human rights concerns being discussed in the Council, noting that human rights concerns belonged in the Human Rights Commission in Geneva, whereas concerns about international peace and security were in the purview of the Security Council. Notably, however, China expressed its reservations about human rights considerations in formal meetings and abstained from voting on resolutions that linked human rights and humanitarian law to Chapter VII of the UN Charter, but did not veto them.

Momentum began to build after the Bosnian Serb forces overran the "safe haven" of Srebrenica in July 1995. Previous violent action against United Nations Protection Force (UNPROFOR) by the Bosnian Serbs had already angered Members of the Security Council, particularly its kidnapping and detention of more than 400 UN personnel to use as human shields in May 1995. Starting on 12 July 1995, Bosnian Serb forces ethnically cleansed Srebrenica through forced population removal and murderous cleansing. Over the next several days, thousands of Muslim men disappeared. In the meeting of the Security Council on 12 July, Honduras used the phrase "Karadžić methods" as a synonym for Serbian ethnic cleansing and named Milošević (President of Serbia) and Mladić as perpetrators (United Nations Security Council, 1995, Resolution S/PV.3553, p. 9). On 21 December 1995, the Security Council unanimously adopted Resolution 1034 (1995), which strongly condemned "all violations of international humanitarian law and human rights" and condemned in particular, violations of international humanitarian law and human rights by Bosnian Serb and paramilitary forces in the areas of Srebrenica, Žepa, Banja Luka and Sanski Most. The resolution noted a "consistent pattern of summary executions, rape, mass expulsions, arbitrary detentions, forced labour and large-scale disappearances." Resolution 1034 (1995) also specifically named Bosnian Serb leaders Radovan Karadžić and Rako Mladić for "Their direct and individual responsibilities for the atrocities committed against the Bosnian Muslim population of Srebrenica in July 1995" (United Nations Security Council, 1995, Resolution S/RES/1034).

The establishment of an international criminal tribunal to investigate and prosecute war crimes in the former Yugoslavia illustrates the importance of the

protection of human rights to collective security, greatly increasing the legitimacy of Security Council engagement on human rights questions.

5.2.2.1. The diffusion of the Norm – the UN Security Council and ICTY

The Security Council is a place of "heated and unsystematic, but often principled debate about appropriate standards of international behavior and the extent and limits of the Council's authority to regulate that behavior" (Johnstone, 2003, p. 438). However, it took a lot of time for some of the member states of the United Nations to appreciate that the overwhelming majority of civilian deaths in the civil war in Bosnia did not constitute "collateral damage", i.e. proportionate harm to civilians resulting from lawful attacks on military targets, but that civilians were in many instances directly and deliberately targeted. As early as 1992, the Security Council expressed "grave alarm" at reports of "mass forcible expulsion and deportation of civilians" and "deliberate attacks on non-combatants" in Bosnia-Herzegovina, and condemned the practice of "ethnic cleansing" (UN Security Council, 1992). Ignatieff (1997, p.132) emphasised that the atrocities of the war in Bosnia-Herzegovina were committed "not as an unintended consequence of drunkenness and indiscipline, but as a deliberate military strategy".

The United Nations became involved in the conflicts in the former Yugoslavia early in September 1991 when the Security Council passed resolution 713 (1991) condemning the fighting and establishing an arms embargo against all of the territory of Yugoslavia. The arms embargo was justified as an effort to limit the conflict and prevent its further escalation. Resolution 1034 (1995) noted a "consistent pattern of summary executions, rape, mass expulsions, arbitrary detentions, forced labour and large-scale disappearances." Resolution 1034 also specifically named Bosnian Serb leaders Radovan Karadžić and Rako Mladić for "[t]heir direct and individual responsibilities for the atrocities committed against the Bosnian Muslim population of Srebrenica in July 1995" (S/RES/1034, 1995). In addition, however, seven operative paragraphs were addressed to "all parties" reflecting the persistence of the minority Security Council decision that all parties were perpetrators of the Bosnian war, some continued uncertainty of its character, and the persisting norm of impartiality for UN peace operations. Four principle issues were a source of division between the Europeans and the Americans with regard to the Bosnian conflict: the character of the

conflict; the nature of the human rights violations; arms embargo policy; and the purpose of the use of force (Allin, 2002, p. 15-21).

Inability to agree on these issues threatened transatlantic values that were important to the cohesion of the NATO alliance as well as mutual relations between them. The United States adopted the position that Bosnia-Herzegovina was an independent state under attack from neighbouring Serbia early in the conflict. In fact, as early as 1989 the United States' relations with Serbia had been strained over its treatment of its minority populations, including the ethnic Albanians in Kosovo. France and the UK, however, understood the conflict to be more complicated than the simple story articulated by the Americans. Attack was coming from two sources outside of Bosnia – Serbia and Croatia – but also from within by Bosnian Serbs and Bosnian Croats. Two or three of the ethnic groups residing in Bosnia-Herzegovina were supporting the external war against the Government. The Bosnian state's existence was being opposed by the majority of its inhabitants from this perspective, raising questions about the legitimacy of Bosnian Government sovereignty (Allin, 2002, p. 15-21). The members of the transatlantic alliance were similarly divided, at least early in the conflict, between whether the war was characterized more by ethnic cleansing or as a traditional war over territory. Divisions over the arms embargo reflected not only the articulation of different causal stories about the conflict and different perspectives on sovereign authority in Bosnia, but also reflected different national interests. The American government was under immense pressure from Congress and its domestic population to unilaterally lift the arms embargo, which they viewed as denying Bosnia the right to defend itself. The US also had an interest in arming the Bosnian Muslims so that they could reverse some of the Bosnian Serb gains and make potential intervention easier and safer for NATO and UN troops. The Europeans were bitter that the US both pressured them to alter the arms embargo policy and blamed them for its continuation, arguing that the US was a veto-wielding member of the United Nations and could have blocked the arms embargo initially. France and the UK also had different national interests than the US when it came to the question of the use of force. Not only were the European states more inclined to see the conflict as one in which all sides were perpetrators, they had military troops on the ground that would be put at risk if the UN, led by the US, was to initiate humanitarian intervention on behalf of the Bosnian Muslims. The United States pushed the use of diplomacy backed by force, but it was unwilling to commit ground

