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BAIT AND SWITCH

Human Rights and U.S. Foreign Policy

SECOND EDITION



Julie A. Mertus

Bait and Switch

Second Edition

It has become routine for the U.S. government to invoke human rights to justify its foreign policy decisions and military ventures. But this human rights talk has not been supported by a human rights walk. Policy makers consistently apply a double standard for human rights norms: one the rest of the world must observe, but which the United States can safely ignore.

Based on extensive interviews with leading foreign policy makers, military officials, and human rights advocates, Mertus tells the story of how America's attempts to promote human rights abroad have, paradoxically, undermined those rights in other countries. The second edition brings the story up to date, including new sections on the second half of the Bush administration and the Iraq War, and updates on Afghanistan.

The first edition of *Bait and Switch* won the American Political Science Association's award for 2005 Best Book on Human Rights.

Julie A. Mertus is a professor of human rights at American University and co-director of the Ethics, Peace and Global Affairs Program. She has been a Senior Fellow at the U.S. Institute of Peace, a fellow in human rights at Harvard Law School, a MacArthur Foundation Fellow, a Fulbright Fellow, and a Counsel to Human Rights Watch. She is the author of five books, including *Kosovo: How Myths and Truths Started a War*.

Winner of the 2005 American Political Science Association Organized Section on Human Rights Best Book Award

“Julie Mertus’ study offers a thought-provoking analysis of the differences between the rhetoric and practice of human rights in U.S. foreign policy. Anchored in a theoretical framework shaped by the solidarist variant of the international society school and constructivism, and drawing extensively on interviews and survey work, Mertus skillfully captures the successes and failures of the human rights discourse during the post-cold war presidencies. She disaggregates the United States into three sets of actors around which the book is organized: U.S. civilian policymakers, U.S. military and U.S.-based NGOs. The author then tests the extent to which the identities and interests of different actors affect policy outcomes. Among the book’s many strengths is its discussion of the role of civil society in shaping human rights and foreign policy. In this context, the focus on issues relating to children’s rights, tobacco control (health rights), and disability rights is highly instructive. What emerges is a mixed record: human rights advocates have been fairly effective in framing policy issues in human rights terms, but this success is tempered by the inability to transform human rights talk into consistent human rights behavior in these critical issue areas. In a short but provocative conclusion, Mertus calls upon advocates to adopt a more constituency-oriented approach to the promotion of human rights norms.

“Mertus’ insightful scholarly analysis, combined with her passionate commitment to the cause of human rights, render *Bait and Switch* the most comprehensive, theoretically informed, and methodologically systematic work to date on this subject. It is a must read for all interested in exploring the issue of the global protection of human rights. In recognition of this achievement, the Human Rights Section of the American Political Science Association is both pleased and honored to select *Bait and Switch* as the 2005 Best Book in Human Rights.”

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Bait and Switch

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Second Edition

JULIE A. MERTUS

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A careful reader will note that many interviews were conducted for this book in 2001 and then again in 2003. For my family, 2002 was a very difficult year. My father, better known as Grampy Dan, died that year. It was his world travels and strong faith in the common dignity of mankind that inspired me to take on this work.

This book is dedicated to my mother, Marilyn Mertus, in honor of her own strength and with gratitude for her encouragement of mine.

Julie Mertus
Washington, D.C.

PREFACE TO SECOND EDITION

The subject matter of this book, human rights and U.S. foreign policy, has never been more relevant. The rhetoric of human rights continues to be invoked by the White House to justify its counterterrorist activities; by U.S. military commanders to explain their selection of weapons, strategies, and tactics on foreign fronts; and by civilian activists on all sides of the political spectrum who monitor, challenge, and, in some cases, support U.S. actions abroad. At the same time, critics of U.S. policies and practices invoke international human rights standards on an ongoing and consistent basis in their critique of the American militarization of nation building, its highly selective support of foreign governments and militaries, and its involvement in well-publicized and heavily documented cases of torture and other grave abuses.

Understanding the contemporary debates on human rights and U.S. foreign policy requires knowledge of the larger context in which they arise. This book provides this context in the following format:

- The book begins by providing, in chapter 1, an overview of the scholarly frameworks that act as tools for understanding human rights processes. This section emphasizes how human rights may be important in shaping the identity, interests, and expectations and, ultimately the behaviors, of three groups of actors: U.S. civil policy makers, the U.S. military, and U.S.-based non-governmental organizations. A reader less concerned with theory and more interested in the practice of human rights and U.S. foreign policy could choose to read only the beginning and end of this chapter and then turn quickly to the three groups of actors.
- Chapter 2 examines one of the most important set of actors in the U.S. foreign policy establishment, the executive branch. Through a chronological analysis of the historical context within which U.S. human rights foreign policy has developed, this section demonstrates that the struggle for human rights is never “finished” and that rights are never “won.” Rather, human rights remain contested concepts that each presidential administration has used or avoided, in whatever manner best suits their own political needs. While each post–Cold War White House has engaged in American exceptionalism, chapter 2 explains, the administration of George W. Bush has been distinguished by its exceptional exceptionism.
- Chapter 3 turns to the contribution of the U.S. military to foreign policy on human rights. The reports of U.S. military

involvement in torture and other gross human rights abuses in Afghanistan and Iraq have served to tarnish the image of U.S. soldiers and to create a credibility gap between what military leaders profess to believe and what they actually do. This chapter analyzes the emergence of this credibility gap in the context of the pre-9/11 efforts that the U.S. military undertook to transform its identity and augment its roles to emphasize human rights and humanitarian norms. Among the issues included in this chapter is an examination of U.S. efforts to train foreign forces, the phenomenon of U.S. military abdication of responsibility through private contracting, and the implications of greater utilization of advanced weaponry.

- Chapter 4 considers efforts of U.S.-based nongovernmental organizations and other civil society actors to influence U.S. human rights foreign policy. Through the introduction of specific case studies of civil society efforts, this chapter identifies points of influence and highlights processes that can make a difference in the conceptualization and application of U.S. policy. Of particular importance in this analysis is an identification of the impact of 9/11 on the strategies and tactics of U.S.-based human rights advocacy organizations.

All of the many recent developments in the fields of human rights and U.S. foreign policy have not changed the central thesis of this book, that is that human rights matter for all the actors involved in the creation and promotion of U.S. foreign policy, including the U.S. military. Nor does it change the book's conclusion about the "bait and switch."

The first edition concluded by comparing the way the United States "does" human rights abroad to the way cars salesmen sells cars—as a "bait and switch." The car salesman lures people into his showroom with promises of good deals that don't really exist, only to switch to the lesser offering once the unsuspecting customer is in the showroom. The United States still pretends to support universal human rights when actually it recognizes different standards for itself and its friends than those it applies to its enemies. Once states start to go along with the United States on human rights, the real offer is unveiled: U.S. exceptionalism and ad hoc favoritism over true universalism.

The "bait and switch" comparison still is valid. So is the solution suggested in the first edition: that is, the mobilization of civil society on human rights issues. However, the implications of reaching such a conclusion in 2007 is not the same as doing so in 2003 (the year the original text was researched). The U.S. counterterrorism strategies during the past four years have contributed to intense hatred and distrust of U.S. policies; and the backlash generated by these policies have contributed to the spread of terrorism, not the curbing of it. Never before has there been a greater need for the United States to regain its credibility as a country that puts human rights in the center of its foreign policy.

INTRODUCTION: ALL THAT GLITTERS . . .

This book is about the future of human rights in U.S. foreign policy. Many fear that the era of human rights ended the day terrorists turned jet planes into weapons of destruction and flew them into the World Trade Center and the Pentagon.¹ Or, many believe, human rights ended shortly after September 11, 2001, when the United States retaliated with unilateralist policies in violation of international standards, under the assumption that they could establish the rules for the rest of the world.² I disagree, but in a way that may be slightly confusing for the reader looking for a clear thumbs up or thumbs down on human rights. I contend that human rights are still important for U.S. foreign policy. The United States is in fact still leading the world on human rights, but in the wrong direction, promoting short-term instrumentalism over long-term ethical principles, double standards instead of fair dealing, and a fearful view of human nature over a more open one. An increasingly sophisticated array of non-governmental organizations (NGOs) and other leaders in civil society continue to demand that human rights ideas be more fully incorporated into U.S. foreign policy. To some extent, these advocates have succeeded in framing public policy choices in human rights terms, but too often competing interests eclipse human rights considerations. Human rights talk has not been accompanied by human rights behaviors.

This is not the book I set out to write. When I began this project in the fall of 2000, I intended to test the thesis that human rights norms had a significant impact on both the White House and the Pentagon because they had become “deeply embedded,” or, if you prefer, “institutionalized.” I thought I would find that human rights norms had, in Martha Finnemore and Kathryn Sikkink’s words, “become so widely accepted that they [had been] internalized by actors and achieved a ‘taken-for-granted’ quality that [made] compliance . . . almost automatic.”³ I was particularly interested in analyzing how human rights norms shape the identity, interests, expectations, and behaviors of

Americans who make, implement, and influence decisions concerning military intervention and other forms of American involvement across state borders. I had high hopes of finding human rights deeply embedded in U.S. foreign policy. I discovered that human rights norms had shaped identities, but that human rights were not a taken-for-granted factor in shaping behavior. In particular, I discovered that the American public would tolerate and even participate in behavior running contrary to human rights tenets.

The events following September 11 assured me of my failed thesis, but the interviews I conducted in and around Washington, D.C., long before then had already tipped me off that something is seriously awry with the way the United States “does” human rights. Policy makers may talk about human rights now more than ever, but the talk does not lead to consistent human rights abiding behaviors and decisions. The manner in which human rights have been understood and applied threatens to strip human rights ideas of their central content. While many of the government policy makers and military officers I interviewed for this book genuinely identified with being “on the side of human rights,” their vision of human rights accommodated double standards: one for the United States, and another for the rest of the world. In other words, human rights are something the United States encourages for other countries, whereas the same international standards do not apply in the same manner in the United States.

In the course of my research, I discovered that when I said “human rights” and when many of the governmental actors I was studying said “human rights,” we were referring to two different things. I was referring to an understanding of human rights that, as explained below, incorporates three fundamental principles: the equality principle, the human dignity principle, and the moral worth principle. In contrast, the people and institutions that I was studying were most likely referring to a short list of American values, to be projected and applied to others in line with American national interests. By explicitly or implicitly understanding human rights as something done “out there” and to “other people,” and in failing to apply human rights norms to the United States on equal terms, they were undercutting the core nature of human rights.

Although the rhetoric on human rights has changed from presidential administration to administration, manifestations of American exceptionalism appear in every presidency. Harold Hongju Koh, assistant secretary of state for democracy, human rights, and labor during part of the Clinton administration (1998–2001), stresses that some forms of American exceptionalism present little danger to the future of human rights.⁴ For example, that the United States has a distinctive rights culture and often uses distinctive legal terminology is not troubling. Indeed, the distinctiveness of the United States may benefit human rights claimants.⁵ However, the use of a double standard may be devastating both for U.S. human rights foreign policy and for the future of human rights. Koh points to at least four problems with a double-standard approach to human rights: (1) the undercutting of U.S. ability to pursue an affirmative human rights agenda; (2) the co-optation of the United States

into condoning or defending other countries' human rights abuses; (3) the weakening of the United States' claim to lead globally through moral authority; and (4) the undermining of the legitimacy of human rights norms.⁶ It is this double standard form of American exceptionalism that is the subject of the present book.⁷

To understand how human rights have become so tarnished, this book examines three groups of actors: (1) U.S. civilian policy makers; (2) the U.S. military; and (3) U.S.-based NGOs and other members of "civil society" concerned with human rights.

The framework of the book is organized around the three sets of actors under study. First, it begins with the executive branch and analyzes post-Cold War trends in human rights and U.S. foreign policy, noting continuities and discontinuities among administrations and underscoring the impact of Congress, the media, public opinion, and other contextual factors. Second, it examines the impact of human rights ideas on the U.S. military during the same time period, underscoring changes in behavior and identity. Third, it turns to trends within civil society and searches for specific examples of the ways in which civil society has influenced human rights and U.S. foreign policy.

Instead of relying solely on secondary sources, I draw from more than 150 interviews conducted over the course of the last three years,⁸ a written survey with a similar number of respondents, primary documents, and my own field notes from work in the former Yugoslavia. My goal is to provide a readable account of human rights and U.S. foreign policy that will speak to a wide range of readers interested in world affairs as well as scholars and practitioners concerned with norm formation. With the exception of this introductory chapter, the theory driving this analysis remains in the background. The remainder of this chapter clarifies the definition of "human rights" and outlines the theoretical orientations informing this study. This theoretical discussion provides the underpinning foundations for the analysis on the whole, though it is possible to read any of the chapters that follow in isolation.

CLARIFYING TERMS

This section begins with a brief discussion of how the idea of human rights is employed in this study, introducing universalism and particularism concepts that are applied to the analysis of civilian and military actors that follows. It then turns to the two main theoretical influences for this work. First, the "English school" provides a good starting point for thinking about the nature of human rights in today's deeply troubled world. Second, the school of thought known as constructivism sheds light on how norms shape the identities, interests, and expectations of actors.⁹

Human Rights

The idea of human rights has resonance in many different ideological and cultural traditions.¹⁰ As a base line, human rights require a certain conception

of individual agency and autonomy, human nature, and rationality.¹¹ R. J. Vincent has explained this notion of “rights.” As Vincent notes,

A right in this sense can be thought of as consisting of five main elements: a right holder (the subject of a right) has a claim to some substance (the object of a right), which he or she might assert, or demand, or enjoy, or enforce (exercising a right) against some individual or group (the bearer of the correlative duty), citing in support of his or her claim some particular ground (the justification of the right).¹²

As Tim Dunne and Nicholas Wheeler have observed, disagreement on human rights centers on the last factor, the grounds on which rights are justified. Human rights advocates make the foundational case for human rights based on notions of common morality,¹³ a singular “human nature,”¹⁴ human dignity,¹⁵ “universal social facts,”¹⁶ equal creation, and equal brotherhood. Some human rights advocates point to a divine or “natural” origin for human rights,¹⁷ while others search for more secular evidence,¹⁸ examining historical practices and discovering similarities among diverse cultural traditions,¹⁹ as well as in state practices.²⁰ Others take a more pluralistic and pragmatic approach: one does not need to reach a conclusion on the source of human rights in order to believe in human rights enforcement.²¹

Many advocates for social justice underscore the pragmatism behind framing claims of the oppressed in human rights language. Amy Gutmann points out that Article 1 of the Universal Declaration of Human Rights does not assert one foundation for human rights, but many, and each of these foundations is open to multiple interpretations. Recognition of the plurality of religious and secular foundational arguments for human rights is essential in a pluralistic world. “When foundations are treated as more important to honor than the rights themselves, and disagreement about foundations becomes a cause for violating rights,” Gutmann warns, “then idolatry of abstract ideas, quite apart from the practical consequences of such idolatry, becomes a serious political problem.”²² The real-life consequences of recognizing or failing to recognize a human right should always be a prominent concern.²³

The Core of Human Rights

To the extent that human rights adherents can find agreement on the content of human rights, it is in relation to three fundamental precepts. First, adherence to human rights requires acknowledgment of the dignity of individuals as individuals. That this principle focuses on the individual does not negate the importance of community. Individuals are not free-floating entities; they exist and derive meaning through social relationships and communal responsibilities and duties.²⁴ The identification and enforcement of human rights thus depends greatly on community. As Jean Bethke Elshtain notes, “[Rights] are woven into a concept of community” and “are intelligible only in terms of the obligations of individuals to other persons.”²⁵ The idea of human rights, however,

necessitates recognition of the agency and identity of the individual that may exist apart from the community. A human rights framework insists that “essential to [each individual’s] dignity, and to a life worthy of a human being, is the simple fact that they are human beings.”²⁶

The notion that each human being should be treated with dignity solely because he or she is human requires acceptance of a second principle: the moral equality of human beings.²⁷ “Since all human beings have dignity and need common conditions of growth,” Bhikhu Paarekh observes, “their claims to them deserve equal consideration and weight.”²⁸ Equality is inherent to human rights because it informs day-to-day application of human rights norms. The equality principle requires states to apply human rights norms to the behaviors of all states, friend and foe alike, and to accept scrutiny of themselves under the same standards.

The third integrally related principle pertains to the notion of moral worth. This is the idea that all humans have value and, therefore, all can make a contribution to society. This notion of worth and the related concept of equality do not mean that all people are treated the same or that all benefits and burdens in society must be distributed in identical fashion. Differences in treatment may still exist, but any differential treatment must respect the moral worth and dignity of individuals.

The universal nature of the individual dignity, equality, and worth principles is endorsed in several international human rights documents. The preamble of the United Nations Charter states that one purpose of the organization is to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”

The first line of the Universal Declaration of Human Rights similarly states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Similar recognition of the “inherent dignity” and “the equal and inalienable rights of all members of the human family” is found in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

More recently, at the Second World Conference on Human Rights in June 1993, representatives of 171 countries reaffirmed these principles when they adopted a Declaration and Program of Action, which states in the second paragraph of the preamble that “all human rights derive from the dignity and worth inherent in the human person, and . . . the human person is a central subject of human rights in fundamental freedoms, and consequently should be the principal beneficiary and participate actively in the realization of these rights and freedoms.”²⁹

These international documents are clear: dignity is one core element of human rights, equality another, and worth a related third.³⁰ U.S. human rights policy has long gone awry by engaging in “exceptionalism,” that is, in assuming that the United States should and will receive special treatment when human rights are applied in practice. The modern idea of human rights

requires—indeed is premised upon—the presence of all three concepts. One cannot embrace the idea of human rights and also hold that these rights apply to some individuals, or that only some states have a responsibility to respect human rights.³¹ At the same time, one cannot accept the idea of human rights and also accept that they are earned, or that some individuals may be more worthy of human rights than others. A necessary corollary is that one must be willing to apply human rights standards to oneself and, thus, that states will reject exceptionalism.