troops and was only willing to use force from the air because it was safer for US forces. What was in the interests of US forces, however, was threatening to the forces of France and the UK (Allin, 2002, p. 15-21).

As predicted by the spiral model, the increase in human rights violations by 1995 brought a significant revival in the human rights scene. Prominent local organizations were established. In addition, international human rights nongovernmental organizations (NGOs) substantially extended their levels of activity in the region. More than 100,000 foreigners, at least a dozen UN agencies, and over two hundred non-governmental organizations (NGOs) participated in the humanitarian relief effort. By mid-1995, some two-thirds of all UN peacekeepers in the world were deployed in the region, with the total number of troops in Bosnia reaching 22,500 (Andreas, 2009). The United Nations played a central role in efforts by the international community to reduce the suffering and to end the conflict. The refugees from eastern Bosnia gathered in three cities that were still under Bosnian government control: Srebrenica, Zepa and Gorazde. These cities, and their surrounding areas, were considered as islands of safety for these refugees. The problem was that they were cut from the territory controlled by the Bosnian government. The situation in Srebrenica was particularly bad, where the Serbian forces continued their assaults and artillery shelling. Srebrenica was eventually proclaimed a "safe area" by the UN Security Council Resolution 819; Resolution 824, voted on the same day, proclaimed Zepa, Gorazde, Sarajevo, Bihac and Tuzla safe areas as well. The resolutions were purported to place the safe areas under UN control, demilitarize these regions and prevent the Serb forces from occupying them. A mechanism was created to enforce the safe areas through NATO air forces, and especially the U.S. Sixth Fleet in the Mediterranean. This was the one real attempt from above to implement cosmopolitan human rights norms during the war.

Aside from the dispatch of troops, a second response of the international community and Security Council members' decision was to establish an International Criminal Tribunal to investigate and prosecute war crimes in the former Yugoslavia. That illustrates the importance of the protection of human rights to collective security, greatly increasing the legitimacy of Security Council engagement on human rights questions. Emerging of the norm is more likely when it complements these existing international norms then when its practice directly challenges them.

The international community recognized the need for a court to settle the issue of ethnically based violence and hatred within the former Yugoslavia and end the culture of impunity regarding such conflict violence (Goldstone, 2002). By no means was the use of an international tribunal a new invention of international law, but its method of operation was unique. The ICTY, as established, was not created to be concerned with groups, organizations or governments, but rather it was designed to allocate guilt to individuals responsible for the intergroup fighting (Ibid). It was designed to address the ethnic tension and violence that individuals enacted upon others and therefore the court's jurisdiction is limited to individuals who perpetrated crimes. Without the establishment of this international tribunal, the perpetrators "would have led lives of relative comfort, as immune from prosecution in their homeland as generations of war criminals before them" (Neuffer, 2002, p. 390). While the international community had seen similar types of hatred before, it had not put on trial perpetrators of ethnically based crimes.

The court was therefore tasked with jurisdiction over individuals, not of political or even ethnic groups, and its mandate was to assign guilt based on the relationships and violence that had occurred by individuals toward distinctive groups based on ethnic hatred (The ICTY: Mandate and Jurisdiction). This mechanism was distinct from other legal mechanisms such as the International Court of Justice, which had been designed and used, not as a mechanism of moral justice, but instead to settle interstate disputes between sovereign states.

The goal of providing justice to victims and witnesses was to bring a voice to the victims by aiding them with opinions that used their testimony to right the wrongs that had been committed based on ethnic identification. This task is quite daunting when considering that these victims and witnesses represented thousands of victims and witnesses involved in the conflict. The idea behind providing such justice was that the court needed to allow the voices of the victims to be heard to allow for the court to bring justice, peace and reconciliation to those who were involved in the tragedy. Actions which previously appeared justified come to be seen as improper, illegitimate, and morally distasteful. One of the victims includes a Bosnian Serb woman, speaking about how she felt after ICTY convict Hazim Delić raped her in the Čelebići prison camp near Konjic in Bosnia and Herzegovina (ICTY, 1997, PROSECUTOR vs. MUCIĆ ET.AL. CASE IT-96-21). Amongst the many stories captured on the ICTY website run common tragic themes of pain and suffering. Individual internalization

proceeds slowly, at the sometimes glacial pace of diffuse social change. In turn, if the tribunal was to be successful in this, it was thought that it would end the culture of impunity regarding ethnic violence. While some scholars and legal activists raised concerns about the use of the victims in court and whether it furthered or helped to dissipate ethnic tensions, others raised concerns that victims were being silenced, rather than heard by the tribunal (Dembour and Haslam, 2004).