Human rights provide victims with increasingly influential political and legal strategies for articulating their demands. Human rights mechanisms honor the agency of victims by calling into action a system of rights and correlative duties. Under human rights law, victims become claimants who are permitted to bring claims against perpetrators and some bystanders. By using human rights mechanisms for achieving justice and addressing human suffering, victims are able to act nonviolently to improve their positions. Without such recourse, violations are likely to perpetuate conflict through cycles of revenge and retaliation.

While reference to human rights norms does not automatically resolve disputes, it provides a language and, in some cases, specific agreed-upon adjudicative and legislative mechanisms for the hearing of the conflict.³² A rights-based approach treats everyone equally before the law and values all people on the basis of their inherent worth rather than viewing certain members of society as more dignified, and therefore “more equal,” than others. Accordingly, a human rights approach forces states to recognize the worth inherent in others and give them equal opportunity to state their claims.

The achievement of human rights is *political* in the sense that human rights translate, reflect, and challenge claims to power.³³ Human rights are demands for power from all who invoke them, including states, groups “below the state” (i.e., NGOs and social movements), and those “above and beside the state” (i.e., transnational bodies).³⁴ Within state borders, human rights norms serve as a check on the power of government to do what it wills with its own citizens.³⁵ In Jack Donnelly’s words, “Human rights is the language of the victims and the dispossessed.”³⁶ The disempowered turn to human rights discourse because it so “successfully manages to articulate (evolving) political claims.”³⁷ Across state borders, respect for human rights serves as both a check on and an enabler for coercive and noncoercive intervention. States that fail to abide by minimum human rights guarantees open themselves up to criticism, censure, sanction, and, in some cases, military intervention.

Human rights norms not only restrict states, the doctrine also enables states to adopt certain courses of action. In the post-Cold War period, state leaders turn to human rights discourse to articulate “national interests” and assert moral superiority.³⁸ Virtually no state leader will acknowledge human rights violations perpetrated by the state, but instead will cling to the identity of the state as a human rights supporter and upholder.³⁹ In fact, state leaders seeking legitimacy will claim that human rights norms support their actions.⁴⁰

The human rights “rationales and justifications for behavior which are proffered, together with any pleas for understanding or admission of guilt, as well as the responsiveness to such reasoning on the part of other states,”⁴¹ are indicative of the efficacy of human rights norms.

Particularism versus Universalism

Human rights can be seen as reflecting a cosmopolitan sentiment that every human being should matter equally in relation to all others, and thus that each human being should be given equal consideration.⁴² Two competing humanitarian ethics are embodied in this trade-off: ethical universalism and ethical particularism. This section explores these two orientations and explains how U.S. human rights policy appears universalist but actually is particularist in orientation.

Universalism and particularism differ according to their emphasis on: (1) individuals as agents capable of making choices, (2) the significance of prior relationships to other individuals, and (3) the nature and application of principles of ethical behavior.

Ethical universalism views all people “as agents capable of making choices surrounded by a universe of other such agents.”⁴³ The relationship of individuals to one another may be significant in establishing ethical standards for behavior on a less “fundamental level.” However, on a basic level, the duties that individuals have toward one another are determined by “general facts about other individuals,” and not by any particular facts about their relationships. For example, my duty to feed a hungry person is determined primarily by the fact that the person is hungry and that I have food. That the hungry person is my relative, my neighbor, or my student does not matter on a basic level in determining this duty.

In contrast, ethical particularism “invokes the different picture of the ethical universe, in which agents are already encumbered with a variety of ties and commitments to particular other agents, or to groups or collectivities, and they begin their ethical reasoning from those commitments.”⁴⁴ In this case, we begin our ethical reasoning by “taking account of the various relationships in which we stand to others.”⁴⁵ Thus, that the hungry person is related to the person with food, while not determinative of the existence and nature of a duty, may be a highly significant relational fact in the duty calculus.

David Miller suggests that we can discern the core differences between these two approaches by understanding what the universalist will identify as the main weakness in particularism and, conversely, what the particularist will identify as the main weakness in universalism. Of central concern to the universalist is the apparent disregard of ethical particularism for reason in favor of sentiment, prejudice, and convention. More troubling is the failure of the particularist to search for a set of principles that could establish duties and guide conduct consistently and the unwillingness of the particularist to subject the purported existence and perceived nature of local relationships to rational scrutiny. This, notes Miller, leads to two dangers:

One is moral conservatism, the sanctification of merely traditional ethical relations, based on the interests of dominant social groups, on outmoded philosophies, or perhaps on sheer ignorance. The other is incoherence, where the ethical demands that stem from the relationships of different kinds are not brought into any rational relation with one another, so that a person who follows a particularist ethics would receive no guidance in cases where he was pulled in one direction by one set of obligations and the opposite direction by a second set.⁴⁶

A particularist human rights policy deters the redress of social injustices and deters progressive social changes. Particularism supports the interests of dominant social groups by protecting their rights to the neglect of the rights of less powerful and unpopular minorities. By emphasizing the territoriality of values, particularism makes geography destiny. "If we adopt this perspective," Ken Booth warns, "the chessboard of international relations—and hence the politics of human rights—will be entirely synonymous with the geography of meaning."⁴⁷ Although spatial relationships are important, people move in many spaces and frequently alter their spatial relationships over time. Given this dynamic movement, "local" culture is never "pure"; rather, it is influenced by and, in turn, influences international culture.⁴⁸

Particularly troubling for universalists is the manner in which a few elite spokespersons articulate the specific dimensions of a people, deeming themselves qualified to state the "real interests" of the group. And yet, those advancing the particularist claim often do not genuinely and legitimately represent those on whose behalf they are making the claim. The problem of cultural authenticity is complicated by the fact that cultures are not static but are constantly in flux.⁴⁹

The main criticism that particularists have of universalists could be summed up as follows: the world simply does not work in a universalist way. For ethical particularism, it is implausible to assume that human beings exercise moral agency in the manner demanded by ethical universalism. Human beings are not equipped to determine moral duties by reflecting on the human condition in the abstract. In the real world, people are not detached and wholly autonomous creatures. Further, individuals are rarely motivated by purely rational considerations. Ethical duties are in fact determined by personal identity; considerations about who we are, where we come from, and to which communities we belong greatly influence our ethical reasoning.⁵⁰

Where universalism insists that ethical motivations be grounded in rational convictions about morality and not influenced by sentiments, prejudices, and prior relationships with the objects of the duty, particularists insist that these often irrational motivations must be present. After all, one can only have rights as a member of a particular group and tradition and, it follows, one can only respond to rights violations as a member of a group. Far from being an abstract, individualistic-oriented rulebook, ethical life is a

social institution whose principles must accommodate natural sentiments towards relatives, colleagues, and so forth, and which must rely on a complex set of motives

to get people to comply with its requirements—motives such as love, pride, and shame as well as purely rational convictions.⁵¹

Those who reject ethical universalism vis-à-vis U.S. human rights policy offer several lines of criticism, yet a common element is that the social relationships and particularist sentiments motivating behavior on human rights issues is highly significant. In today's post-Cold War era of globalization, they argue, recognition of the particular communal context is essential for avoiding human rights imperialism.⁵² While globalization has entailed an increasing interdependence and a degree of norm convergence at the world level, it has also had the contradictory impact of increasing the fragmentation of states and peoples.⁵³ The ability of powerful states like the United States to make credible military threats, to persuade other countries to join in economic sanctions, and to offer enticing economic inducements puts pressure on local decision making. Local traditions and values, threatened by encroaching global moralism, must be protected. Thus, as a survival tactic in the increasingly interconnected world, economic, social, and cultural networks have formed to resist imperialism and to promote their own collective interests.⁵⁴ In this context, critics of universalism assert, the forced impositions of outside ideas about human rights on local matters may result in retrenchment and reactive nationalism that can lead to human rights disaster for minority groups.

Another argument for particularism takes a more pragmatic stance, and suggests that if one really cares about human rights, one must be at least a bit of a particularist. Some degree of particularism is necessary in order to determine the content of the duty at stake in any particular situation where rights are violated. Similarly, the general ethos of the United States determines the interests that it feels called upon to promote,⁵⁵ as well as the circumstances in which it takes risks in relation to those interests. Human beings in fact support human rights policies only when they see some self-interest at stake. This interest need not be related to money and power, but rather can be related to sentiment and identity.⁵⁶ The U.S. public, for example, tends to support humanitarian and human rights interventions when the photos of the suffering human rights victims “look like us” and/or “are us” in the sense that they are kin to at least some of us.

Human rights advocates in the U.S. government have long been criticized across the American political spectrum for their universalism. The problem, however, is that they are not universal enough. Many diplomats, U.S. State Department employees, and Pentagon spokespeople do indeed identify as being on the “side of human rights” and espouse the universal language of human rights, but they do so in defense of highly particularistic causes. Today the gap between what they profess to believe in (universal, aspirational rights) and what they actually represent on a political and operational level (particularist, relativist behavior) is enormous. In practice, they are not universalists, but exhibit demonstrably particularist behavior in carving out exceptions for their own actions based on a belief in the United States' special mission in the world.

Through its self-perception as the morally and ideologically superior state, the United States advocates human rights for the world and state sovereignty for itself.⁵⁷ This being the case, why are human rights norms important at all? The theoretical schools of thought known as the “English school” and “constructivism” shed light on this question.

The English School

Hedley Bull, credited with the founding of the English school, has famously observed that theoretical inquiry into international relations is necessarily about moral or prescriptive questions.⁵⁸ While the trained social scientist may objectively and even dispassionately plan studies and gather data, moral and ethical questions inevitably enter into the analysis. None of us is a blank slate. We are individuals brought up in families and communities that have given us a sense of right and wrong and deeply rooted understandings of what it means to relate to one another in furthering the common good. Moreover, the desire to understand behaviors that violate our moral and ethical beliefs attracts many of us to the field of international relations. Although not explicitly prescriptive in nature, most of us hope that our work will do more than satisfy an intellectual curiosity, and will have some real-life application.

The question then is not *whether* but *how* norms should matter in the field of international relations. For the English school, norms are at the core of thinking about international relations. In contrast to scholars who envision an international *system* marked by ad hoc and functional cooperation, adherents of the English school speak in terms of an international *society* in which conduct is guided by norms expressing common sentiment.⁵⁹ Bull explains that a “society of states (or an international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive of themselves to be bound by a common set of rules in their relations to one another, and share in the working of common institutions.”⁶⁰ Other descriptions of international society emphasize that it is a socially constructed ideal, and that the governing norms may be interpreted differently by various actors and over time.⁶¹ While the English school’s understanding of international society is state-centric, some scholars writing in this tradition have suggested, as a modification to the tradition, thinking in terms of human relationships, thus moving beyond the state.⁶²

While the centrality of norms in international society is fundamental to the English school, scholars differ according to their basic assumptions about the nature and function of norms. There are two main branches of the English school: the pluralist and the solidarist.⁶³ Proponents of the pluralist branch of the English school accept that the common principles for international social interaction are those related to security and coexistence—that is, sovereignty, nonintervention, and the nonuse of force.⁶⁴ For pluralists, these rather limited rules are rationally determined, fixed, and applicable only to state behavior;

no space exists for human rights and humanitarian NGOs and other nonstate actors, regardless of their motivations. The solidarist branch of the English school challenges the ontological and epistemological bases of these rules. Solidarists suggest that the principles for interaction in international society are based on a broader principle of solidarity and are not fixed, but rather are susceptible to change along with their normative underpinnings. For solidarists, common moral principles can be identified that apply to both states and individuals. While some solidarists speak in terms of common moral values,⁶⁵ others refer to humanity and responsibility.⁶⁶ NGOs and humanitarian agencies are not only included in the cast of characters, but their actions can be grounded in altruism as well as cost-benefit analysis.

This book is influenced by the solidarist version of the English school and, in particular, in the commitment of solidarists to human rights as a key constitutive element of international society.⁶⁷ In addition to recognizing universal human rights directly as part of the ethical dimension of international society,⁶⁸ solidarist writings on legitimacy and justice offer indirect support for the centrality of human rights. They observe that the legitimacy of international society is linked to its commitment to justice. Wheeler explains that “[r]ather than see order and justice locked in a perennial tension, solidarism looks to the possibility of overcoming this conflict by recognizing the mutual interdependence between these two claims.”⁶⁹ Human rights are one set of international standards that may promote justice and thus advance the legitimacy of international society. Conversely, as the present work seeks to illustrate, when human rights are poorly observed, this legitimacy is undermined. The manner in which human rights norms are observed is critical due to the created nature of social standards, procedures, and values. Because these principles do not exist apart from the community that recognizes them, one must analyze the circumstances and interactions surrounding their deployment. For this type of investigation, the English school alone proves theoretically inadequate.

Constructivism

Constructivism provides a lens through which to analyze the social structure of international society identified by the English school. For the purposes of the present study, constructivism is particularly helpful for understanding (1) the social environment in which norms operate; (2) the circumstances in which norms influence behaviors; and (3) the particular relationship between legal rules and norms. In brief, the English school tells us that norms matter and, at least according to the solidarists, human rights are of central concern. Constructivists stress that identities and interests matter and that actors are most likely to obey norms relevant to society. Perhaps more important, however, constructivists argue that what actors do, how they interact, and the manner in which they (and others) interpret their actions creates and changes the *meaning* of these norms. These dynamics are further elaborated upon in the following section.

An Environment Marked by Social Relationships

At the outset, constructivist theory helps us to think about the environment in which human rights norms are said to exist.⁷⁰ Rejecting the unidirectional road map analogy, constructivists propose conceiving of the international system as a dynamic network of social relationships.⁷¹ One proponent, Alexander Wendt, explains that the international system contains three elements: “shared knowledge, material resources, and practices.”⁷² Further, he asserts that the identities and interests of states are not exogenously determined or permanently given, but are socially constructed products of learning, knowledge, cultural practices, and ideology.⁷³ In other words, states do not come to the international arena with identities, interests, and preferences predetermined; rather, their identities, interests, and preferences are continuously shaped through local and international interactions. The distribution of things, like corporate wealth and military arsenals, is similarly socially determined. Like everything else in the world, “material resources acquire meaning for human action through the structure of shared knowledge in which they are embedded.”⁷⁴ The third element Wendt includes—practices—similarly underscores that social structures exist and acquire meaning only through lived realities: processes, interactions, and behavior.⁷⁵

International structures and actors can be understood as mutually constitutive because the social construction process does indeed run in both directions.⁷⁶ States, through their interactions, help constitute the structure of the system, and the structure, in turn, shapes the identities and interests of states.⁷⁷ States’ positions on human rights questions help shape the international system in which these norms are defined and enforced. At the same time, however, the international system influences the identities and interests of states that lead them to adopt certain human rights stances. This observation about mutually constitutive social construction runs contrary to the assumption made by some liberal scholars that human rights policy is driven by a rational, interest-based calculation focused on interests and preferences related to autonomy and security.⁷⁸ While many states do engage in such calculations, what is missing from this analysis is that state interests and preferences are formed and continually reformed through the process of social interaction.

Robert Keohane explains the importance of this distinction to the study of the exercise and distribution of power. He notes,

Institutions do not merely reflect the preferences and power of the units constituting them; the institutions themselves shape those preferences and that power. . . . It is therefore not sufficient in this view to treat preferences of individuals as exogenously given: they are affected by institutional arrangements, by prevailing norms, and by historically contingent discourse among people seeking to pursue their purposes and solve self-defined problems.⁷⁹

This orientation permits greater influence on norm compliance by non-state actors.⁸⁰ As Margaret Keck and Katherine Sikkink have explained,

nonstate actors may act strategically in trying to shape state interests and identities and, accordingly, to influence state behavior.⁸¹ For example, the actions of human rights groups—such as documenting and publicizing human rights abuses and designing high-profile advocacy campaigns naming violators—may lead to a state’s reassessment of its best interests. By including NGOs as one among several sets of actors, this book seeks to locate innovations and trends in NGO and civil society attempts to influence U.S. understandings of interest vis-à-vis human rights norms.⁸²

Circumstances in Which Norms Influence Behaviors

Constructivist theory provides further insight into the relationships among human rights norms, identities, and behaviors and, in particular, why state actors comply with norms. Wendt, in a leading constructivist text, suggests three explanations given by neorealists, neoliberals, and idealists, respectively: (1) because they are coerced (they are threatened with use of force to produce and enforce a norm); (2) because they see complying as being in their interest (they calculate a cost-benefit analysis and determine there is an incentive to comply); or (3) because they regard the norm as legitimate (the norm becomes a part of who the state is). Only in the last instance are actors’ identities constructed by norms; in the others, norms are merely affecting behavior or beliefs.⁸³ This framework provides a useful starting point for analyzing the circumstances most likely to promote norm compliance. While there is value in all three approaches, this book is most interested in searching for evidence regarding the last—that is, the extent to which human rights norms have become a part of the actor’s identity.

The link between human rights identities and behaviors is complicated. An actor’s behavior and identity are mutually constitutive in that behavior constructs an identity over time, yet the parameters of behavior are based upon that same identity.⁸⁴ Actors usually want to be seen as being on the same side of these norms and, consequently, may lay claim to the identity of norm enforcers or norm promoters.⁸⁵ Consequently, in order to make this claim, they may change their behaviors.