Consequently, issues of victimization help form the basis for findings of human rights violations and allocations of guilt. While the judges see the accused and specific victims and witnesses on a very individualized basis, the testimony and evidentiary proofs presented in court must ultimately be translated into a legal opinion that will be used by the political and legal world for future generations. A person must fit certain criteria in order to be accused of crimes in international law. At the ICTY, this means that the court must have reason to believe that an individual had command over other individuals who committed certain crimes, or else the court must find that the individual had committed or else had ordered the crimes themselves (the doctrine of command responsibility) (Danner and Martinez, 2005). The case study shows that those opposed to the Tribunal in postwar Bosnia who were forced to comply with norms of the ICTY began to utilize the language of human rights, giving at least the appearance of being in line with new universal norms about accountability.

The establishment of the Bosnian War Crimes Chamber was also significant, as it was the latest in the series of hybrid tribunals supported by the international justice community as a way to correct institutional deficiencies of purely local and purely international trials. Therefore, the significance of the Bosnian WCC was both substantial (to improve on justice processes in Bosnia) and institutional (as a real world test in transitional justice model). Finally, the hope was that WCC's international staff would be able to carry out "expertise transfer" and contribute to capacity building of Bosnian war crimes law experts and institutions.

In Bosnia, the UN attempted to coerce compliance with the application of the non-combatant immunity principle by passing resolutions, condemning perpetrators of genocide and by ordering Yugoslavia to "stop and desist" from supporting and influencing acts of genocide (Report of Secretary General Pursuant to Paragraph 2 of Security Council Res. 808, 1992, 117-121). The Council responded to the continuation of human rights abuses in Bosnia by declaring genocide a threat to international peace.

5.3. Stage 5 - Rule-consistent behaviour

Norm diffusion and internalization is a political change moving in a democratic transition where political space that has formerly been occupied by the state apparatus is checked by an active civil society that is the promoter and defender of social and individual rights of all citizens against any harassment by the state. Therefore, in a country in transition towards democracy, the civil society will be enlarging the scope and depth of its activities vis-à-vis the state.

Regarding human rights, Bosnia has ratified all major UN and international human rights conventions, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms. Yet, actual implementation of these instruments still needs to improve. However, the Bosnian government works to transform Bosnia to build new institutions to police their borders, to fight organized crime and to foster economic growth.

5.3.1. Internalization and Reframing of the Norm within the State

Continuing denial of the Srebrenica genocide was causing great strain on relations on Bosnia. Acknowledging the massacre was important for victims in a practical sense. This issue became so toxic politically that in 2004, RD president Dragan Cavic read excerpts from the Srebrenica Report (2004) on RS public television and indicated that his government would begin redress its position on crimes committed by Serbs during the war: "After years of prevarication, we will have to finally face up to ourselves and to the dark side of our past. We must have courage to do that" (Wood, 2004). Recently President Didik added: "Understanding the suffering of others leads to reconciliation. The Serb Republic has apologised to innocent victims in the past. I express my deep sorrow on this occasion, as I did in the past, for the loss of any innocent life, especially for those who were victims of irresponsible individuals who belong to my nation. Every victim deserves respect, and every crime deserves condemnation" (Reuters, 2010). Izetbegovic (a Bosnian politician) said in March 2012: "I wanted my first trip to be to Brussels in order to give a strong message that Bosnia-Herzegovina was determined to become an EU member". He went on: "We need to create a positive political atmosphere so as to attract foreign investors" (World Bulletin, 2012). In terms of the improvement of human rights, the EU membership process has made a significant contribution.

Bosnia's attempt to comply with the EU regulations led to the development of minority rights in Bosnia. Since socialization is based on interaction, the more the opportunities for institutional and private dialogue, the greater the external impact on domestic structures as a result of learning, lesson drawing, model emulating, etc. In general, the density of institutional ties between the EU and a would-be member increases with time as the candidate comes closer to accession.

On 20 November, leaders of the six ruling parties in BiH met in Mostar to discuss the possibilities of constitutional changes. The main point of a new constitution would be to allow ethnic minorities to run for top governing posts that are currently reserved for the three largest ethnic groups, Bosniaks, Serbs and Croats. The six leaders also discussed the EU "Road Map" agreed in July 2012 in Brussels. This sets a list of dates and deadlines for the country to fulfil before it can submit a credible EU membership application (European Forum for Democracy and Solidarity, 2012).

BiH ratified the European Convention on Human Rights (ECHR) on 12 July 2002, enabling cases from BiH to be taken to the European Court of Human Rights in Strasbourg. Following BiH's accession to the Council of Europe (CoE) on 24 April 2002, it is bound to ratify and implement various treaties relating to legal and penal matters and implement the numerous recommendations of the CoE in the penal and criminal law field, including those pertaining to victim and witness protection. On 5 February 2002, BiH ratified the UN Convention on Trans-national Organised Crime which also contains obligations relating to trans-national legal and investigative co-operation.[8]

In the study of post-conflict justice situations, reparation or redress is seen as one of the three categories of accountability measures; the other two are truth and justice (Bassiouni, 1998, p. 58). While in restorative justice reparation is more often directly linked to the accountability of the individual perpetrator, in post-conflict situations the state is seen as having a crucial role in providing a remedy and reparations, and this duty forms the cornerstone of establishing accountability for violations and achieving justice for victims (Bassiouni, 2002 , p. 38). Following these lines, until recently the main source of reparations in Bosnia was the process of