Actors may, however, have other reasons for complying with norms, such as fear of sanctions or other coercive measures. Even in such circumstances, their reluctant norm compliance has the (unintended) effect of promoting a human rights identity and, in turn, supporting larger human rights structures and processes.⁸⁶ Similarly, even attempts to use human rights in a hypocritical and self-serving manner may nonetheless serve to bolster human rights structures. To take one illustration, Daniel Thomas’s study of the Helsinki human rights process demonstrates that although repressive states agreed to be bound by human rights norms in the belief that they could acquire international legitimacy without substantial compliance, “this ‘empty’ commitment nonetheless promote[d] local, transnational, and interstate processes that undermine continued repression.”⁸⁷ Once they become part of structures and processes, human rights norms may assume a life of their own, and continue to exert

influence even as conditions change. Because they become part of the social space, other actors can relate, not only with these norms, but also with other actors through these norms.

The norms that have the most powerful influence over an actor's identity and behavior are those that have become so deeply rooted that they can be said to be embedded in identities and structures and thereby internalized. Jeffrey Checkel has described this process as "social learning," that is, "a process whereby actors, through interaction with broader institutional context (norms or discursive structures), acquire new interests and preferences—in the absence of obvious material incentives."⁸⁸ Through social learning, not only are actors' identities transformed, but their interests are changed as well. Jeffrey Lego has pointed out that while states do have multiple identities (e.g., sometimes acting as doves, sometimes as hawks), states will choose which norms to follow according to an assessment of the norms' impacts on the most salient of state identities.⁸⁹

Finnemore and Sikkink describe a three-step life cycle for norm influence.⁹⁰ They observe that "[c]hange in each stage . . . is characterized by different actors, motivations, and mechanisms of influence."⁹¹ In brief, in the first stage, norm emergence, particularly influential people—"norm entrepreneurs"—"frame policy choices in human rights terms. In so doing, they call attention to issues or even 'create' new issues,"⁹² and "attempt to convince a critical mass of states (norm leaders) to embrace new norms."⁹³ In the second stage, largely due to such factors as pressure for conformity, norms begin to "cascade" down to domestic society. Where in the first stage persuasion is used to encourage states to embrace new norms, in the second stage norms spread through a process of socialization. Finally, at the "extreme end of the norm cascade," norms are internalized.⁹⁴

For foreign policy decision makers, this process holds great importance. "Once a norm becomes internalized in this way, it is not simply one among a number of considerations that must be added into the calculus of foreign-policy decision-making," Ward Thomas has explained, "it becomes one of the foundational assumptions on which that calculus is based."⁹⁵ Where norms become foundational assumptions, actors are pulled into compliance with them. This is so, not because of some specific incentives for compliance in a particular case, but because the actors have already determined that compliance will serve their interests and identities over the long run.⁹⁶ In such situations, the norm acquires a taken-for-granted quality in that compliance is expected and there is little contentious debate over the appropriateness of the norm.⁹⁷

So how can one find evidence of norm embeddedness? This study is based on the assumption that what actors both do *and* say matters. As Thomas Risse and Kathryn Sikkink have demonstrated, dialogue, communication, and argumentation are essential mechanisms for the socialization of norms.⁹⁸ Rhetoric connected to reputation is particularly helpful for tracing norm socialization. Actors continually strive to communicate in a manner that enhances their reputation by, for example, portraying themselves as being in compliance

with applicable norms. Wendt explains that “identities and their corresponding interests are learned and then reinforced in response to how actors are treated by Others.”⁹⁹ This process is referred to as “reflected appraisals” or “mirroring” because “actors come to see themselves as a reflection of how they think. Others see or ‘appraise’ them, in the ‘mirror’ of the Others’ representation of the Self.”¹⁰⁰ Audie Klotz’s impressive study of the influence of international norms on state stances on apartheid illustrates that concern for reputation can play a role in influencing human rights foreign policy.¹⁰¹ Drawing on such works, this book considers how the United States presents itself to the world on human rights issues.

Cynics point out that the U.S. military’s reference to human rights and humanitarian norms can at times be hypocritical and self-serving. This may be true. Nonetheless, the mere reference to the norms, as distinct from behavior indicating compliance, demonstrates a desire to be seen as promoting the norm and, thus, the importance of the norm for the actor’s identity and interests. In the same vein, how a state’s behavior within a regime is interpreted by others, what pleas for understanding or admissions of guilt are made, and how others respond to these claims are all component parts of explaining the socialization of a norm.¹⁰² Thus, this study searches for references to human rights norms not only in behaviors, but also in speech, including interviews, public addresses, and memoirs.

The Role of Legal Norms

This book also develops the strand of constructivism that analyzes the role of legal rules and norms. In particular, it considers the legal rules pertaining to human rights. As explained above, constructivist theorists have found some norms to be “constitutive” in that they define the identity of an actor. Applying this insight to legal norms, Peter Katzenstein has explained that legal rules have constitutive effects when they “specify what actions will cause relevant others to recognize a particular identity.”¹⁰³ Where norms are thought of not as constitutive but as merely “regulative,” they operate as “standards that specify the proper enactment of an already specified identity.”¹⁰⁴ To use Friedrich Kratochwil’s oft-cited example, the rules of chess make the game itself.¹⁰⁵ One could play by other rules on the same board, but one would be playing a different game. In the same vein, constitutive international rules are said to be constitutive of the international system, defining the identities and interests of actors in the system. Good illustrations of rules that help form the identities of actors are the shared understandings that bestow recognition on states and their respective rights and duties.¹⁰⁶ Thus, for example, the sovereign equality of states is said to be a constitutive legal rule of the Westphalian system.¹⁰⁷ This rule could disappear, but then so would the Westphalian system.¹⁰⁸

Constitutive legal rules define the interests and identities of international actors.¹⁰⁹ Constitutive rules determine “what constitutes relevant political behavior, what power is, and which dimensions of collective life are most

significant.”¹¹⁰ In this sense they are part of the architecture of state identity. One need not define with precision the constitutive rules of the international system.¹¹¹ Instead, what matters here is the perception of “constitutive rules” and the identification of rule violators. To extend the example introduced above, this study is interested in how international actors that violate accepted norms of sovereignty define themselves, how others define them, and the expectations, behavioral patterns, and structures that emanate from such definitions. Those regarded as breaching sovereignty norms may be viewed positively as sovereignty-free actors, transboundary entities, and norm entrepreneurs, or they may simply be called international lawbreakers. This book examines not the mere existence of rules or compliance with rules, but the perception of rules and the resulting expectations and behaviors reflected through processes.¹¹²

For this study, nonconstitutive legal rules hold equal importance to the extent that they also shape identities. Both legal rules and norms are important parts of the shared knowledge of a wide range of actors, and these actors define themselves within the community in relation to these rules. At the same time, the material resources and structure of society are created and manipulated by the actors’ involvement with legal rules and norms. This book is particularly interested in how the process of human rights norm definition and enforcement demonstrates who we are as a society, what we value, how power is distributed, and how relationships are regulated.¹¹³

Process theory within the field of international law is somewhat analogous to constructivist approaches to the socialization and internalization of norms. Process theorists traditionally examine the horizontal legal process that occurs among nation-states interacting within treaty regimes.¹¹⁴ But Koh, a leading scholar writing in this tradition, suggests instead a focus on the vertical process “whereby international norms become domesticated and internalized into domestic law.”¹¹⁵ Among law-abiding states, he notes a three-step process of “interaction, interpretation and internalization of international norms.”¹¹⁶ He has made the important observation that “[a]s transnational actors interact, they create patterns of behavior and generate norms of external conduct which they in turn internalize.”¹¹⁷ It is through a repeated process of “interaction and internalization that international law acquires its ‘stickiness,’ that nation-states acquire their identity, and that nations define promoting the rule of international law as part of their self-interest.”¹¹⁸

Koh’s project thus examines why states obey, and how law-abiding states internalize international law in their domestic and legal political structures. In contrast, this book examines how law-abiding nonstate actors internalize international laws and norms into their identities and communities. Notwithstanding the different goals, Koh’s detailed analysis of transboundary relations provides a useful framework for this study, which complements the constructivist orientation.

THREE ARGUMENTS

Using the tools described above, this book uses a close study of post–Cold War civilian policy making, military actions, and activist strategies to test three arguments.

First, human rights norms matter as they shape the identities, interests, and expectations of all three groups of actors (U.S. presidential administrations, the military, and the activist community). Of these three groups, the identity of the U.S. military has changed the most in casting off the traditional warrior image and adopting an identity of professionalism and humanitarianism. Moreover, just as human rights norms have impacted military identity and behavior, so too have changes in the military impacted human rights. By using human rights terms—at least sometimes—to define purposes or guide actions, the military does indeed play an important role in framing the debate about international problems and in making human rights arguments more socially available.

Second, American exceptionalism prevents human rights norms from progressing into consistent human rights behaviors. Although U.S. policymaking and military actors have long tended to pronounce themselves as universalists on human rights, they act as particularists, failing to apply human rights norms to their own behaviors. A view of human rights in which the doctrine applies only to others and not to oneself with the same consistency undermines the main tenet that human rights are to be applied to all equally. Thus, to the extent that the United States is leading the world on human rights by example, it is leading the world in the wrong direction.

Third, for the presidential administrations and the military, the trend toward the institutionalization of human rights norms has been influenced by numerous external actors who have become increasingly sophisticated in their activities. Civil society has a subtle yet significant impact on human rights and U.S. foreign policy. Largely due to the influence of civil society, human rights policy in the United States is today a rhetorically available idea, filled with hope and radiating culturally and morally loaded values.

Despite the creative and unrelenting efforts of human rights advocates, human rights have yet to become deeply embedded in institutions so as to have a “taken for granted” feel. This book explains this quandary: Human rights behavior is much harder to come by than human rights talk. Politicians deploy human rights rhetoric easily, but on closer inspection it turns out to be fool’s gold.

ENDNOTES

1. Michael Ignatieff, “Human Rights as Politics,” in *Human Rights as Politics and Idolatry*, ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 2001), 16.
2. Andrew Lui, “Do Human Rights Have a Future? A Study of Transformation in International Relations,” paper presented at the Forty-Fourth Annual Convention of the International Studies Association, Portland, Oreg., 2003.

3. Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 904.
4. Harold Hongju Koh, "On American Exceptionalism," *Stanford Law Review* 55 (2003): 1485–87.
5. Koh identifies another form of exceptionalism that is rarely of concern, the "flying buttress mentality"—that is, when the United States harms its own reputation by failing to agree with international mechanisms even as it complies with the substantive mandate of those mechanisms.
6. Koh, "On American Exceptionalism," 1487.
7. References to "American exceptionalism" in this text refer to this double-standard form.
8. See the list in the appendix. Note that many people interviewed who are in the military and government wished to remain unnamed.
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10. See Tim Dunne and Nicholas J. Wheeler, "Introduction," in *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), 1–28.
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12. R. J. Vincent, *Human Rights and International Relations* (New York: Cambridge University Press, 1986), 152.
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16. See, e.g., Ken Booth, "Three Tyrannies," in Dunne and Wheeler, *Human Rights in Global Politics*, 31–70.
17. See, e.g., Michael Perry, *The Idea of Human Rights* (New York: Oxford University Press, 1998).
18. See, e.g., William F. Schultz, *In Our Own Best Interest: How Defending Human Rights Benefits Us All* (Boston: Beacon Press, 2001).
19. See, e.g., Bhikhu Paarekh, "Non-Ethnocentric Universalism," in Dunne and Wheeler, *Human Rights in Global Politics*, 128–59.
20. See, e.g., Andrew Hurrell, "Power, Principles and Prudence: Protecting Human Rights in a Deeply Divided World," in Dunne and Wheeler, *Human Rights in Global Politics*, 277–302.
21. Amy Gutmann, "Introduction," in Gutmann, *Human Rights as Politics and Idolatry*, xi.
22. *Ibid.*, xxiii.
23. This argument about the relative unimportance of foundations should not be

- overstated. The foundational basis for human rights does shape the content of the rights recognized and most avidly enforced.
24. Chris Brown, "Universal Human Rights: A Critique," in Dunne and Wheeler, *Human Rights in Global Politics*, 103–27.
 25. Jean Bethke Elshtain, "The Dignity of the Human Person and the Idea of Human Rights" (book review), *Journal of Law and Religion* 14 (1999–2000): 53–7; see also Lisa Sowle Cahill, "Toward a Christian Theory of Human Rights," *Journal of Religious Ethics* 9 (1980): 278.
 26. Donnelly, *Universal Human Rights*, 81.
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 29. "Vienna Declaration and Programme for Action," presented at the World Conference on Human Rights, Vienna, June 14–25, 1993. United Nations General Assembly A/CONF/157/23. Available online at [www.unhcr.ch/huridoca/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhcr.ch/huridoca/huridoca.nsf/(Symbol)/A.CONF.157.23.En).
 30. Donnelly, *Universal Human Rights*, 81.
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 42. David Miller, *On Nationality* (New York: Oxford University Press, 1995), 49.
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 45. *Ibid.*
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 47. Booth, "Three Tyrannies," 53.

48. See, e.g., Michael Peter Smith and Luis Eduardo Guarnizo, *Transnationalism from Below* (New Brunswick, N.J.: Transaction, 1998).
49. See, generally, Richard A. Wilson, "Human Rights, Culture and Context," in *Human Rights, Culture and Context: Anthropological Perspectives*, ed. Richard A. Wilson (New York: Pluto Press, 1999).
50. Gertrude Himmelfarb, "The Illusions of Cosmopolitanisms," in *For Love of Country: Debating the Limits of Patriotism*, ed. Martha C. Nussbaum (Boston: Beacon Press, 1996), 72–77.
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70. See John G. Ruggie, *Constructing the World Polity: Essays on International Institutionalism* (New York: Routledge, 1998); Nicholas G. Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (Columbia: University of South Carolina Press, 1989); Friedrich V. Kratochwil, *Rules, Norms, and Decisions* (New York: Cambridge University Press, 1989); Alexander Wendt, "Constructing International Politics," *International Security* 20 (1995): 77–78.
71. Alexander Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics," *International Organization* 46 (1992): 405–7.
72. Wendt, "Constructing International Politics," 73.
73. Harold Hongju Koh, "Review Essay: Why Do Nations Obey International Law?" *Yale Law Journal* 106 (1997): 2650 (discussing Wendt and the constructivist and "international society" school of international law).
74. Wendt, "Constructing International Politics," 73.
75. *Ibid.*
76. Anthony Clark Arend, "Do Legal Rules Matter? International Law and International Politics," *Virginia Journal of International Law* 38 (1998): 107–29.
77. *Ibid.*
78. Andrew Moravcik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54 (2000): 217–52.
79. Robert O. Keohane, "International Institutions: Two Approaches," *International Studies Quarterly* 32 (1988): 379–82.
80. See, generally, Margaret Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Relations* (Ithaca, N.Y.: Cornell University Press, 1998).
81. *Ibid.* See esp. 887–917.
82. See, e.g., Christian Reus-Smith, "The Constitutional Structure of International Society and the Nature of Fundamental Institutions," *International Organization* 51 (1997): 555–69; Audie Klotz, "Norms Reconstituting Interests: Global Racial Equality and U.S. Sanctions Against South Africa," *International Organization* 49 (1995): 451; and Martha Finnemore, "International Organizations as Teachers of Norms: The United Nations Education, Scientific, and Cultural Organization and Science Policy," *International Organization* 47 (1993): 565.
83. Wendt, "Constructing International Politics," 73.
84. See Arend, "Do Legal Rules Matter?" 129.
85. See, generally, Keck and Sikkink, *Activists Beyond Borders*.
86. Thomas Risse calls this process "argumentative self-entrapment," in which state actors fall into the spiral of becoming increasingly accountable to their own assertions of being norm promoters; see Risse, "Let's Argue! Communicative Action and International Relations," *International Organization* 54 (2000): 32.
87. Daniel Thomas, *The Helsinki Effect* (Princeton, N.J.: Princeton University Press, 2001), 3.
88. Jeffrey Checkel, "The Constructivist Turn in International Relations Theory," *World Politics* 50, no. 2 (1998): 324–48.
89. Jeffrey W. Lego, "When Norms Matter: Revisiting the 'Failure' of Internationalism," *International Organization* 51 (1997): 31–63.