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[8] CoE Information Document SG/Inf (2004)10, "Bosnia and Herzegovina: Compliance with obligations and commitments and implementation of the post-accession co-operation programme" Sixth Report, 10 March 2004, para. 69-82 ("Rule of Law").

property restitution implemented by the Commission for Real Property Claims of Displaced Persons and Refugees and national authorities. This commission – established under Annex 7 of the Dayton Peace Agreement – determined the claims of displaced persons and refugees who lost their property during the war and ordered restitution of, or compensation for, the lost property. It was created as a top-down mechanism, and the issue of reparations was dealt with by the commission and the victims. The state's role in enforcing the commission's decisions is evidence of the central role accorded to it in ensuring reparations in the aftermath of widespread conflict.

The notion of accountability in restorative justice as applied to common crimes seems to be associated with recognition of the violations, of their wrongfulness, and of the damage caused, which will the basis for making amends and for repairing the harm. A very interesting experience in Bosnia in terms of truth-seeking and accountability has been the establishment of the Srebrenica Commission, created to investigate the events in and around Srebrenica in July 1995 when it is estimated that over 7000 Muslim men and boys were killed. Its creation resulted from a decision by the Human Rights Chamber of Bosnia and Herzegovina (2003), which found that the Republica Srpska (RS) was violating the rights of the relatives of the missing by not providing them with information it had concerning the missing persons. The investigation, the report published by the commission (Republic of Srpska Government, 2004) and the acknowledgement and apology by the RS government for the crimes committed in the past has constituted an important form of truth-seeking and acknowledgement. The fact that this was an official commission and that its findings were accepted by RS officials was an important form of accountability. In fact, RS authorities were not only found to be in breach of the rights of the relatives of the missing to know what happened to them and thus obliged to investigate the facts, but were also compelled at the end of the investigations to acknowledge facts which had for a long time been denied or manipulated.

The decision by the Human Rights Chamber of Bosnia ordering the creation of the Srebrenica Commission also ordered the RS to pay compensation to the applicants, and determined that this should be done in the form of a lump sum to the Foundation of the Srebrenica-Potocari Memorial and Cemetery. This decision represents a creative way of combining measures of truth-seeking, accountability and

reparation, which is of even greater importance in a situation where denial and lack of acknowledgment have prevailed.

The challenge for truth-seeking mechanisms is to promote acknowledgement and not simply come to a verdict (Vanspauwen and Valinas, 2009). I argue that restorative truth-seeking mechanisms, if set up with mutual respect and in a fair manner, have the potential to elicit a diffusion of human rights.

Although the starting position for the diffusion of international norms endeavour was not favourable, since the most important prerequisite, trust among the different ethnic groups, was missing, there was at least a strong external commitment to make democracy work in the war-shattered country. The international community, represented by economically potent actors, was willing to empower human rights norms and to commit the required resources for the democratization project. However, after years of external norm empowerment, human rights norms are still not as entrenched in Bosnian societies as might have been expected, since the required support from within is not strong enough.

5.4. Acceptance of human rights norms

Effective norm cascades are those that are slow and moderate. Rapid change can lead to internalization and hinder the norm more than help it to be implemented. To disaggregate a norm into smaller actions that can slowly get the states to test the norm and see its need and effectiveness can lead to change in a more effective manner.

Apologies are non-judicial mechanisms of dealing with the past and promoting reconciliation in post-conflict societies (Bloomfield, Barnes and Huyse, 2003). Public apologies, promotion and protection of internationally recognized human rights norms, therefore, have a special place in improving the reputation of a state or a leader. Those leaders want others to think well of them, not only for the material benefits that may arise, such as increased trade, increased foreign direct investment and tourism, leadership (agenda setting) positions in international organizations or on committees and praise by other world leaders, but also because of the psychological benefits that a leader receives, stemming from the potential boost in both domestic and international legitimacy. In 2004, former RS Prime Minister Mikerevic and RS President Cavic officially apologised on behalf of the RS government for Srebrenica. In 2003, then President of Croatia, Stjepan Mesić, and then President of Serbia and

Montenegro, Svetozar Marović, engaged in a mutual/reciprocal apology for the crimes committed by their countries (Phillips & Petrovic, 2003). Following this, Marović also apologised to Bosnia and Herzegovina for the evils and misfortunes caused by Serbia and Montenegro. In 2004, Serbian President Boris Tadić apologized in Sarajevo. In 2007, President Tadić apologised to the citizens of Croatia for injustice committed by members of the Serbian people (Popovic, 2007). At the same time, he also accepted responsibility for the crimes committed against Bosniaks (B92, 2007). Tadić's apology in 2007 received praise from some human rights leaders, including Nataša Kandić. Recently, following the signing of the declaration on Srebrenica in March of 2010, Tadić offered an official apology to the families of the Bosnian Muslim victims of Srebrenica (Tadić, 2010). Tadić's recent apology may not be perfect, but it brings Serbia much closer to accepting its role in the conflict and to creating a genuine path toward reconciliation. Following Tadić, in April, Ivo Josipović apologized to Bosnia and Herzegovina for the role Croatia played during the recent conflict. This apology is seen as monumental, as it is the first time Croatia has officially acknowledged its role in the wars in Bosnia and Herzegovina. It could also be seen as cultivating a reputation for respecting human rights in order to increase their chances of membership in the EU, which, in turn, has substantial economic and political benefits.

Furthermore, the RS government has constantly transferred indicted persons to the ICTY over the last few years. Radovan Karadžić, (the former Bosnian Serb leader) was arrested on July 21 2008 and General Ratko Mladić (the former Bosnian Serb Army commander) was arrested on May 26 2011. The punishment of those responsible for war crimes is only one side of the coin. The other, more important side is that people move beyond the war atrocities, since the latter can also still be exploited in the rhetoric of extremist politicians to keep animosities between the ethnicities awake. Reconciliation between the different ethnicities is the prerequisite for progress in other areas. Two aspects seem to be equally important for reconciliation, the willingness of one side to admit atrocities and the willingness of the other side to accept apologies, so that both sides can form a new beginning. Living in a multi-ethnic Bosnian society requires overcoming the stereotypes that were strengthened during wartime and getting to know each other again as people of a different ethnic background with shared hopes and, if looked upon more rationally, with common goals. For many, dealing with the past is associated with coming to terms with "the truth" about what happened. In most post-conflict contexts, this is

connected to the work of truth commissions and local truth-telling processes. While there have been attempts at creating a truth commission in former Yugoslavia, until recently, the attempts were made at the national level, e.g., in Serbia and Montenegro and Bosnia and Herzegovina, rather than at the regional level.

A post-conflict situation offers a unique opportunity for the diffusion of human rights norms. Knowledge and understanding of the main enabling and obstructing factors in the norm diffusion process can help to analyse more adequately the post-conflict starting position in a target society, which is an important precondition for the development and implementation of adequate democratization strategies. The case of Bosnia demonstrates how the norm diffusion concept works in the context of a divided society. The information garnered from this research can be applied after both inter-state and intra-state conflict.

Finnemore and Sikkink hypothesized that states which are in domestic turmoil or insecure about their international position will adopt new norms more readily. When people have lost trust in their leadership and political system, they are open for change and new ideas (Blind, 2006). "Ideas and norms most associated with the losing side of a war or perceived to have caused (...) failure should be at particular risk of being discredited, opening the field for alternatives" (Finnemore and Sikkink, 1998, p.909). When structure, order and stability are lost or shaken, as in a fragile post-conflict situation, the opportunity to spread new norms is greatest.

After enduring war and ethnic cleansing, people were tired of war and ripe for change (United Methodist News Service, 1995). But the various ethnic groups so far have not been ready to show forgiveness or to reconcile. Three and a half years of intra-state conflict put the different ethnicities far apart. Thus, socialization of this society with strong internal tensions and post-conflict burdens proved to be more difficult than expected (Singer and Wildavsky, 1996, p. 169). Even under the constant engagement of the international community, Bosnia has only made slow though steady progress within the last years.

In spite of the slow progress, much has been achieved, especially as concerns institution building and reconstruction. The infrastructure has been rebuilt, existing institutions have been overhauled and new democratic institutions have been created. The countries have changed. Today, many democratic institutions are in place and working.

In particular, the EU and the UN made the provision of preferential trade, financial aid and conclusion of bilateral cooperation agreements incumbent upon countries' efforts to re-establish economic and regional cooperation, to comply with their peace obligations, and to demonstrate "the willingness of the countries concerned to work towards consolidating peace and to respect human rights, the rights of minorities and democratic principles" (Council Conclusions and Declarations on Former Yugoslavia, 1996). Respect for democratic principles, the rule of law and human rights were made an essential element of the Regional Approach in July 1996 with the adoption of a Community regulation on assistance to Bosnia-Herzegovina, Croatia, FYROM and Serbia-Montenegro (the so called OBNOVA regulation, 1996).

5.5. Conclusion

In the context of Bosnia, international socialization is connected to dealing with the past, present, justice and new identity. In sum, a stronger show of support for and commitment to cooperative security, diplomatic engagement, soft power in terms of donor aid, democracy support and development - in other words, a paradigm shift in international relations - is needed to face the challenges of state failure, state-building and democracy consolidation. The norm-driven change model sheds new light on political development. Most conventional studies have focused on either material elements of the international system or purely domestic factors. First, by investigating the effect of international culture and norms, the norm-driven change model allows us to discover new aspects of those wars. The model argues that in Bosnia, the reconciliation process is a product of learning from its Western counterparts. Emphasis on states learning from the international normative environment equips us with a more flexible toolkit for explaining state behaviour.

Second, the norm-driven change model allows us to examine the interaction between international and domestic norm formation. One of the analytical advantages of the model is its ability to uncover how the international norms help to construct domestic ideas. This enables us to determine the source of domestic norms and culture, which is often unclear in purely domestic cultural explanations. I argue that human rights compliance plays an important role in building a state's reputation in order to assist the state in achieving regional or international goals. Specifically, I hypothesize that international human rights compliance is a means to improve a state's

reputation when the state is either facing regional pressures as the result of a desire to join a regional organization such as EU or NATO or to not run afoul of a court within a regional organization, or is seeking foreign assistance from an entity with human rights requirements for the receipt of such assistance.