90. Finnemore and Sikkink, "International Norm Dynamics," 895.
91. *Ibid.*
92. *Ibid.*, 897.
93. *Ibid.*, 895.
94. *Ibid.*, 904.
95. Ward Thomas, *The Ethics of Destruction: Norms and Force in International Relations* (Ithaca, N.Y.: Cornell University Press, 2001), 38.
96. In this sense, the ethical tradition behind behaviors could be viewed as "rule utilitarianism," not act utilitarianism. Rule utilitarianism holds that the "correct rules are those the general observance of which maximize utility." See Anthony Ellis, "Utilitarianism and International Ethics," in Nardin and Mapel, *Traditions of International Ethics*, 158–79.
97. Finnemore and Sikkink, "International Norm Dynamics," 895.
98. See Risse, "Let's Argue!" 1–39; see also Thomas Risse and Kathryn Sikkink, *The Power of Principles: The Socialization of Human Rights Norms in Domestic Practice* (New York: Cambridge University Press, 1999).
99. Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 327.
100. *Ibid.*
101. Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid*. (Ithaca, N.Y.: Cornell University Press, 1995).
102. John G. Ruggie, *Constructing the World Polity: Essays on International Institutionalization* (London: Routledge, 1998).
103. Peter Katzenstein, "Introduction: Alternative Perspectives on National Security," in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter Katzenstein (New York: Columbia University Press, 1996), 5.
104. *Ibid.*
105. Friedrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and International Affairs* (Cambridge: Cambridge University Press), 26.
106. See Restatement (Third) of the Foreign Relations Law of the United States, Sec. 201 (1987).
107. Stephen A. Kocs, "Explaining the Strategic Behavior of States: International Law as System Structure," *International Studies Quarterly* 38 (1994): 535.
108. Some commentators would say the Westphalian system has already disappeared. See, e.g., the essays in Gene M. Lyons and Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University Press, 1995).
109. Wendt, "Anarchy Is What States Make of It," 391.
110. Paul Wapner, "Politics beyond the State: Environmental Activism and World Civic Politics," *World Politics* 47 (1995): 319.
111. I would argue only that the very search for such matters as "central principles," "nonderogable," *erga omnes*, or *jus cogens* proves my point: international actors are drawn to perceiving some legal rules as constitutive and others as less important; the identity of many actors and structures are based on such categorizations (or rejection of such categorizations). See, e.g., the now classic debate over "relative normativity" in international law, which was initiated in Prosper Weil, "Towards Relative Normativity in International Law," *American Journal of International Law* 77 (1983): 413, and the responses in Theodor Meron, "On a Hierarchy of International Human Rights," *American Journal of International*

- Law* 80 (1986): 1, and in John Tasioulas, "In Defense of Relative Normativity: Communitarian Values and the Nicaragua Case," *Oxford Journal of Legal Studies* 16 (1996): 85.
112. This study thus departs significantly from the traditional international law requirements for norm formation. While international relations scholars commonly examine how rules are socially constructed, international lawyers adhere to the traditional twin requirements—state practice and *opinio juris*—for the formation of customary international law. Where state practice is lacking, international lawyers may stress *opinio juris*. They may also look for evidence of intent in treaty law, treaty negotiations, international standards, and other "soft law," or attempt other tactics to dodge the practice requirement. See, generally, Michael Beyers, *Custom, Power and the Power of Rules: International Relations and Customary International Law* (New York: Cambridge University Press, 1998); Jordan J. Paust, "Customary International Law: Its Nature, Sources and Status as Law of the United States," *Michigan Journal of International Law* 12 (1990): 59; see also Theodor Meron, "The Continuing Role of Custom in the Formation of International Humanitarian Law," *American Journal of International Law* 90 (1996): 238–39.
 113. Philip Allott explains the constitutive nature of power as "a power over consciousness itself, through its control of society's reality-forming, as well as the power to embody the values derived from such reality-forming in legal relations and to interpret and apply those legal relationships authoritatively." See Allott, *Eunomia: New Order for a New World* (Cambridge: Cambridge University Press, 1990), 210.
 114. See, e.g., Abram Chayes and Antonia Handler Chayes, *The New Sovereignty* (Cambridge, Mass.: Harvard University Press, 1995).
 115. Harold Hongju Koh, "The 1998 Frankel Lecture: Bringing International Law Home," *Houston Law Review* 35 (1998): 623–35.
 116. Harold Hongju Koh, "Why Do Nations Obey International Law?" 2599–2603.
 117. Harold Hongju Koh, "Transnational Legal Process," *Nebraska Law Review* 75 (1996): 181–202.
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THE LINGUA FRANCA OF DIPLOMACY: HUMAN RIGHTS AND THE POST-COLD WAR PRESIDENCIES

Human rights have long been central to U.S. self-image.¹ The Declaration of Independence's proclamation of "inalienable rights" is, in fact, an assertion that certain rights are neither granted by government nor subject to removal by government. And from the beginning, U.S. foreign policy has been concerned with projecting a positive image of U.S. national identity and values. As Arthur Schlesinger observed, "Americans have agreed since 1776 that the United States must be a beacon of human rights to an unregenerate world. The question has always been how the U.S. would execute this mission."² It would be wrong to assert that U.S. foreign policy has only recently assumed an interest in human rights—that interest has been there all along. What is new is the frequency with which the United States has invoked human rights as rhetorical justification for its actions. The U.S. view of itself as a chief human rights proponent has remained strong, even as public exposures of U.S. complicity in torture and other grave human rights abuses have shaken the foreign policy establishment. Manipulating human rights rhetoric to suit its aims, the administration of President George W. Bush has sought to justify its repressive counterterrorism strategies in human rights terms. This chapter explains how this use of human rights rhetoric, although unique in many respects, is in fact an extension of well-established patterns in American human rights foreign policy established in prior administrations.

The relationship of human rights to U.S. foreign policy has traditionally been framed in terms of national interests. One could say that today U.S. national interests solidly include the promotion of human rights and the disassociation of the United States from regimes that are abusive on human rights issues.³ Or one could assert that in U.S. foreign policy national interests may be trumped by "moral sensitivities," including caring for fundamental human rights.⁴ Regardless

of whether one sees a redefinition of national interest or a greater accommodation of moral considerations, the United States does in fact rhetorically invoke human rights concerns in its foreign dealings with regularity. In the words of Chester Crocker, “human rights have become part of the furniture when it comes to U.S. diplomacy.”⁵ American diplomats invoke human rights rhetoric so frequently that, to some extent, they have built up expectations that the United States will demand compliance with human rights norms. Advocates thus frame U.S. policy options in human rights terms with the hope that this framing will generate attention and influence outcomes.⁶

The framing of policy choices in human rights terms, however, must compete with alternative ways of interpreting the problem and, worse yet, the general public accepts these alternatives as viable choices. To put it bluntly, human rights are not the only game in town, and quite frequently other games garner more attention. Kathryn Sikkink has pointed to the post–World War II pressures of anticommunism and the segregationist sentiment among conservative states in the nation as “more powerful clusters of ideas/interests” blocking adoption of a strong U.S. human rights policy.⁷ Even after these ideas subsided, Sikkink observes, “human rights ideas did not totally displace earlier interpretations of national security, but rather continued to exist with them among some members of Congress, the executive, and the general public.”⁸

After the 9/11 attacks on the World Trade Center and Pentagon, human rights ideas must also contend with the pressures of antiterrorism and the willingness of the general public to accept double standards when justified by antiterrorism claims.⁹ Yet doomsayers who bemoan the end of human rights are clearly wrong. Even with competition from alternative ideas, the promotion and protection of human rights norms has remained a legitimate concern of U.S. foreign policy, albeit one with stiff competition for attention.

The continued presence of human rights as an influential policy theme during skeptical administrations can be explained by both the institutionalization of such rights and their centrality for American identity. This does not mean that each presidential administration has embraced human rights and responded in a consistent manner to human rights concerns. On the contrary, the story of human rights in U.S. foreign policy is one of perpetual tension and resistance, of interpretation and reinterpretation. By unraveling trends in U.S. human rights foreign policy, administration by administration, this chapter explores the nature of this dynamic process, exposing the way in which it involves both acceptance of and resistance to human rights.

While also surveying earlier historical developments, this chapter primarily focuses on the development of U.S. human rights foreign policy in the post–Cold War presidential administrations of George H. W. Bush, Bill Clinton, and George W. Bush. For each administration, the chapter considers four questions:

1. *What was inherited?* How do institutional legacies from previous administrations constrain the new administration in its development and deployment of human rights policy? (A somewhat more detailed background is provided with the first post–Cold War president, George

H. W. Bush, simply because he is the beginning of our narrative and the history each president inherits is cumulative.)

2. *What was retained, and what was changed?* In what ways did the new administration either continue to use the human rights institutions of its predecessor, or conversely, deride the human rights stance of its predecessor in order to distinguish its own goals, objectives, and the country's interests? What specific changes were made to existing institutions or programs, and which new ones were created in the process of using this norms-based language?
3. *What were the constraints?* What constraints or influences can we identify based on the expectations and demands of other actors, including U.S. allies, citizens of the country being targeted, American citizens, government employees, the military, nongovernmental organizations (NGOs), the media, and so on, that moved the administration toward employing or ignoring human rights norms?
4. *What was the degree of norm embeddedness?* Does the evidence suggest that human rights norms are "embedded" in the sense that they have a taken-for-granted quality in influencing policy choices? To what extent will the public sacrifice human rights norms for competing approaches?

PRESIDENT GEORGE H. W. BUSH: HUMAN RIGHTS AND THE NEW WORLD ORDER (1988–92)

... a new president could change the tone of American foreign policy even the first day that he is in office, with the inaugural speech. An eagerness to reach out to other nations, to elevate human rights or civil liberties to a top level, and to resolve conflicts in the world in a peaceful way . . . [T]hose kind of messages I think would send a very clear signal that the [U.S.] foreign policy provisions are going to change . . .

—President Jimmy Carter, remarks made prior to George W. H. Bush entering the White House¹⁰

What Was Inherited?

In his assessment of human rights in U.S. foreign policy from 1945 to the inception of the first Bush administration, David Forsythe points out a number of problems that would criticize the human rights policies of President George H. W. Bush. Although human rights ideas had been resonant among Americans since the country's founding, American embrace of human rights presented two fundamental problems in foreign policy.¹¹ At first a reluctant great power and then a more willing superpower, the United States faced the traditional conflict between the commitment to human rights on normative grounds (because they are "right") and the demand that power be exercised or conserved for other interests.

The United States had painfully discovered that although American and international versions of human rights are equally important in an interdependent world, these versions are not necessarily the same. This discovery

left the nation with three awkward choices: (1) ignore the differences and pretend that international human rights norms converge perfectly with American values; (2) confront the difference and assert the superiority of the American way of thinking and being (for example, in asserting that civil and political rights warrant more attention than economic, social, and cultural rights); or (3) acknowledge the differences and reform American laws and practices to meet international standards. While the last tactic has never been politically popular in the United States and thus is rarely invoked, President Bush and his administration had the first two approaches at their disposal, along with a growing number of human rights specialists who could help Bush make his case.¹²

Within the diplomatic corps, Bush worked with a number of seasoned political veterans whose careers had been formed by the anticommunism fight. Among them was Secretary of State James Baker, who had been chief of staff in Ronald Reagan's first administration. Lawrence Eagleburger and Brent Scowcroft were also key players on Bush's staff. They followed in close association with Henry Kissinger and were likewise ideological devotees of détente politics.¹³ Bush did, however, choose an adviser to the United Nations Commission for Human Rights, Marc Northern, who was a strong supporter of human rights principles. Northern addressed the commission stating, "The U.S. makes no apology for insisting that where human rights are concerned, every nation, including my own, must be held to the highest standard. . . . We stand ready to help those governments committed to human rights move ahead."¹⁴

Development of State Department and Congressional Roles

In designing his own policies on human rights, Bush also had to contend with a Congress and State Department that had become increasingly interested in human rights. The willingness of the State Department to engage in human rights issues was a radical departure from earlier times. Under the administrations of Richard Nixon and Gerald Ford, the State Department had opposed the creation of a human rights bureau,¹⁵ and only a single desk officer worked on U.S. positions for UN issues concerning human rights.¹⁶ At the same time, Secretary of State Henry Kissinger was openly hostile to including human rights in American foreign policy concerns.¹⁷ Appearing on the television show *Face the Nation* in 1976, he defended U.S. support for abusive regimes, commenting,

You cannot implement your values unless you survive. . . . Wherever we can, we are trying to nudge [these regimes] in a direction that is compatible with our values. But to pretend that we can simply declare our values and transform the world has a high risk of a policy of constant interventionism in every part of the world . . .¹⁸

American diplomats rarely criticized oppressive regimes before the administration of Jimmy Carter, and Kissinger made an example of one who

did—Ambassador David Popper. When Popper raised human rights concerns to Chilean officials in 1974, Kissinger made sure that his response, “Tell Popper to cut the political science lectures,” was widely circulated.¹⁹ Not surprisingly, during this period the United States played a decidedly destructive role in promoting human rights abroad, increasing aid to a range of dictators involved in “dirty wars.”

Congress grew increasingly concerned with the glaring absence of human rights on the U.S. foreign policy agenda and by American support for brutish regimes, which included the U.S. backing of the military junta in Greece, support for martial law regimes in South Korea and the Philippines, and U.S. ties to dictatorships in Latin America, including support of the overthrow of a democratic government in Chile and the installation there of a repressive regime.²⁰ Under the leadership of Congressman Donald Fraiser of Minnesota from 1973 to 1978, the House Foreign Affairs Committee spurred the enactment of a series of legislation linking human rights to U.S. military and economic assistance to other nations. Requirements were created for certain countries with histories of abusing human rights, such as Argentina, Chile, and Uruguay. “Because of the mistrust of the executive,” John Salzberg’s study of U.S. human rights legislation concludes, “even after Carter’s election, the legislation became increasingly specific.”²¹

Another mechanism used by Congressman Fraiser was the power to hold public hearings in order to influence presidential administrations recalcitrant on human rights issues. The Subcommittee on International Organizations held more than 150 hearings with more than 500 witnesses, examining the human rights records of such countries as Argentina, Chile, Cuba, El Salvador, Indonesia, Israel, Nicaragua, South Korea, and the Soviet Union.²²

The new flurry of hearings on Capitol Hill was accompanied by changes at the State Department. In 1976, Congress mandated the creation of a new bureau in the State Department²³ and required the secretary of state to promote human rights through U.S. foreign policy.²⁴ Modest steps were taken to strengthen the weak human rights bureaucracy, but the first coordinator of the new State Department Bureau of Human Rights and Humanitarian Affairs was “really ‘no factor’ in administration policy-making.”²⁵ Unavailing in its desire to elevate the status of human rights concerns within government, Congress responded by passing legislation elevating the rank of the position to an assistant secretary position.²⁶ It was in this manner, through the persistence of Congress, and not through any presidential initiatives, that the institutionalization of human rights in U.S. foreign policy began.

The Carter Years: Human Rights Take a Stand

The human rights climate that George H. W. Bush inherited predated the Reagan and Carter years. While President Carter did not initiate the U.S. human rights foreign policy agenda, he did bring an unprecedented presidential commitment to the issue. As Kathryn Sikkink has noted, “Virtually all of the essential human rights legislation was already in place when he

took office.”²⁷ All that was needed was for the president to make use of it. In his inaugural address, Carter declared, “We have already found a high degree of personal liberty, and we are now struggling to enhance equality of opportunity. Our commitment to human rights must be absolute, our laws fair, our natural beauty preserved; the powerful must not persecute the weak, and human dignity must be enhanced.”²⁸ The rights the administration sought to address, Secretary of State Cyrus Vance announced in 1977, included

The right to be free from governmental violations of the integrity of the person. Such violations include torture; cruel, inhuman, or degrading treatment or punishment; and arbitrary arrest or imprisonment; . . . denial of fair public trial and invasion of the home; The right to the fulfillment of such vital needs as food, shelter, health care, and education; The right to enjoy civil and political liberties; freedom of thought, of religion, of assembly; freedom of speech; freedom of the press; freedom of movement within and outside one’s country; freedom to take part in government.²⁹

Never before had an American presidency endorsed such a broad list of rights. President Carter’s rhetorical allegiance to human rights raised the human rights agenda to public prominence.³⁰

The main human rights tactic employed by the Carter administration was one of “public diplomacy,” a vast improvement over his predecessor’s “quiet diplomacy,” which often entailed doing nothing.³¹ Combining traditional diplomacy with symbolic actions, Carter’s “public diplomacy” on human rights was often at the highest levels of government. In his memoirs, he explains that “whenever I met with the leader of a government which had been accused of wrongdoing its own people, human rights was on the top of my agenda.”³² Nonetheless, during the Carter administration, security and economic interests could be invoked both to support as well as to trump human rights concerns.³³ “This contradiction,” Forsythe writes, “helps explain his reluctance to use economic sanctions on Idi Amin’s brutal rule in Uganda . . . , and his early reluctance to a congressional effort to link human rights to World Bank and other multilateral loans.”³⁴

The new human rights bureau at the State Department faced considerable obstacles in the Carter years. The first assistant secretary for human rights and humanitarian affairs, Patricia Derian, a former civil rights activist, was “not warmly welcomed” at the State Department.³⁵ While Carter had tried to support human rights by elevating Derian’s position to the assistant secretary level, clashes between the staff of the human rights and geographic bureaus were frequent, particularly over Latin America. The most significant change in human rights practice at the State Department at this time was the implementation of congressionally mandated human rights reports. Human rights staff members were charged with writing annual country reports on the human rights records of specific states and with monitoring related foreign policy decisions, such as whether improvements in a country’s human rights

record merited continued foreign aid. While many of the State Department publications were criticized as selectively serving other American foreign policy interests,³⁶ the reports were seen as conditioning the Foreign Service and State Department cultures to be more sensitive to these issues. This sensitivity continued throughout the Carter administration, even as the Iran hostage crisis and U.S.–Soviet relations eclipsed human rights concerns at the end of the term.³⁷

Throughout the administration, the United States played an increasingly active role in United Nations and inter-American human rights bodies,³⁸ creating worldwide public expectations that the United States would continue to be an active member in these fora. Carter also undertook the important, although largely symbolic, step of signing two controversial covenants on human rights, the UN Convention on the Elimination of All Forms of Discrimination Against Women and the UN Covenant on Economic, Social, and Cultural Rights. (It was not until 1984 that the Senate ratified its first international human rights treaty, the Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted by the UN General Assembly in 1948 but languished in Congress for many decades.) Although human rights had entered U.S. foreign policy before Carter took office, he was the first president to make the institutionalization of human rights a central concern. To be sure, the Carter foreign policy record on human rights promotion included many short-term failures, but in long-range terms, it helped “undermine the legitimacy of . . . authoritarian regimes and helped lead to the reestablishment of democracy.”³⁹

The Reagan Years

The Reagan administration proclaimed at the outset that it would undo the Carter human rights legacy and, in particular, rein in the human rights work of the State Department. Forsythe writes:

Reagan went out of his way to invite to the White House, and display prominently in the Washington press corps and society, friendly authoritarians from South Korea, Zaire, Liberia, etc.—all who had been given the cold shoulder from Carter.⁴⁰

Reagan also signaled his degree of respect for human rights with his initial nomination for head of the Bureau of Human Rights. Perhaps one could find no better person to undermine human rights than Ernest Lefever, an avowed critic of human rights legislation who openly advocated doing away with the annual country reports on human rights practices (even though they were mandated by Congress).⁴¹ Lefever even went so far as to announce that, if confirmed, he would abolish the very office for which he was being considered. The Lefever nomination proved to be a wake-up call on human rights for the Reagan administration. Having underestimated the support for human rights both within and outside government, the administration was surprised when

the Senate Foreign Relations Committee rejected Lefever's nomination with a vote of thirteen to four.

The Reagan administration revisited its objection to human rights. Secretary of State Alexander Haig, who had previously flaunted his disdain for human rights by excluding human rights staffers at his State Department meetings, delivered a major address "declaring that human rights were 'the major focus' of the administration's foreign policy."⁴² The administration also intentionally leaked a high-level internal State Department memo calling for renewed commitment to human rights in U.S. foreign policy.⁴³ While the Reagan administration cast about trying to reinvigorate human rights policy after the Lefever episode, the human rights bureau "languished as the 'laughing stock' of the State Department."⁴⁴ Nonetheless, human rights would not go away.

The appointment of Elliot Abrams as assistant secretary of the Bureau of Human Rights and later as assistant secretary of state for inter-American affairs simultaneously salvaged the institutionalization of human rights in the State Department while also undermining the credibility of human rights discourse. Abrams, a Washington establishment insider who knew how to influence the foreign policy agenda, would uphold the institutional mechanisms of the State Department's role in shaping policy. However, recognition of human rights as a legitimate agenda item within the administration and State Department did not lead to a consistent human rights foreign policy in line with international standards. Abrams seized upon human rights as a useful tool for promoting his own anticommunist ideological agenda in Latin America and the Caribbean. He supported U.S. assistance to the *contras*, a force on record for using tactics in clear violation of international human rights standards, to overthrow the Sandinista government of Nicaragua. He also advocated for funding the military government of El Salvador and supervising its war against a popular leftist rebellion. In the congressional investigations that followed disclosure of the Iran-Contra conspiracies, Abrams was accused of withholding information from Congress.

The self-serving manner in which Abrams used human rights to advance policy goals is characteristic of the entire Reagan administration, which abruptly changed course on human rights after the first year in office. In 1981, UN Ambassador Jeanne Kirkpatrick, who had previously defended U.S. assistance for authoritarian regimes, wrote that "not only should human rights play a central role in U.S. foreign policy, no U.S. foreign policy can possibly succeed that does not accord them a major role."⁴⁵ The Reagan administration, however, defined human rights far more narrowly than the Carter administration, omitting any mention of economic rights. Foreign policy was set by pragmatists within Reagan's administration and thus human rights were advanced inconsistently and only in places where it was ideologically correct to do so, and where major economic or security interests were not a factor.⁴⁶

Accordingly, Ambassador Kirkpatrick and other members of the Reagan administration could criticize communist regimes for human rights violations while continuing to support rightist dictators with economic and military

assistance. This explains a somewhat surprising finding made by statisticians analyzing the relationship between the amount of U.S. aid and the human rights conditions within the potential recipient countries. One would expect to find fewer human rights abuses in countries receiving large aid packages, both because the United States supports friendly countries (its friends are not supposed to engage in human rights abuses) and because aid is conditioned on observance of international human rights standards. Yet during the Reagan administration, large amounts of U.S. aid (that, is, aid given to rightist dictators) was associated with a deterioration in human rights observance.⁴⁷

Although the public diplomacy that had characterized the Carter administration disappeared, human rights continued to be invoked in bilateral relations in subsequent administrations.⁴⁸ Under the Cold War paradigm, the Reagan years were dominated by interventionist policies that were often quite destructive to human rights in practice, but were legitimized by claims that the United States was supporting middle-ground politicians rather than radicals. This dichotomy is witnessed in, on the one hand, the United States supporting the Contra revolution in Nicaragua and sending aid and arms to Afghanistan and Angola, and, on the other hand, Reagan sending aid and arms to President José Napoléon Duarte in El Salvador, a centrist Christian Democrat who sought democratic reforms. Late in the administration, Reagan acknowledged the abuses of authoritarian leaders such as Augusto Pinochet in Chile and Ferdinand Marcos in the Philippines, and went so far as to encourage Marcos to step down from power.⁴⁹ When the Reagan administration backed the Haitian coup in 1986 that removed Jean-Claude “Baby Doc” Duvalier, the United States declared its new policy: “The American people believe in human rights and oppose tyranny in whatever form, whether of the left or the right.”⁵⁰

The Reagan administration reoriented the human rights agenda by recognizing a close relationship between democracy and human rights and by interlacing American exceptionalism throughout. The very definition of human rights was altered to focus narrowly on the civil and political rights most familiar to the American system. Decisions to engage another country in human rights discussions were based even more squarely on larger American interests. The United States refused to apply international human rights standards to its own behavior, placing its own national sovereignty above the value of human rights as an international norm. Domestic practices in violation of human rights in the United States included measures of discrimination against racial minorities, such as cutting back equal opportunities in education and fair housing, and the enormous discrepancies in the incarcerations of the nation’s blacks (versus whites), which were magnified after the onset of Reagan’s drug war.⁵¹ In this altered form, however, the ideas promoted by the Human Rights Bureau spread to the rest of the State Department bureaucracy. “By the end of Reagan’s second term,” one close observer concludes, “human rights were accepted as an important component of the American national interest.”⁵²

President George H. W. Bush thus inherited an ambiguously complex legacy in which his immediate predecessor had created and projected an image

of disdain for international organizations, laws, and norms. Reagan's foreign policy revealed hypocrisy with respect to condemning communist regimes for human rights abuses while remaining silent on those of authoritarian allies. During this time, a distrustful Congress mobilized to ameliorate the damage caused by the executive branch's stance on human rights, and the Department of State and the Foreign Service grew ever more sensitive to human rights themes. This legacy undoubtedly shaped and constrained Bush's own policies with respect to human rights.

What Was Retained, and What Was Changed?

Initially, it seemed like great changes were ahead in the new administration. President George H. W. Bush promised that the United States would benefit from the "new world order" made possible by the end of the Cold War. While members of the administration had absorbed the Cold War suspicions of international institutions, they saw an unparalleled opportunity to advance U.S. interests by controlling the agenda. Bush explained,

The new world facing the U.S. [is one] devoted to unlocking the promise of freedom. It's no more structured than a dream, no more regimented than an innovator's burst of inspiration. If we trust ourselves and our values; if we retain the pioneer's enthusiasm for exploring the world beyond our shores; if we strive to engage in the world that beckons us, then and only then, will America be true to all that is best in us.⁵³

To a large extent, the focus of the Bush administration was an *economic* new world order. Walter Russell Mead explains that this could be characterized as the Hamilltonian globalist school. Indeed, Bush set about developing "a worldwide trading and finance system based on the unchallenged might of America's military forces and on the dynamism of its economy."⁵⁴

The foreign policy of the Bush administration was also influenced by the more multilaterally minded Wilsonian school. Mead explains that for Wilsonians, a "vast and systematic intensification of American political and economic interests around the world" entails such measures as "promoting the rule of law, the spread of democracy, and the construction of a genuine international consensus against aggression and the protection of human rights . . ."⁵⁵ Many members of the administration believed that a link existed between the trade interests of the United States and the existence of democracy and rule of law in other states. So it was within the context of a globalist agenda focusing on economic interests, but also heeding the need for democracy promotion, that human rights concerns emerged.

President Bush's overall foreign policy record vis-à-vis human rights is difficult to characterize.⁵⁶ On the one hand, he criticized Bulgaria for its treatment of minority Turks, and pressured El Salvador to control death squads and other paramilitaries.⁵⁷ Yet on the other, he downplayed rights violations in China and renewed its most-favored-nation trade status following the

Tiananmen Square massacre,⁵⁸ and virtually ignored human rights violations in Iraq prior to the Persian Gulf War.⁵⁹ Bush also opposed proposals for reductions in foreign aid in 1989 to African countries with old-guard dictators, such as Kenya (Daniel arap Moi), Somalia (Siad Barre), and Zaire (Mobutu Sese Seko).⁶⁰ Human rights issues also came back to haunt Bush when he was reproached by Bill Clinton during the 1992 presidential campaign for returning Haitians who were fleeing their country and for failing to take decisive actions in Bosnia.⁶¹

In the Western Hemisphere, Bush did use international mechanisms to advance certain human rights concerns, such as the Santiago Declaration on collective security for all democratic governments in the Organization of American States (OAS), of which the United States was a signatory. Bush also used the OAS and the UN to expand peacekeeping and electoral assistance operations in South and Central America, such as in Nicaragua, El Salvador, and Guatemala.⁶² Nevertheless, Bush's involvement with the OAS was always instrumental. As comparative human rights scholar Forsythe has noted, "the United States has supported [OAS programs] as it sees fit, but without fully integrating itself into OAS human rights activities."⁶³ The United States has neither ratified the OAS American Convention on Human Rights nor accepted the jurisdiction of the Inter-American Court of Human Rights.

This erratic policy position can best be explained by highlighting a continuity between Bush and his predecessor: like Reagan's policy team in his second term, Bush's advisers—National Security Advisor Brent Scowcroft, Secretary of Defense Dick Cheney, and Secretary of State James Baker—were pragmatists with regard to human rights.⁶⁴ In places like El Salvador and the Occupied Territories in Israel, Bush showed more attention to human rights than Reagan. Yet in Iraq, Bush strongly opposed the trade sanctions being considered by Congress in 1990, as Saddam Hussein was still seen as a strategic ally in maintaining a stable Iran. Furthermore, Bush publicly protested the Tiananmen Square crackdown while privately sending assurances that relations would continue with Beijing.

When there was no conflict of interest, Bush did act on human rights grounds. Bowing to intense international and domestic pressure, in the spring of 1991 Bush did support military involvement inside Iraq and the eventual creation of a zone of Kurdish autonomy where, with the help of the UN, Kurdish rights achieved a degree of protection.⁶⁵ In a flip-flop of policy, Bush made a direct appeal to human rights norms in his depiction of Saddam's atrocities against Kuwaiti civilians—acts that, according to Bush, demanded U.S. military action. He charged that while the international community sat back and waited for sanctions to have effect, Hussein "systematically raped, pillaged, and plundered a tiny nation no threat to his own. He subjected the people of Kuwait to unspeakable atrocities."⁶⁶ Hussein's actions were a "throwback to another era, a dark relic from a dark time."⁶⁷

Once the war was over, realist power equations seemed to dampen Bush's enthusiasm for putting a stop to continued "throwback behavior." Bush was slow to react to Hussein's continued attacks of the Shiite peoples in southern

Iraq and the Kurds in the north, concerned that a disintegrating Iraq would strengthen Iran.⁶⁸ Assistance for these groups came only after media coverage spotlighted the civilian slaughters.⁶⁹ Furthermore, U.S. military actions helped reinstate the autocratic ruler of Kuwait, forgoing the opportunity to make any serious demands toward democratic reform in that country.⁷⁰

In the realm of treaty law, Bush's record was mixed. He signed and sent to the Senate the UN Convention against Torture and obtained consent to ratify that treaty as well as the International Covenant on Civil and Political Rights (ICCPR), which had been signed by Carter. However, following the pattern it set for itself with earlier treaties, the United States accompanied each signing with a series of "RUDs"—"reservations," "understandings," and "declarations."⁷¹ The government used this device to declare, among other things, that the United States shall abide by only those provisions compatible with the American constitution and that are in conformity with existing American law.⁷² U.S. treaty making has been likened to Russian matryoshkas—wooden dolls that can be twisted apart at the middle to reveal any number of smaller, nested dolls—because it requires interpreters "to penetrate layer upon layer of reservations, understandings, and declarations that pose progressively greater obstacles to achieving the goals of the treaty."⁷³ The U.S. reservations to the ICCPR permit the United States to deviate from international standards by allowing hate speech in line with American free speech jurisprudence, the use of the death penalty for persons under the age of eighteen, and sentencing of a convicted criminal to the sentence given at the time the crime was committed even when a lighter sentence has since been enacted.⁷⁴ The UN Human Rights Commission found that the United States' reservations to the ICCPR go too far, making them incompatible with the object and purpose of the covenant and therefore in violation of international law.

Throughout his term, then, Bush seemed reluctant to abandon the triumphant American exceptionalism so central to the Reagan presidency. While he was more focused on the creation of a new world economic order than his predecessor, Bush continued to apply human rights norms in a selective and self-serving manner, continuing the trend set in the second Reagan administration.

What Were the Constraints?

As the Soviet Union collapsed, the United States emerged as the sole world superpower. President Bush set about casting the United States in terms that he thought our allies and would-be foes demanded—that is, of a "principled" hegemon, actively engaged and leading the world toward greater democracy, prosperity, security, and multilateral cooperation. The world, according to Bush, was calling for strong U.S. leadership because it is trusted to be fair, restrained, and moral in its use of power.⁷⁵

Public opinion proved to be a significant impetus for Bush's human rights foreign policy. Like presidents before him and since, he had to contend with "the American self-image of an exceptional people who stand for freedom

around the world.”⁷⁶ The notion that Americans opposed human rights and international institutions has been proven wrong.⁷⁷ On the contrary, human rights discourse was particularly attractive to the public in the wake of the Cold War, when Americans were searching for their bearings and a new self-definition. According to the Program on International Policy Attitudes (PIPA), an independent research center affiliated with the Center on Policy Attitudes and the Center for International and Security Studies at the University of Maryland, the percentage of Americans considering human rights a very important priority for U.S. foreign policy rose at the end of the Cold War.⁷⁸ With a very strong majority of Americans feeling that promoting human rights served U.S. interests, human rights advocates within the Bush administration had a strong platform from which to frame their arguments.

The media also served to shape the nature of U.S. policy on human rights issues, although the exact extent of media influence during this time period is debatable. Research on the actual impact of media coverage on policy choices demonstrates that the so-called CNN effect is often overstated.⁷⁹ It is widely asserted, for example, that the “unrelenting” media coverage, rather than moral outrage, caused the Bush administration to reverse its policy and authorize U.S. peacekeeping troops to intervene to stop the famine and social disintegration in Somalia in 1992.⁸⁰ Yet in the case of Somalia, there was not much media coverage before the decision to act, and thus media coverage cannot be credited with prompting the intervention. To the extent that “television inspired American intervention in Somalia,” political scientist Jonathan Mermin explains, “it did so under the influence of government actors . . . who made considerable efforts to publicize events in Somalia, interpret them as constituting a crisis, and encourage a U.S. response.”⁸¹ The media does prove influential, but only in limited cases. Where policy certainty exists, media coverage cannot force policy change.⁸² However, where the administration remains uncertain about its policies and the media coverage empathizes with the victim, media coverage may in fact drive policy.⁸³

Human rights advocates also influenced how American human rights foreign policy developed during the Bush administration.⁸⁴ The reforms introduced in the State Department in the 1970s drew more attention to human rights in American foreign policy, and the expertise and influence of foreign policy officers on human rights was growing.⁸⁵ The work of Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter, to take one illustration, led to improvements within the UN Human Rights Commission, which ultimately transformed the commission’s investigatory rigor.⁸⁶ Or, to take another example, Jim Bishop, Schifter’s replacement as acting assistant secretary of state for human rights and humanitarian affairs, is generally credited with improving the administration’s human rights policy on Africa and, specifically, for drawing attention to Somalia.⁸⁷ While the human rights supporters within government did not exercise appreciable policy setting, they did find some success in reaching their goals in the Bush administration, in contrast to the Reagan era.

What Was the Degree of Norm Embeddedness?

Ultimately, however, the inconsistent and ideological response of the Bush administration to items on the human rights agenda signals a lack of norm embeddedness. As will be explained further in chapter 3, the military under George H. W. Bush was slow to protect civilians in other parts of the world. When confronted with evidence of ethnic cleansing and other gross human rights abuses in Yugoslavia and Somalia, Bush urged “prudence.”⁸⁸ By the time the United States acted, however, the ethnic cleansing, detention camps, and massacres of Bosnian civilians, and the famine and social upheavals in Somalia, had been widely publicized by the media, and the Bush administration was perceived as doing “too little, too late.”⁸⁹

Bush’s actions often failed to live up to his ideal-laden rhetoric. On one hand, the United States was seen as—or, rather, wished to be seen as—the great leader of the civilized world and a beacon of freedom. On the other hand, Bush depicted the United States as a warrior on constant guard “to defend civilized values” in the face of the “jungle’s” assault.⁹⁰ He tried to create and maintain fear, warning, for example, that “the Soviet bear may be extinct . . . [but] there are still plenty of wolves in the woods.”⁹¹ The threat to the American way of life was seen as ongoing: “There will be other regional conflicts. There will be other Saddam Husseins.”⁹²

Bush’s mindset has been described as one of “neo-Cold War orthodoxy.” He believed that human rights factored into this worldview insofar as the United States was the only superpower with the power and moral responsibility to solve international problems.⁹³ As Bush declared in his 1991 State of the Union address,

Yes, the United States bears a major share of leadership in this effort. Among the nations of the world, only the United States of America has had both the moral standing, and the means to back it up. We are the only nation on this earth that could assemble the forces of peace. This is the burden of leadership—and the strength that has made America the beacon of freedom in a searching world.⁹⁴

Bush viewed human rights as one set of concerns that the United States must tackle. In doing so, he looked not to international human rights, but to norms already found in U.S. law and culture. While he spoke often of “shared interests” and “shared ideals,” they were always those of “our great country.”⁹⁵ Human rights advocates had made progress during the Bush administration, but American exceptionalism was still the informing principle behind U.S. human rights foreign policy.