Bosnia and Herzegovina is considered a regime in transition from an authoritarian kind to a liberal western-style democracy. In such transformations, the active participation of civil society in the process is considered crucial. Examination of the Bosnian case also underscores the increasing power of human rights norms. Security Council resolutions clearly linked the protection of human rights with the maintenance of international peace and security. Further, by establishing the International Criminal Tribunal for the former Yugoslavia, the Security Council advanced the legitimacy of human rights and the relevance of their protection to collective security. New norms must enter an environment in which the standards of appropriateness are determined by existing norms. A norms cascade requires support but not unanimity from critical states (Finnemore and Sikkink, 1998, p. 901). Whether or not the norm's entrepreneurs will induce norm breakers to become norm followers and punish them when they violate the norm will determine whether the responsibility to respect the norm will cascade through the international community of states, becoming the prevailing standard of appropriateness, or whether, like many emergent norms, it never cascades.

Looking forward, Bosnia should also be seen as a predecessor case for the international community's current involvement in Afghanistan and Iraq, because it clearly illustrates what happens when the international community takes on an interventionist role in a post-conflict region. A quick retreat after intervention would be devastating for the people living in the region. To allow for successful stabilization and economic recovery, the international community must instead pledge a long-term commitment to the region.

CHAPTER 6: Conclusion

The ever-growing number of human rights norms in the international arena suggests the importance of understanding whether and why states abide by these norms. Although much of this research involves a detailed look at the political determinants of norm diffusion in Bosnia, its point of departure is international relations theories about the ways in which international norms become translated into domestic politics. The notion of socialization and diffusion of human rights law continues to loom large on the scholarly agenda and serve as a source of rich conceptual insights. While the process of international norm diffusion has been well investigated, comparatively less is known about the domestic norm diffusion process. This thesis has probed the plausibility of the argument linking human rights with global diffusion by focusing on Bosnia. National human rights herald a new phase in the history of the UN efforts to make international human rights work in the world of sovereign states. The UN Secretary-General's report of 9 September 2002 epitomized their central position within the current UN human rights regime:

> Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the Organization. These activities are especially important in countries emerging from conflict (UN, 2002, p.12 para. 50).

The ideals of statehood in post-conflict states must be attained by evolution. They are the outcome of many forces. In our time, historical facts are often forgotten. Constitutional changes, Dayton Accord revisions, crime and corruption, ethnical divide, nationalist divide, lack of economic unity and many other issues presented in the findings need to be addressed and/or resolved one at a time in order for the successful socialization path to open. Promoting international norms as a set of values and, therefore, as an element of social identity faces an important obstacle in the form of a possible reaction of resentment leading to a backlash against democracy and democratic institutions. The role of constitutional politics in post-conflict situations, therefore, must oscillate between checking possible resentment and establishing a workable and efficient legal-political framework. Domestic pressure emanates from

civil societies and domestic legal systems, while international pressure emanates from international bodies either initiating infringement proceedings or criticising states through international reporting systems. These domestic and international bodies need to create positive incentives to encourage state compliance and support those norms for progressive change from within states.

From the constructivist perspective, considering these facets together offers new understandings of the school's fundamental concepts. In regard to international society, this case has demonstrated that Bosnia constructed its identity in relation to the international community and actively draws upon the established shared practices and values of international society. It has been pointed out that Bosnia's new identity predisposes it towards acknowledging the significance of complex interdependence and ongoing interaction with the international community. Such findings add importance to the notion of international society: that states outside international society are influenced by the predominant practices and values of that society. Focusing on fragility, however, puts the accent on the social and political realities of the state-building process. It emphasizes that state fragility is not an accidental situation but a process and the result of a constellation of social, political and economic forces and pressures. A particular state may become more or less fragile with time; it may collapse into conflict but then re-emerge, perhaps in a different form.

The literature on state socialization is still in its infancy and there have been very few attempts at systematically finding its leading causes. Research into international socialization must also take into consideration the domestic application of norms. Arguments that international norms cannot be effectively applied because they are 'legal imports' attempt to weaken their social functions. Nonetheless, domestic laws directed to apply and fulfil either international treaties or customary law, or global values not contained in treaties, are relevant most of the time, even if they are not entirely or completely enforced, because they provide tools that can be used by domestic actors as guidance. The consolidation of the international community with its very own cultural forces embeds and gives form to policy frameworks on a variety of subject matters. In other words, it sees their consolidation and restrictive force as socially determined and shaped, rather than drawn by imposition or coercion, as realist views would have it, or by persuasion or internalization, as posed by constructivist views.

A central factor is the divisiveness among the local elites in Bosnia who are supposed to internalize these norms and practices through a process of socialization. Elites with disparate interests make it difficult for an argumentative dialog to emerge in the process of socialization. For the internalization of norms to occur through a process of socialization, domestic institutional actors must be able to reconcile individual self-interest with the well-being of the country as a whole.