BILL CLINTON: HUMAN RIGHTS AND DEMOCRACY (1992–2000)

As we near the dawn of a new century, the international community has an unprecedented opportunity to engage in respectful dialog on how best to promote human rights, freedom, and dignity. Every culture, tradition, and civilization brings its

own genius to bear on this monumental effort, and that moral responsibility rests with every man and woman on this planet, calling us to a modern-day pursuit of an age-old quest for justice.

—**John Shattuck, assistant secretary of state for Democracy, Human Rights and Labor**⁹⁶ (Clinton administration)

Forget the “new world order.” Forget “enlargement.” Forget “assertive multilateralism.” The votes have been counted, and the most prominent theme of America’s emerging foreign policy is neomercantilism. Foreign policy for the next two years will be an exercise in the art of the possible, and what’s possible is anything that has tangible benefits for the American public.

—**Anthony Lake, national security adviser in the Clinton administration**⁹⁷

What Was Inherited?

Bill Clinton inherited from George H. W. Bush a legacy of value-laden foreign policy, U.S. leadership, and international infrastructures presupposed by collective engagement.⁹⁸ Cold War institutions were firmly intact and, to some extent, strengthened. Bush had concluded that the North Atlantic Treaty Organization (NATO), the “G-7,” the International Monetary Fund (IMF), and the World Bank (i.e., the Bretton Woods institutions) came into their own in the post-Cold War era, fulfilling his new vision and serving their original mandates.⁹⁹ Clinton inherited this policy of “collective engagement and shared responsibility” through these institutions;¹⁰⁰ and, perhaps most important, he inherited the expectation that the United States would act in concert with them.

Bush, being the committed globalist that he was,¹⁰¹ also left office with U.S. troops deployed in more countries abroad than at any time since the administration of Harry Truman. Clinton, the foreign policy novice, became the commander in chief of U.S. Marines stationed in Somalia, Navy and Coast Guard personnel ringing Haiti, and Air Force servicepeople monitoring the no-fly zone in Iraq and preparing for the Bosnian airlift.¹⁰²

Clinton also inherited a more complicated and contested foreign policy establishment. As one scholar of the post-Cold War presidencies summed up,

During the cold war era, the president and his advisors directed foreign policy, but in the post-cold war era members of Congress and other powerful groups have become highly visible actors in the process. There are now numerous actors clamoring to act in the name of the United States.¹⁰³

This infusion of new actors, ideas, and agendas serve—in James Scott’s words—to “make foreign policy making more like domestic policy making: subject to conflict, bargaining and persuasion among competing groups inside and outside government.”¹⁰⁴ This pluralist trend was well in place by the time Clinton took office.

What Was Retained, and What Was Changed?

Like his predecessor, Clinton was “staunchly globalist.”¹⁰⁵ He was elected to office, however, with a mandate to be a different kind of globalist—one who would bring greater awareness of social issues to the Hamiltonian economic agenda and greater appreciation of Wilsonian-style engagement in international consensus and cooperation. Candidate Clinton declared that human rights would be a cornerstone of foreign policy under his leadership.¹⁰⁶ He criticized the Bush administration’s policies in Iraq, Serbia, China, and Haiti and distinguished himself by offering a foreign policy oriented toward democracy and human rights promotion and working with international organizations.¹⁰⁷ Clinton vowed to press China on its human rights record by linking the renewal of most-favored-nation trade status to improvements in human rights.¹⁰⁸ He urged Bush to seek the UN’s approval for air strikes to protect relief aid delivery in Bosnia.¹⁰⁹ On every international issue, from democracy to human rights to intervention in humanitarian disasters and nuclear nonproliferation, Clinton claimed Bush had done too little too late, and pledged himself to be resolute on human rights values when confronted with competing interests.¹¹⁰

Upon taking office, Clinton immediately set to work cleaning shop, filling many key positions with people with strong human rights backgrounds. The position of secretary of state was first filled by Warren Christopher, a political veteran of human rights policy in the Carter administration, and then by Madeleine Albright, who brought to the position experience on democratization and a strong devotion to human rights.¹¹¹ The human rights portfolio in the Clinton administration was also advanced by Assistant Secretary of State for Human Rights John Shattuck, who came from the American Civil Liberties Union, and his successor, Harold Hongju Koh, an international law professor from the Yale University Law School with very strong credentials on human rights. Defense Secretary Les Aspin’s record supported more attention to democracy and humanitarianism at the Pentagon.

Other impressive appointees with a commitment to human rights included Timothy Wirth, the former Colorado senator who led the new Office of Global Issues at the State Department; Morton Halperin, appointed to head the Office of Human Rights at the National Security Council; and Halperin’s successor, Eric Schwartz, formerly of Human Rights Watch. Equally important, in addition to appointing strong human rights advocates at the top of key institutions, many new hires at the mid-range level had experience in human rights NGOs.¹¹² “All of a sudden it was like—BANG!” one advocacy director in a human rights organization remembered, “and after so many years of being ignored, State was calling us. They had to talk to us.”¹¹³

Policy Shift: Democratic Enlargement

The change in personnel and increased openness to human rights was accompanied by a significant policy focus on democratic enlargement. While

Presidents Reagan and Bush had favored promoting democracy, President Clinton embraced democracy promotion, including human rights, as a cornerstone of his entire foreign policy portfolio. Clinton explained that the key to peace and prosperity was “enlargement”—that is, expansion of the community of democratic states.

President Clinton explained the policy in his 1994 State of the Union address. “Democracies don’t attack each other,” he noted, and therefore “the best strategy to insure our security and to build a durable peace is to support the advance of democracy elsewhere.”¹¹⁴ The vision of democracy promoted by the Clinton administration was democracy American style, linking free markets to the political freedoms characteristic of the American form of government. In practice, this blended privatization and open-trade projects with minimal guarantees of civil and political rights and free and fair elections. The emphasis on “market democracy” assumed that political freedom would be enhanced by economic liberalization and that the rule of law and protection of basic freedoms would be the foundation of a successful economy.¹¹⁵ Overt promotion of these tenets increased after the bailout of the Mexican peso in 1995, and especially after the Asian economic crisis of 1997. In these cases, an explicit connection was made between corrupt and despotic governments and faltering economies. Through this approach, human rights issues were brought into discussions of trade and economic relations as never before.

In a speech at Johns Hopkins University in September 1993, National Security Adviser Anthony Lake delineated the four components of “enlargement of the world’s free community of market democracies,” noting,

First, we should strengthen the community of major market democracies—including our own—which constitutes the core from which enlargement is proceeding. Second, we should help foster and consolidate new democracies and market economies, where possible, especially in states of special significance and opportunity. Third, we must counter the aggression—and support the liberalization—of states hostile to democracy and markets. Fourth, we need to pursue our humanitarian agenda not only by providing aid, but also by working to help democracy and market economics take root in regions of greatest humanitarian concern.¹¹⁶

The idea of democratic enlargement would be implemented largely by tagging “democracy” onto other issues; for example, in the NATO enlargement debate, the United States insisted that applicant countries meet certain democracy benchmarks.¹¹⁷

The bureaucratic rearrangements that followed the announcement of the doctrine of democratic enlargement served to elevate the importance of democracy promotion, and in so doing detracted attention from human rights. The Center for Democracy and Governance, for example, was created at the U.S. Agency for International Development (USAID), and when Clinton’s attempt to create a position of assistant secretary of defense for democracy

and peacekeeping at the Department of Defense was thwarted by Congress, a special assistant for democracy was named at the National Security Council.¹¹⁸ Similarly, the bureau in the State Department focusing on human rights, formerly known as Human Rights and Humanitarian Affairs, changed its name to the Bureau of Democracy, Human Rights, and Labor.

As the expansion of democracy became official policy, changes in orientation and behavior were noted among some of the more idealistic members of Clinton's policy team. For example, Madeleine Albright abruptly toned down her moralizing internationalist rhetoric against genocide and instead adopted what one analyst has described as a "realpolitik maverick," denouncing the slow reform of the UN and downplaying the role of UN peacekeeping.¹¹⁹ Secretary of State Christopher, however, was concerned that the "enlargement" policy made no provisions for either human rights or peacekeeping. While he largely reiterated National Security Adviser Anthony Lake's four-point doctrine, Christopher nonetheless emphasized not only the continued support of democracy but also the defense of human rights. "Our commitment is consistent with American ideals," he stated. "It also rests on a sober assessment of our long-term interest."¹²⁰

Both Christopher and Albright have been described as "basically pragmatic individuals, like Clinton, who adhered publicly to the principles of democracy and human rights but steered toward a policy of realism much of the time."¹²¹ Measured in terms of rhetoric, the investment in democracy was enormous, but in terms of actual dollars spent, it was small. Compared with military spending, democratization and human rights received only a small fraction of government spending. Figures from the State Department indicate spending on democracy assistance at \$580 million in 1998, with increases to \$623 million and \$709 million in 1999 and 2000, respectively. Nevertheless, these levels of support for democracy assistance did not reflect the Clinton administration's grand rhetorical commitment to a policy of democracy enlargement. When compared with the 1999 appropriations of \$21.6 billion for International Affairs and \$276.7 billion for the Department of Defense, the dollar amounts are minimal.¹²²

Under the Clinton administration, the development of market economies was a top priority. As Clinton explained,

In this new era our first foreign priority and our domestic priority are one and the same: reviving our economy. . . . I will elevate economics in foreign policy, create an Economic Security Council . . . and change the State Department's culture so that economics is no longer a poor cousin to old school diplomacy.¹²³

This economic-centric foreign policy left Clinton open to accusations that he had picked up where Bush had left off. Richard Falk saw the policy as evidence of a "rightward lunge on matters of national security and foreign policy." Falk warned that "[t]he Clinton Administration, with only minimal efforts at disguise, is the architect of this market-oriented design for the New World Order."¹²⁴

The democratic enlargement doctrine was never designed to promote human rights and democracy everywhere: as a politically viable concept, enlargement had to be aimed at primary U.S. strategic and economic interests.¹²⁵ Yet Clinton's campaign promises of holding fast to human rights principles raised expectations that would lead to a hard letdown. As Falk put it in his scathing critique of Clinton's mislabeled "democratic enlargement" doctrine,

Clinton has reoriented the Democratic Party as a party dedicated to serving the economic elite of the country and accepting the U.S. role as guardian of global capitalism interests. [They] have abandoned welfare capitalism in favor of a late Twentieth Century version of comprador capitalism at the expense of the most vulnerable members of our society and of genuine democracy abroad.¹²⁶

In their assessment of the impact that these enlargement programs have had, David Forsythe and Barbara Ann Rieffer have tentatively concluded that U.S. democracy assistance has had little discernible impact on democratization but was nevertheless highly intrusive into foreign societies' economies.¹²⁷ The democratization initiatives predominantly consisted of small grants to isolated projects for short time periods, while funding for market restructuring substantially outweighed the support for democratization initiatives. "This raised the questions," they note, "of whether democracy assistance was the moral fig leaf covering other motivations like American pursuit of profit (not to mention the workings of laissez-faire ideology)."¹²⁸

Thomas Carothers reached a similar conclusion in his studies of U.S. policy toward the former Soviet bloc. He found that the emphasis was by and large on economic reform and security concerns and the advancement of democracy was only a secondary goal.¹²⁹ The democratic enlargement policy was also seen by some as having a stifling effect on advancing a culture of human rights, particularly in those countries already deemed "democracies."¹³⁰ Rather, critics asserted, the Clinton policy settled for a proliferation of "illiberal democracies."

Human Rights and Trade

Following the pattern set by the democratic enlargement policy, the Clinton administration's record on human rights and trade is mixed. Although Clinton campaigned strongly in favor of linking trade agreements to human rights improvement, his record was poor, particularly in comparison to his two immediate predecessors. A 1999 study of foreign assistance found that

[h]uman rights considerations did play a role in determining whether or not a state received military aid during the Reagan and Bush administrations, but not for the Carter or Clinton administration. With the exception of the Clinton administration, human rights was a determinant factor in the decision to grant economic aid,

albeit of secondary importance. . . . Human rights considerations are neither the only nor the primary consideration in aid allocation.¹³¹

While exceptions to the general rule existed—for example, in 1997 the United States suspended foreign assistance in Cambodia and conditioned aid to Zaire due to human rights concerns¹³²—the Clinton administration generally refused to permit human rights abuses to stand in the way of advantageous trade.

Perhaps the greatest human rights policy reversal took place over China.¹³³ In 1996, the Clinton administration announced it would apply economic sanctions against China for failing to protect intellectual property rights as obligated under a 1995 agreement. In response, China backed down and undertook immediate steps to enforce the agreement. It was clear then that economic sanctions could have impact on China. Nonetheless, while the United States has used its economic and political might to isolate Burma and Cuba on human rights grounds, these same considerations were not permitted to sour relations with leading trading partners such as China.

Instead, Clinton succumbed to business lobbying efforts and adopted an approach of “engagement” with China, delinking the most-favored-nation status from the human rights record.¹³⁴ This reversal was essentially a return to the approach of the Bush administration.¹³⁵ Clinton had an opportunity to redeem himself on China when, during U.S.–China summits in 1997 and 1998, he spoke out forcefully on Chinese policies including such issues as forced prison labor, the denial of freedom of religion, and the occupation of Tibet.¹³⁶ But the administration failed to use summit negotiations to secure significant Chinese reforms.

Perhaps, not surprisingly given its record on trade, the Clinton administration did not push international financial institutions on human rights. With regard to World Bank and IMF policy, Forsythe notes, “The United States has always been the most important state in these two IFIs [international financial institutions] and bears considerable responsibility for their record on human rights.”¹³⁷ As an illustration of this power, in 1997 the U.S. government blocked an IMF loan to Croatia due to the state’s failure to indict war criminals and protect the rights of minorities. In the Clinton era, that sort of intervention was rare, and there were only limited changes in these organizations’ positions vis-à-vis human rights. While the World Bank began to embrace the rhetoric of good governance, this was largely measured in fiscal responsibility rather than in the promotion or defense of human rights. The IMF was even more reluctant to address notions of human rights, much in keeping with the past. The Clinton administration did little to challenge these anti-human rights positions, and pressed for giant increases in IMF funding as a response to the Asian economic crisis, without any sort of human rights, labor rights, or environmental protections emphasized in U.S. funding of the institution.¹³⁸

Human Rights and the United Nations

Since the end of the Cold War, the United States has consistently—and often successfully—asserted its views on human rights in the UN Security Council, General Assembly, and Human Rights Commission.¹³⁹ One cornerstone of the Clinton administration was the belief in the benefit of U.S. participation in UN institutions. Human rights concerns were best aired through international bodies. Harold Hongju Koh, Clinton's assistant secretary of state for democracy, human rights, and labor, credited the president with playing an essential role through supporting international institutions and catalyzing human rights networks in particular.¹⁴⁰ Increased U.S. involvement in UN bodies in the Clinton years led to four major changes involving human rights.

First, the United States led the Security Council to greatly expand the scope of Chapter VII of the UN Charter: “In effect, many human rights violations essentially inside states came to be viewed as constituting a threat to or breach of international peace and security, permitting authoritative Council decisions including the deployment of force and sometimes limited combat action.”¹⁴¹ With the Iraqi Kurds (during Bush Sr.'s term), Somalia, the former Yugoslavia, Haiti, and Rwanda, the consistent application of Chapter VII brought human rights to a more prominent standing in the international community. By narrowing the ability of states to use “state sovereignty” to shield them while committing human rights abuses, this development elevated human rights above national boundaries to a point where the international community could intervene on the grounds of human rights. As a result, human rights gained status as standards that could and would be enforced by the international community.