The analyses in the theoretical and empirical chapters have shown that there is sufficient evidence to believe that the evolution of global human rights has contributed to the global diffusion of human rights. In Chapter Two, theories on global norm creation and diffusion ask more generally how normative claims such as human rights become internationally authoritative and under which conditions they gain relevance in domestic contexts. This perspective conceptualizes international and domestic normative discourses not as separated, but intertwined and overlapping. It examines the dynamics that create globally shared cultural values and explores why certain values become internationally accepted norms and others do not, and which actors are most relevant to produce such processes. Studies on global norm diffusion have shed light on the relevance of new actors in creating and spreading norms. Chapter Three reviewed the evolution of global human rights in the post-World War II era. The historical accounts of the evolution identified various factors that contributed to the growing importance of human rights ideas in global politics. Over time, changes occur, and norms can change behaviour through socialization and reputation. Chapter Four evaluated the methods of international human rights pressure imposed on Bosnia and pressure from the outside. In Chapter Five I offered an explanation of norm diffusion with respect to how global identities construct Bosnian domestic politics. Belonging to the international community means following a given set of rules in order to reap the benefits of membership as part of the group. These rules, or norms, regulate and constrain Bosnia's behaviour because they are standards that embody states' agreement on what constitutes appropriate behaviour.

The more integrated a country is in international society, the more likely it is to comply with the rules and norms in the international community. Since international human rights models have become one of the most important global standards, a country that is closely involved in international affairs is likely to modify domestic human rights policies and practices to comply with the international standards. Since global society tends to set higher standards of human rights than the

practice in most countries, the diffusion of global human rights pressures governments to improve their human rights practices. Also, reports on bad human rights practices are damaging to a country's international reputation. In order to maintain or attain a legitimate position in the global polity, it has to address these issues carefully and appropriately with special attention to international standards. Thus, it is suggested that the greater a country's linkage to international society, the more likely it is to improve its human rights practices. Embedded norms are integrated into domestic law, assimilated into doctrine and included in actors' belief structures to the extent that they provide the frame for decision-making. Contrary to realist assumptions, embedded norms constrain strategic actors' decision-making and shape calculations of their self-interest, as even strategic maximisers evaluate the costs and benefits - both material and normative - of particular actions and calculate how other actors will respond to that compliance decision. In order to make these assessments, the actor must understand the social context in which he or she operates. But even the most commonly accepted rules are not clear, either in terminology or in scope. In the case of civilian immunity, this ambiguity occurs. Consolidating around a new set of ideas is not an easy process, as this stage is challenged by the efforts of opposing constituencies and the difficulties in agreeing on a different belief system. Actors are concerned about the material and normative repercussions of their compliance decision. Strategic culture of armed forces entails collectively held assumptions about the nature of war. It follows therefore that strategic culture and compliance with law are closely linked.

Findings

It is important to look at the role of the international regime in persuading and coercing a state to embrace the international norm (or the regional value). Quite a few research projects have highlighted elite learning processes in explaining norm compliance. I agree that Bosnia's elites 'learned' a great deal from the UN Security Council and the European Union, and that the socialization and learning process played an important role in encouraging this country to adhere to norms. Yet an important point is that learning and persuasion are more likely to be successful and politically feasible when they are backed by incentives.

Regarding the diffusion of human rights, there have been many suggestions on how to improve existing law. The suggestions that have particular controversy are

those directed at improving enforcement and making the law more inclusive because those are the two specific causes of the law's ineffectiveness. Van Dongen suggested improving enforcement mechanisms, such as increasing the role of "intergovernmental human rights bodies" (Van Dongen, 1991, p.227). Others suggested that including international human rights norms within national laws would improve the effectiveness of law enforcement (United Nations, 2003). As Mertus explained, "national human rights are thought to be more effective than international mechanisms in promoting a human rights culture" (Mertus, 2009, p. 29). Durr argued that the United Nations should be more responsible for "ensuring respect for IHL in armed conflicts" (Durr, 1987, p.271). Many scholars suggest that improved enforcement could end impunity and improve post-conflict justice and reconciliation (United Nations, 2003). Improving the capacity of domestic and international human rights mechanisms through increased material and normative support will automatically increase legitimacy. Specifically, countries that already have a national human rights institution, such as Bosnia, should provide more resources to these institutions. I argue that there should also be a move towards a law of transition, connecting international humanitarian law with human rights law as a framework guiding the transition to peace.

This study's findings offer several contributions to theoretically-oriented discussion on norm diffusion. Firstly, scholars need to pay more attention to the ways in which key actors understand their normative obligations, particularly their constitutive elements. Considering how ambiguous norms can give rise to variations in normative obligations provides fresh insights into possible reasons why norms are not followed. Viewing it from this lens paints a more complex picture of norm violation. Secondly, scholars should expend more of their analytical expertise on the process of domestic norm implementation. Not much is known about the domestic norm diffusion process. Yet, this process plays a crucial part in international norm compliance. Consequently, understanding its mechanics and challenges can also help to illuminate why norm violations occur.

Notwithstanding the need for theory-testing, there is sufficient evidence in the theoretical literature to suggest some policy implications regarding the diffusion of norms to new and democratizing states in the current world system. First, the material incentives for such behaviour (i.e. international recognition, international aid and, in the case of Bosnia, possible admission to Western institutions) are heavily reinforced

by powerful transnational norms. An analytical framework enabled us look at the transnational socialization processes in depth and to capture their dynamics and impacts on socializing states. A careful analysis of socialization may lead to a better understanding of state-to-state socialization between small, middle and major powers on a comparative scale.

The human rights norms passed on through the international diffusion process might become modified or distorted as they continue their journey through the domestic diffusion process. The result is that those near the end of the chain of diffusion possess a different understanding of the principle than that advocated by norm proponents.

The chapter concludes with a discussion of some of the theoretical and policy implications of the findings in this study. For instance, this study's findings challenge scholars to revisit our understandings of how norms influence global political behaviour. Particular attention needs to be paid to how scholars think about norm compliance and norm violation when norms are ambiguous. Policymakers need to rethink strategies designed to minimize human rights violations in an environment where norm implementers and norm proponents operate under different understandings of compliance, and when whole categories of actors are excluded from the norm generation and norm clarification processes.

Viewing the diffusion of norms as a process profoundly changes the question of state behaviour. Generating the legitimacy of the norm is not a 'one-shot game' but a reflexive process in which the legitimacy of the rule must continually 'catch up' with the dynamic nature of the law-making. Conditions of global interdependence force states to enter into dialogue, and the solidarity developed through it would facilitate a meaningful compliance in other areas of social life as well. Internalization and political engagement should not be pushed too fast. The temptation to do so is strong, given the costs of intervention and the risk that prolonged foreign domination may breed resentment and discredit the process of diffusion of norms. The first step towards the political maturation is developing internal democracy and giving it time to change attitudes. It is important to respect the level of ideology and legitimacy developed by the organization, and the developments in contextual indicators.

Bosnia's socialization cannot be fully explained by domestic factors. It is international pressure to adopt specific institutional structures, policies and practices qualifying a country for NATO or EU membership that drives Bosnia's government to

fulfill compliance requirements. The study of norm diffusion has significantly improved our understanding of the working of International Law and has rightly emerged as one of the central topics within the discipline in recent years. This project must proceed, however, with an awareness that the discipline ought to be disposed toward change. An interesting case that can be investigated is the norm diffusion in comparison to another country in the region. After all, one can compare the success story of the former Yugoslavian republic of Slovenia, evaluating why its leaders had an easier path on the road of human rights compliance. Any attempt to build a generalized model of socialization based on behavioural observations must also involve a critical evaluation of global social relations and a consideration of how they may be transformed. Such theorising is always built upon certain normative arguments, and this thesis has offered an in-depth reflection on some of the arguments that are being employed by some of the influential contributions to the compliance debate. Theorising socialization must begin not only with the creation of formal legal obligations, but with the process that brought about the obligations in question, as well as the ways in which it is interpreted, clarified and internalised.

Agenda for Future Research

Suggestions for further research arise logically from the limitations of this study. An important methodological concern would involve complementing the current research based on document analysis with a series of structured interviews with decision-makers. This would help to reveal underlying motivations for particular policy actions. In addition to the key decision-makers, interviewing individuals engaged in policy implementation at lower levels may prove to be especially rewarding because these individuals may be more inclined to truthfully disclose social and utilitarian concerns influencing Bosnian politics. Social interaction processes, including persuasion, affect individuals in both formal and informal settings. Including information from interviews would reveal informal social pressure on decision-makers from their peers in other countries and from international organizations.

A second methodological suggestion for further research would be the extension of the study to include a comparison of several cases. Multiple case studies should help to answer questions about the relative weighting of social and instrumental motivations of decision-makers. The use of numerous cases should also

assist in the effort to improve role theory. In order to further increase the knowledge on how international norms travel one could either perform a similar analysis on a different case, or perform a comparative analysis for instance between Bosnia and Afghanistan.

Social roles of states are largely the product of the international environment, which means that expectations of appropriate role behaviour are based on systemic characteristics. The precise definition of social expectations ultimately requires the formulation of a comprehensive role theory for the international system. Research on global norm diffusion reconstructs the processes that convert certain values into internationally authoritative norms as well as the dynamics that make those international norms meaningful in domestic contexts. To a certain extent, this perspective overcomes the segmentation of international vs. national domains. In the context of international society, norms are contested fields that unfold their validity in stages: in successful cases, they are pushed onto the international agenda by norm entrepreneurs, are taken over by states until they are transformed into widely accepted standards on the international level, and finally become internalized within national contexts. Yet norm diffusion does not occur in a linear top-down manner from the global to the local, but is a circular process of negotiation, appropriation and contestation in and between international, national and sub-national contexts.

Discussing and reformulating normative standards in the context of international cooperation produces learning processes and increases intersubjectively shared interpretations. International and non-governmental experts are crucial to enhance those learning processes of state actors. The interaction is based on a constructive ongoing dialogue aiming at gradual change according to the conditions of each state, not on confrontation. However, domestic reactions to international normative discourses are a crucial yet not sufficiently explored part of norm diffusion. The acceptance of an international norm can be measured in its resonance with national discourses, state institutions and state policies. The repercussion of international norms in domestic contexts depends on diverse factors, especially on the match with the domestic cultural values, on their incorporation into domestic institutions and on the interests of influential domestic actors. There are always promoters of a norm and recipients who may at times be contested with two options: to adopt a foreign norm and thus bring a democratic change into the country or to

pursue the undemocratic stability. The study has shown that an adopted foreign norm may trigger significant consequences for the country's post-conflict conditions.

The concept of human rights implies the concept of human dignity on the individual and the community level and a responsibility to enhance and promote this goal on the state level. From an international angle, the puzzle is to envision both the creation of a set of norms and its growing acceptance around the world in principle, the domestic contestations of these norms when it comes to their realization, and the transnational activism that connects these dynamics. In sum, the dynamics that make norms internationally and domestically convincing have to be understood as an ongoing process of cooperation and negotiation on different levels, as a process of reciprocity between these levels and as a process of interpretation, appropriation and contextualized reformulation.

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