Second, under Clinton the United States led the way in expanding the concept of UN peacekeeping under Chapter VI of the UN Charter, leading to second-generation, or complex, missions in Namibia, El Salvador, and Cambodia, though in the case of the last credit may fall at least equally to President George H. W. Bush. Notes Forsythe, “[I]n many situations the United States led the United Nations in seeking not just peace based on the constellation of military power, but a liberal democratic peace based on many human rights.”¹⁴² With the endorsement and often the participation of the United States during the Bush and Clinton administrations, postconflict activities have “*broadened* laterally in terms of the policy goals and sectors that are implicated, *deepened* in terms of their involvement in the internal workings of societies, and *lengthened* in terms of the stages of conflict when it operates.”¹⁴³ Through a series of presidential directives (see chapter 3 of this volume), “Clinton made peace operations a centerpiece of U.S. foreign policy.”¹⁴⁴

Third, the United States was the prime impetus behind the creation of the international criminal courts for the former Yugoslavia and Rwanda. In creating these courts, “the United States rejuvenated the idea of individual criminal responsibility for violations of the laws of war, crimes against humanity, and genocide.”¹⁴⁵ The United States was the primary funder and supporter of these courts. Although the support of the United States for a

permanent international criminal court later wavered,¹⁴⁶ the Foreign Relations Authorization Act, Fiscal Year 1994 and 1995, recorded the following “Sense of the Senate on the Establishment of an International Criminal Court”:

1. The establishment of an international criminal court with jurisdiction over crimes of an international character would greatly strengthen the international rule of law
2. Such a court would thereby serve the interests of the United States and the world community
3. The United States delegation should make every effort to advance this proposal at the United Nations.¹⁴⁷

Finally, under the Clinton administration the United States used the UN General Assembly as the forum for advocating for the new office of high commissioner for human rights in late 1993.¹⁴⁸ The first high commissioner, José Ayala Lasso, was roundly criticized by human rights groups for failing to speak out against abuses.¹⁴⁹ Mary Robinson, the high commissioner after Lasso, however, successfully used her position to disseminate information about human rights and offer technical support to countries requesting assistance. This position of high commissioner is quite dependent on the role taken by the high commissioner himself or herself. Likewise, U.S. financial support for this office has also been irregular, in large part due to congressional pressures and uneven domestic support.¹⁵⁰

International Instruments

Clinton’s record on human rights treaties and other international instruments is mixed. Despite its promises, the administration failed to push for Senate ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or the UN Convention on the Rights of the Child. Nor did the United States join any of the major International Labor Organization conventions guaranteeing core labor rights to organize and engage in collective bargaining. Clinton refused to sign the Ottawa Land Mine Treaty, bowing to pressure from the U.S. Army, who contended that it would undermine military effectiveness. Finally, Clinton refused to support a treaty banning the recruitment of child soldiers because the Pentagon disagreed with the eighteen-year-old age minimum for recruitment.¹⁵¹

When the Clinton administration did take a stand on human rights, it did so on issues that were largely settled or where the investment of political capital was low. For example, Clinton indicated that he would support the UN Covenant on Economic, Social, and Cultural Rights, a treaty that had been pending before the Senate since the days of the Carter administration.¹⁵² This treaty will likely never make it out of the Senate Foreign Relations Committee due to the expansiveness of the rights it entails—such as food, clothing, shelter, and medical care. Accordingly, although the administration’s rhetorical support was a significant change from the prior administration, it was of little political consequence. To take another example, the Clinton administration did

take credit for depositing the instrument of ratification for the UN Convention against Torture (CAT), and thus, triggered its implementation. However, it would be wrong to attribute the CAT wholly to Clinton since the vote on ratification had taken place under Reagan.¹⁵³

The Clinton administration did invest political capital into advancing human rights when it ratified and implemented the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹⁵⁴ Undermining the importance of U.S. ratification of the CERD, however, were the many significant reservations the United States made to its terms, including one rejecting the notion that discriminatory acts could be determined by effect as well as intent.¹⁵⁵ In the words of one scholar, the CERD ratification was “largely empty gestures in terms of providing any additional enforceable rights for U.S. citizens and residents.”¹⁵⁶ The importance of the United States ratifying CERD rested in the way it galvanized antiracism activists within the United States and brought their issues to the world stage.¹⁵⁷

A related area of significant progress was in the creation of formal inter-agency coordination mechanisms on human rights issues. In 1998, Clinton signed Executive Order 13107, which calls for the implementation of all human rights treaties to which the United States is a party and establishing an interagency working group to make implementation more effective.¹⁵⁸ While Executive Order 13107 had been prompted by the International Covenant on Civil and Political Rights (ICCPR),¹⁵⁹ it proved extremely useful for the CERD as well. “The inter-agency working group was made necessary by the CERD treaty’s reporting process,” explains Margaret Huang, director of the International Advocacy and U.S. Racial Discrimination programs at the International Human Rights Law Group. “The State Department had to make this report on the status of race discrimination and the U.S. laws related to discrimination, but the State Department didn’t have that information, so they needed to find a way to get it to them.”¹⁶⁰ The interagency working group thus became a main source of information and a portal for input by civil society during the Clinton administration.¹⁶¹ Human rights advocates point to these working groups and the general receptiveness of the Clinton administration to their work as one of the administration’s major achievements on human rights.¹⁶²

What Were the Constraints?

The degree to which the Clinton administration desired to participate in international institutions and to influence international lawmaking demonstrates that international norms and institutions were in fact influencing the administration. “Where there was an important international meeting, we were there—or we wanted to be there,” a former staffer explained: “Of course we [saw ourselves as] on the right side of international law.”¹⁶³ Significant exceptions existed during the Clinton years. For example, the United States’ decision to use force against the Serbs without first gaining Security Council authorization undermined international law.¹⁶⁴ Yet for the most part, the Clinton administra-

tion was more concerned with international law and international institutions than its predecessors.

Congress proved to be the most important constraint on human rights policy during the Clinton administration. Not only could a Republican Congress often effectively undo many of Clinton's human rights policies, but it could also use well-placed threats to prevent him from fully implementing existing policies or creating new ones.¹⁶⁵ Members of Congress used both direct and indirect tactics to advance their agendas.¹⁶⁶ Direct tactics included entering into diplomatic negotiations and introducing legislation intended to have an impact on human rights (i.e., legislation on economic embargoes of countries with poor human rights records). Indirect tactics included those designed to frame an issue to influence the outcome of major foreign policy debates—for example, portraying the International Criminal Court (ICC) not as a matter of accountability for perpetrators but as an attack on state sovereignty.

The increasing participation of Congress in foreign affairs questions put a check on what the administration could do. Congress assumed a more active decision-making role in U.S. foreign policy. For example, Congress played a pivotal role in the decisions to establish a new Cuba policy, reject the Comprehensive Test Ban Treaty, and refuse consideration of the Kyoto Protocol on global warming.¹⁶⁷

The new Republican-led Congress of 1995 provides a good illustration of the constraining power of Congress. In an effort to cut the budget and also to thwart Clinton's initiatives, several projects that were a part of Clinton's democratic enlargement efforts, such as the United States Institute of Peace, the National Endowment for Democracy, and the Agency for International Development, were threatened with cutbacks from Congress.¹⁶⁸ This Congress indeed took its toll on Clinton's plans. As Arthur Schlesinger notes,

These freshmen legislatures showed a scorn for international affairs that was nativist, if not just short of isolationist. The new legislature jammed the brakes on Clinton's ambassadorial nominations, cut funds for the State Department and its overseas missions, drastically slashed American foreign aid, and insisted that two thriving departments—the United States Information Agency and the Arms Control and Disarmament Agency—be folded into the State Department to save money. Clinton capitulated on most of these issues.¹⁶⁹

In addition to Congress, domestic politics and public opinion also played an important role in influencing Clinton's human rights foreign policy.¹⁷⁰ "Many of Clinton's major foreign policy decisions can be traced to domestic politics," according to Richard Haass.¹⁷¹ If this assertion is correct, understanding the public mood toward internationalism throughout the Clinton years arguably carries great explanatory weight in considering human rights policies. As one journalist aptly noted, "Sometimes the Clinton administration's foreign policy appears to be driven almost entirely by domestic concerns."¹⁷² In the

post-Cold War era, Americans were growing less interested in engaging with the outside world.¹⁷³ Throughout the 1990s, the public was concerned with the domestic economy and reducing spending on foreign involvement.¹⁷⁴ A 1995 national opinion poll showed that roughly one-third of the U.S. populace thought that promoting and defending human rights and democratization abroad was “very important,”¹⁷⁵ while most ranked domestic concerns such as illegal drugs and employment and security concerns such as the spread of nuclear weapons as more pressing.¹⁷⁶ Clinton’s deference to public opinion,¹⁷⁷ even to the extreme point of “media panic,”¹⁷⁸ made his human rights foreign policy even more selective.

The business community proved to be one important constituency that the Clinton administration could not ignore. Clinton’s initial resoluteness about his human rights and humanitarian-centered foreign policy quickly succumbed to a forceful lobby of business interests that encouraged the emphasis on trade liberalization and fostering “market economies.” Big business lobbied hard, and ultimately successfully, for the delinking of most-favored-nation trading status and China’s human rights progress.¹⁷⁹ As increased commerce became linked to political reform, the United States sought to open trade with countries with major human rights offenses.¹⁸⁰

The Christian Right also played a potent part in the new American pluralism. Their foreign policy revival confronted Clinton with a sophisticated and well-organized agenda employing the instrumental use of human rights norms.¹⁸¹ The Christian Right strong-armed the passage of specific legislation aimed at promoting religious freedom. Although neutral on its face, the International Religious Freedom Act of 1998 was concerned largely with members of the Christian faith.¹⁸² Within the human rights establishment, the act elevated religious discrimination to a favored institutional position in the State Department, creating a separate Office on Religious Freedom and an ambassador at large for religious freedom. Among other measures, the new law also enabled the president to employ sanctions and other penalties against violators.¹⁸³

The pressure that the U.S. Congress put on the Department of State to focus on religious freedom is indicative of the power struggles that occurred between the Republican-dominated Congress and the Democratic presidential administration. It also exemplifies an internal civilian power struggle of the United States: how, as a diverse nation that pursues equality for all people, to grapple with placing its own special interests above global human rights concerns. As explained further in chapter 3, Clinton-era human rights policy practiced selective human rights assistance and intervention, which was determined not only by the president’s executive decisions, but also derived from congressional pressures, domestic concerns, economic concerns, and public opinion.

In addition to public opinion, Clinton listened very closely to the wishes of his joint chiefs of staff. His decisions on the Ottawa Mine Ban Treaty, the ICC, and on the timing and nature of intervention in Haiti, Bosnia, and Rwanda were “as much due to the concerns of the Joint Chiefs as to opposition in

Congress.”¹⁸⁴ Clinton’s troubles with the military had begun in the first months of his taking office, when he lost face in the controversy of admitting gays into the armed services. The explosive backlash within the military put Clinton on the defense in his future dealings with the military.¹⁸⁵ “From then on,” says one of his former advisers, “he gave more deference to what the military leadership thought.”¹⁸⁶

All of these factors—congressional pressure, the pull of domestic politics and public opinion, the demands of big business and the Christian Right, and the concerns of the military—shaped, and to some extent, limited, Clinton’s ability to promote human rights as a central and consistent concern in his foreign policy.

What Was the Degree of Norm Embeddedness?

The hallmark of the Clinton administration’s human rights foreign policy was the linking of human rights concepts to national interests. Harold Hongju Koh warns against confusing “the real Clinton-Albright doctrine” with the “notion of humanitarian intervention”—that is, “commitment of U.S. military force to promote human rights in situations where there are otherwise no discernible U.S. interests.” Koh writes,

In my judgment, this confuses the tip with the iceberg. The broader goal of the Clinton-Albright doctrine was to assert that promotion of democracy and human rights is always in our national interest. The goal of American foreign policy is thus to fuse power and principle, by promoting the globalization of freedom as the antidote to other global problems, resorting to force only in those rare circumstances where all else fails.¹⁸⁷

Under the Clinton-Albright doctrine, vital national interests became closely linked with human rights concepts such as the independence of the judiciary, the rule of law, and respect for basic freedoms of expression and association. Through this policy Clinton tried to have it both ways, portraying his “democratic enlargement” policy as a synergistic wedding of American values and interests: “I believe that . . . enlargement . . . marries our interests and our ideals.”¹⁸⁸ The appearance of mutual support for these ideals and interests sometimes subsumed the framework of human rights under the priorities of democratization and economic interests.

Many in the administration seemed to be involved in spinning this notion of synergy. Secretary of State Albright noted that the concept of human rights reflects the essence of civilization itself. Vice President Al Gore claimed that the United States stands for something in this world.¹⁸⁹ The integration of human rights into U.S. foreign policy, he contended, is “therefore a natural reflection of our own interests and values.”¹⁹⁰ Shortly before Clinton’s term ended, Samuel Berger, Clinton’s national security adviser, condensed the enlargement doctrine and gave it a globalization spin: “The way for America to exercise its influence today is to build with our democratic partners an international

system of strong alliances and institutions attuned to the challenges of a globalized world.”¹⁹¹

As late as 1999, Steven Wagenseil, director of multilateral affairs for the Bureau of Democracy, Human Rights, and Labor of the State Department, recalled Martin Luther King Jr.’s “Injustice anywhere is a threat to justice everywhere,” and then stated, “This Administration shares Dr. King’s vision.”¹⁹² Yet, after a half a decade of the “enlargement” doctrine, this depiction of Clinton as the global human rights activist rings hollow. As some observers have noted, “Whereas the Clinton administration has firmly rejected cultural and religious relativism, it has embraced the relativism of political and economic expediency.”¹⁹³ While the Clinton administration made clear that it supported human rights, the rights it envisioned as top priorities coincided with American values and interests.¹⁹⁴

While the Clinton administration talked about human rights more than previous Republican administrations, its human rights rhetoric often was not matched by its policy decisions.¹⁹⁵ In 1993, for instance, Secretary of State Warren Christopher stated that the administration would consider acknowledging the validity of economic rights, yet there was no subsequent policy action in this regard. Moreover, the executive branch’s interagency Human Rights Committee (established under Clinton) never actually functioned as intended.¹⁹⁶ And the “expedited removal” procedures of the 1996 Immigration Reform Act, for example, conflicted with U.S. obligations under the 1951 UN Convention Relating to the Status of Refugees and undermined the stated U.S. position on the human rights of refugees.¹⁹⁷

Nowhere is the disparity between rhetoric and action so pronounced as in the Middle East. To take just one example, in his first year in office, Clinton showed no interest in openly challenging the poor human rights record of the Israeli government, and was quick to assure the Israeli prime minister that he favored maintaining U.S. support to Israel, which at the time boasted a three billion dollar price tag.¹⁹⁸ The administration did privately lobby the Israeli government on the closure of the occupied territories and certain other human rights issues, and it did comment publicly when U.S. citizens became the victims of abuse. However, the Clinton administration never commented publicly on the routine abuse to which Palestinian residents of the Occupied Territories were subjected during interrogations and in other day-to-day violations of human rights.

One human rights issue that did prompt public diplomacy was the administration’s first foreign policy crisis. The Bush administration had voted in favor of UN Security Council Resolution 799 on December 18, 1992, to condemn the deportations of 415 Islamists and urged Israel to rescind them. Upon taking office, the Clinton team lobbied against Security Council sanctions on Israel. Notwithstanding the fact that Resolution 799 demanded the “immediate return” of all the deportees, Secretary of State Christopher brokered a deal where only one hundred deportees would be permitted to return immediately. The Clinton administration’s primary interest was on renewing the peace talks. Human Rights Watch notes:

While this was logical, the U.S. at the same time weakened the cause of human rights by lending legitimacy to an inadequate Israeli appeals process. . . . Washington's generous annual aid to Israel bestows on it the authority, and the obligation, to be a public advocate for human rights.¹⁹⁹

The Clinton administration was also particularly selective in its approach toward international justice and accountability issues, which are essential to the maintenance of human rights. U.S. particularism manifested itself in the government's support of the international tribunals dealing with atrocities where no American citizens are at risk, such as in Rwanda and the former Yugoslavia. When it came to the creation of the International Criminal Court (ICC), however, Congress was staunchly opposed and consistently attempted to cripple the institution, so that no U.S. citizens could be indicted for their crimes.²⁰⁰ David Scheffer, ambassador at large for war crime issues of the United States and leader of the American delegation in Rome, put it simply: "The U.S. delegation has been and will continue to be guided by our paramount duty: to protect and advance U.S. interests."²⁰¹

Human rights scholars and activists pronounced the Clinton record as "mixed."²⁰² On one hand, the willingness to assume great financial and political costs in humanitarian efforts such as those in Haiti and Rwanda was seen as a positive departure from previous administrations and reflected an unprecedented commitment to a human rights-based foreign policy. Human rights advocates noted a greater access to high-level policy makers and State Department officials, which translated into a growing capacity to influence the agenda. Moreover, they pointed to the increased willingness of U.S. diplomats to include human rights language and even specific human rights treaties in peace agreements. As George Ward observes, "After [the] Dayton [Peace Accords] there is the expectation that when there is a peace agreement negotiated [at best in part by] the U.S., human rights will be there."²⁰³ On a more negative note, Clinton's actions failed to live up to his lofty rhetoric in three crucial areas: in bilateral strategies against countries that are human rights abusers, in the indiscriminate proliferation of U.S. arms sales abroad, and in the erratic positions taken toward multilateralism and the ICC.²⁰⁴

The Clinton presidency record reveals a "rhetorical policy, one consisting only of words."²⁰⁵ Mark Danner observes that the president exposed the emptiness of his own policy:

As the President remarked one day in April [1995], "The U.S. should always seek an opportunity to stand up against—at least speak out against inhumanity." These verbs—to stand up against and to speak out against—Clinton blends together in a single sentence as if they were one and the same, in fact they are very different.²⁰⁶

Clinton's interest in public images, in economic concerns, and in the expansion of democracy took priority over the international obligations of upholding and supporting human rights.

**GEORGE W. BUSH: EXCEPTIONAL EXCEPTIONALISM/
ARCH-UNILATERALISM**

To be a good president when it comes to foreign policy, it requires someone with vision, judgment, and leadership. . . . My goal, should I become the President, is to keep the peace. I intend to do so by promoting free trade; by strengthening alliances; and by strengthening the military to make sure the world is peaceful.

—George W. Bush, speaking at the New Hampshire Republican Party debates,
December 3, 1999²⁰⁷

Bush believes, whether it's domestic politics or international affairs, that if you have strength you exert it. You use it. You show it. . . . Signs of conciliation are going to be used by your adversaries as signs of weakness. Some intellectuals might write nice things about you, but your adversaries will use it to take advantage of you—that's his view. And that can work if you have that strength, but what you do along the way is you build lots of animosities, and you have all kinds of people who nurse their wounds and egos until you stumble and then are eager to jump on you with cleats.

—Norman Ornstein, resident scholar at the American
Enterprise Institute²⁰⁸

What Was Inherited?

President George W. Bush inherited a world distrustful of American military and economic dominance. Tension between the United States and its traditional European allies was mounting. This strain was due, in part, to the Clinton administration's reluctance to support several significant international agreements. Because Clinton had signed on to the ICC agreement at the eleventh hour over the objections of the Pentagon and the Republican-dominated Congress, U.S. participation in the ICC became a highly controversial issue and set the stage for a subsequent weakening of relations with the international community, and Europe in particular.²⁰⁹

The Bush administration also inherited a State Department with a greater capacity for and an enhanced interest in human rights issues. While the political appointees may have been averse to international human rights standards, career officers were not. Thus, even critics of the State Department were praising improvements in its main work product on human rights abuses, the Annual Country Reports on Human Rights Practices, which offered reports on friendly and adversarial governments alike. Neil Hicks, a longtime critic of the reports, proclaimed, "The Annual Country Reports on Human Rights Practices are now, happily, largely free of the political distortions, favorable to key U.S. allies, that marred the reports in earlier years."²¹⁰ At the same time, the Bush administration inherited a Human Rights Bureau within the State Department that had little influence over foreign policy.

The Bush administration also found itself in a world filled with complex peace-building operations in war-torn areas. While earlier peace operations

focused on such tasks as separating the warring factions and monitoring peace agreements and the provisions of emergency humanitarian assistance,²¹¹ more recent “nation building” efforts were “multidimensional” and “increasingly interventionary in nature.”²¹² The public had grown weary of these interventions by the conclusion of Clinton’s term. Yet at the same time, demands for U.S. involvement in new peace operations were on the rise and, unlike in earlier years, these demands were increasingly coming not only from left-leaning organizations and individuals, but also from the religious right who advanced their own human rights concerns.²¹³

What Was Retained, and What Was Changed?

As a candidate for the presidency, George W. Bush faced significant challenges. He had no experience in foreign policy and, in speeches and debates, it became clear that he also had little knowledge of world affairs. Candidate Bush, however, managed to artfully turn what should have been a negative into a positive: Bush portrayed himself as a “regular guy” who earnestly promised to return America back to American values. Bush advanced himself by defining himself as *not* like Clinton. He promised to rein in the excesses of Clinton globalism and be more humble on the world scene. “Our nation stands alone right now in the world in terms of power,” he said at a presidential debate in 2000.

And that’s why we’ve got to be humble and yet project strength in a way that promotes freedom. We’re a freedom-loving nation. If we’re an arrogant nation, they’ll view us that way, but if we’re a humble nation, they’ll respect us.²¹⁴

Expectations were that while the United States would still pursue its economic and political interests abroad, foreign policy concerns would no longer dominate the agenda. To the extent that the United States was engaged in the world, it would be to advance a narrower view of national interests.

There was a question as to how human rights would fit into the new administration’s agenda. As governor of Texas, Bush had never been supportive of human rights. On the contrary, in his position as governor he had foreseen the executions of more than one hundred people and had spoken out against U.S. involvement in international human rights treaties.²¹⁵ His early appointments would prove telling.²¹⁶

People with Plans

At least three of Bush’s appointees—Otto Reich, Elliott Abrams, and John Negroponte—had emerged from the Iran-Contra affair of his Republican predecessors with spotty records on human rights. Otto Reich, Bush’s special envoy for Western Hemisphere initiatives (through 2004), was perhaps best known for his role as the former director of the State Department’s Office of Public Diplomacy (OPD). Fairness and Accuracy in Reporting (FAIR), a media

watch group, was one of many interest groups to oppose his appointment on the basis of his record of “media manipulation through planted stories and leaks . . . cajoling and bullying of journalists.”²¹⁷ The OPD was permanently shut down in 1987 after Reich became ambassador to Venezuela. Now-declassified U.S. comptroller general’s reports show that Reich’s office had engaged in prohibited, covert propaganda activities.²¹⁸ Reich has also been linked to lobbying for groups that earned money for promoting laws on the U.S. embargo against Cuba. Political analyst Peter Kornbluh observed at the time of Reich’s nomination that Reich “would become the key policy-maker interpreting and implementing legislation on Cuba, which he was handsomely paid to promote—a clear conflict of interest.”²¹⁹

A second specter from the Iran-Contra affair is Elliott Abrams, appointed during the first administration of George W. Bush as special assistant to the president and senior director for Near East and North African affairs, and a key player in determining policy in Israeli-Arab relations.²²⁰ He may be best remembered for his role in playing down, if not lying about, the human rights abuses of U.S.-supported dictators in Latin America.²²¹ Also, in the Iran-Contra affair, Abrams perjured himself by denying that he was soliciting third-country support for the Contras.²²² Abrams pled guilty to two misdemeanor counts of withholding information from Congress but was later pardoned by President George H. W. Bush.²²³ In a response to the news of Abrams’s 2001 appointment to the National Security Council’s Office for Democracy, Human Rights, and International Operations, Canadian member of Parliament Dick Proctor commented, “Talk about putting the fox in charge of the hen house.” Proctor objected most strongly to what he believed was Abrams’s complicity in the deaths of hundreds of El Salvadorians by the U.S.-backed military.²²⁴

While Abrams’s questionable past was the focus of a number of news stories, the real story, noted *The Weekly Standard*’s Fred Barnes, was the appointment of Abrams to shepherd a Middle East peace plan that he apparently opposed. Barnes quotes from Abrams’s book *Present Dangers* (2000), in which Abrams writes,

American interests do not lie in strengthening Palestinians at the expense of Israelis, abandoning our overall policy of supporting the expansion of democracy and human rights, or subordinating all other political and security goals to the “success” of the Arab-Israel “peace process.”²²⁵

Jim Lobe of the Inter-Press Service predicted that Abrams’s hawkish politics would be likely to provide a more conservative balance to Secretary of State Colin Powell’s dovish quest for peace. Abrams openly challenged the “land for-peace” formula, opposed the Oslo peace process, and was described as an “American Likudnik” for his public support of the right wing Israeli party.²²⁶

Bush’s choice for U.S. ambassador to the United Nations, John Negroponte, was a longtime colleague of Abrams and Reich. The *San Francisco*

Chronicle editorialized that this appointment was most troubling because “the U.S. ambassador to the United Nations is the face America shows to the world.”²²⁷ *The Nation* wrote about Negroponte:

Bush has named him to represent the United States at an institution built on principles that include nonintervention, international law and human rights. Negroponte was a central player in a bloody paramilitary war that flagrantly violated those principles and was repeatedly denounced by the institution in which he would now serve.²²⁸

A 1995 article in the *Baltimore Sun* presented evidence that Negroponte, as the U.S. ambassador to Honduras, knew about horrendous human rights violations and crimes committed by government forces trained and supported by the United States. Former Honduran congressman Efrain Diaz Arrivillaga said he spoke several times about the military abuses to U.S. officials in Honduras, including Negroponte. “Their attitude was one of tolerance and silence,” he noted. “They needed Honduras to loan its territory [for neighboring wars] more than they were concerned about innocent people being killed.”

An intelligence unit within the Honduran government, called Battalion 316, trained and supported by the U.S. Central Intelligence Agency (CIA), was responsible for much of the kidnapping, torture, and murder committed against the people of Honduras. Journalist Duncan Campbell wrote in 2001, as the hearings on Negroponte’s nomination got underway, that “some members of the battalion had been living in the United States, but were deported just as Mr. Bush’s selection of Mr. Negroponte was announced.”²²⁹ This eliminated any chance that they could be called upon to testify about their actions and their connections to Negroponte. In the end, the Senate Foreign Relations Committee endorsed Negroponte for the UN post, despite expressing some dissatisfaction with his responses to their questions. As one reporter wrote, “Negroponte, pressed on various human rights cases in Honduras and on what he discussed with the Contras, told the Senate committee he could not remember.”²³⁰

Bush’s appointment of John Bolton to the position of undersecretary of state for arms control, nonproliferation, and international security also sent a clear message that the administration had little interest in participating in international institutions on an equal basis with other states. Bolton had given a number of well-publicized speeches and published several articles blasting international law and international treaties and institutions, including the ICC.²³¹ In a 1994 speech at the liberal World Federalist Association, John Robert Bolton declared that “There is no such thing as the United Nations.”²³² To underscore his point, Bolton said: “If the UN secretary building in New York lost ten stories, it wouldn’t make a bit of difference.”²³³ In 1998, Bolton wrote in the *Wall Street Journal* that the “proposed International Criminal Court, a product of fuzzy-minded romanticism, is not just naive, but dangerous.”²³⁴ Bolton was also fiercely critical of U.S. involvement with

the UN. He responded to the possibility that Washington could lose its vote in the UN General Assembly for failure to pay dues by asserting that many Republicans “not only do not care about losing the General Assembly vote but actually see it as a ‘make my day’ outcome.”²³⁵ Bolton, who stated himself that he “feels like a conservative in a conservative administration,”²³⁶ became a strong part of the Bush team that delights in undermining international institutions if doing so favors U.S. interests.

The appointment of General John Ashcroft, Bush’s pick for attorney general, would prove to be another abysmal moment for human rights. His far right politics and embrace of religious fundamentalism appealed to Bush’s agenda. Ashcroft has been described as “the perfect hatchet man on civil rights enforcement.”²³⁷ Voters in his home state of Missouri elected their deceased governor to succeed Ashcroft in the Senate seat rather than endure another term of what critics referred to as his “Stone Age stance on civil rights.”²³⁸ In confirmation hearings, Ashcroft answered questions about statements he had made in an interview with the white supremacist publication *Southern Partisan*. According to FAIR, Ashcroft said that:

David Duke represented the “American ideal”; that slave-owners were concerned about the “peace and happiness” of slave families; that ethnic groups from outside of Northern Europe “have no temperament for democracy”; and that only “Italians, Jews and Puerto Ricans” live in New York, not “Americans.”²³⁹

In office, Ashcroft lived up to this reputation. Despite a February 2003 speech to a conference on the trafficking of women promising to “protect the victims of trafficking and to bring to justice all those who violate their human dignity,”²⁴⁰ Ashcroft took steps to restrict opportunities for victims of gender-based human rights abuses to seek asylum in the United States.²⁴¹ After the war in Afghanistan began in 2002, he announced intentions to establish camps to indefinitely detain U.S. citizens who appear to be “enemy combatants.”²⁴² Also under his leadership, the U.S. government interceded repeatedly in lawsuits on behalf of corporations accused of human rights abuses in developing nations. Ashcroft even spearheaded a campaign to limit or even end the ability of victims of grave human rights violations occurring outside the United States to bring civil claims in U.S. courts, severely restricting the reach of the federal legislation known as the Alien Tort Claims Act (see chapter 4 of this volume).²⁴³

Rounding out these widely publicized appointees was a close-knit cadre of conservatives who had been working on a conservative foreign policy platform for years.²⁴⁴ Candidate George W. Bush had promised to run the presidency like a chief executive officer: that is, he would set the broad strategies for others to implement. In seeking out experts to help him, the main criteria appeared to be experience and loyalty.²⁴⁵ At the highest level, the experts brought two distinct visions of the United States’ role in the world. Closest in ideological platform to Bush was Secretary of State Colin Powell’s policy of restraint. He cautioned that the United States should conserve its power, avoid conflict, and engage

only when doing so was necessary to advance national interests. The “Powell doctrine” for intervention also more specifically considered cost, level of public support, likelihood of success, and the existence of a coherent exit strategy.²⁴⁶

The new civilian leadership at the Pentagon, however, had far greater ambitions for an assertive, unilateral American foreign policy.²⁴⁷ As Walter Russell Mead observes, under this view “[t]he ultimate goal of American foreign policy should be . . . to convert the present American hegemony into a more durable system.”²⁴⁸ Even according to this hegemonic power model, human rights did not disappear from the American foreign policy agenda. Human rights promotion was still an essential component of U.S. engagement in world affairs, but with one big proviso: human rights would be promoted only insofar as they were consistent with American values. Thus, the line between the United States advancing human rights and reshaping the world in its own image became blurred beyond recognition. Under this new arrangement, the United States would enjoy greater latitude in picking and choosing its subjects of interest, focusing on human trafficking in Eastern Europe and the rights of Christians in Africa, and avoiding as far as possible such touchy subjects as reparations for slavery and the use of the death penalty.²⁴⁹

These two competing platforms would provide lasting tension in the Bush administration as it encountered new foreign policy challenges. The president would seek to balance these tensions in announcing a new vision for human rights in American foreign policy that captured and expanded upon the exceptionalism of earlier administrations. In so doing, the Bush administration would be influenced substantially by the individuals holding key positions, and these would realign nicely over time in support of a more aggressive and unilateral American foreign policy in which American-style human rights could be used selectively and instrumentally. By the second Bush administration, the cast would be complete. Colin Powell would be replaced by Condoleezza Rice, Bush’s national security adviser in his first term, who had advocated a more unilateral American foreign policy, as reflected by Pentagon leadership. John Bolton would be rewarded for his harsh criticism of the United Nations by being appointed the U.S. ambassador to the UN in August 2005 (a position that he served until December 2006). Elliot Abrams would be promoted to be the president’s deputy national security adviser, responsible for promoting Bush’s strategy of advancing democracy abroad. John Negroponte would become the American ambassador to Iraq after the June 30th handover of sovereignty, replacing L. Paul Bremer as the highest ranking American civilian in Iraq. Later the same year, Negroponte would be named the first director of National Intelligence, a position created as a result of recommendations made by the 9/11 Commission completed late in 2004. Last but not least, White House Counsel Alberto Gonzales would replace John Ashcroft as attorney general, a post in which, as explained further in this chapter, he would play a key role in “helping to steer America away from its commitment to human rights under law.”²⁵⁰

The Policy: Providence and Dignity

At the very beginning of his presidency, George W. Bush avoided human rights terminology, especially when it would place any legal obligations on the United States or bind U.S. action in any way. President Bush's inaugural address was a plea for Americans to remember particular tenets of U.S. history (real and imagined) and culture. The United States, he noted, was born from a "simple dream of dignity," and has long strived to be "a place where personal responsibility is valued and expected."²⁵¹ "Where there is suffering, there is duty," he declared. Drawing from scripture, he "pledged to the nation . . . a goal: When we see that wounded traveler on the road to Jericho, we will not pass to the other side."

Bush proclaimed in his inaugural address that it is consistent with the American spirit to be "generous and strong and decent, not because we believe in ourselves, but because we hold beliefs beyond ourselves."²⁵² The source of these beliefs was not international human rights law or American commitment to multilateral institutions, but rather, the president suggested, providence—in his words, "an angel" who "rides in the whirlwind and directs this storm." Emory University religion professor Steven Tipton observes that in Bush's inaugural address providence was one of the central motifs. "From beginning to end, as the inaugural address concludes," he writes,

there has been this providential angel riding the whirlwind of history—surprises, reverses, tragedies, catastrophes, calls to war, national emergencies, this providential angel in whom we trust. And beyond, we trust the authorship of the creator and the orderer of the universe and the orderer of history, too. That carries through from the Inaugural to the State of the Union to the National Cathedral and the other addresses that follow more or less immediately on 9–11.²⁵³

While the foreign policies of other administrations have been informed by the religious convictions of the president and his close advisers,²⁵⁴ Bush's is unusual in the extent to which he justifies his policies based on scripture. Elaine Pagels, a professor at Princeton University, finds that "in recent memory, I cannot think of anyone who has used the language in the way that this man has."²⁵⁵ At a national prayer breakfast, the president declared, "The Almighty God is a God to everybody."²⁵⁶ In announcing the Columbia space shuttle disaster, he paraphrased Isaiah 40: 26, "The same Creator who names the stars also knows the names of the seven souls we mourn today."²⁵⁷ And in his 2002 State of the Union address he drew from a popular evangelical hymn in declaring, "There is power—wonder-working power—in the goodness and idealism and faith of the American people."²⁵⁸

The same religious convictions were evident as Bush moved into his second term. At the 2004 Republican National Convention, Bush justified U.S. actions in Iraq by claiming that "freedom is not America's gift to the world, it is the almighty God's gift to every man and woman in this world."²⁵⁹ In his second inaugural address, he adopted a slightly more interfaith approach, stating, "In

America's ideal of freedom, the public interest depends on private character . . . sustained in our national life by the truths of Sinai, the Sermon on the Mount, the words of the Koran, and the varied faiths of our people."²⁶⁰ Nevertheless, the emphasis on a sense of religious calling and duty remained.

The duty to advance human rights was not unlimited, however. Rather, it was to be tied closely to *American values*. In a speech before the Heritage Foundation on October 31, 2001, Lorne W. Craner, assistant secretary for the Bureau of Democracy, Human Rights, and Labor, told his audience that "maintaining the focus on human rights and democracy worldwide is an integral part of our response to the attack and is even more essential today than before September 11th."²⁶¹ Craner went so far as to assert, "We are proud to bear the mantle of leadership in international human rights in this century . . ." The kind of human rights policies promoted by the administration, however, are "*only those consonant with a narrow set of American values and interests [my italics]*," Craner clarified, "Our policy in this administration, and it is certainly true after September 11th, is to focus on U.S. national interests," which includes "concentration on advancing human rights and democracy in countries important to the United States." The goal for U.S. supporters of democracy and human rights, noted Craner, is to "protect the values that underpin civil society at home."

In both the 2002 and 2003 State of the Union addresses, Bush drew on a notion of "human dignity" contiguous with "American values" as a new policy term. These "dignity" obligations, he contended in the 2003 address, are at the core of the American character:

The American flag stands for more than our power and our interests. Our founders dedicated this country to the cause of human dignity, the rights of every person, and the possibilities of every life. This conviction leads us to help the afflicted, and defend the peace, and confound the designs of evil men.²⁶²

Following the pattern of many earlier addresses, Bush appealed to a religious foundation for the "cause of human dignity." He declared, "As our nation moves troops and builds alliances to make our world safer, we must also remember our calling as a blessed country is to make this world better." The "liberty" that America strives to bring to others, he noted, is "not America's gift to the world, it is God's gift to humanity." Deploying military troops based on a sense of a "calling" and of being "blessed" with "God's gift to humanity" represents a departure from appeals to action based on a sense of obligation grounded in international standards and enforced by multilateral institutions.

It was the 2002 National Security Strategy that first fully evidenced the Bush administration's attempt to replace human rights with a peculiar U.S. notion of "human dignity."²⁶³ To be sure, the National Security Strategy is peppered with references to human rights, for example, promising to "press governments that deny human rights to move toward a better future,"²⁶⁴ and predicting that "only nations that share a commitment to protecting basic

human rights” will be assured future prosperity.²⁶⁵ Yet “human rights” appeared as a vague matter of concern for other states; the administration’s commitment to the applicability of the norm to the United States itself remains uncertain. In contrast to “human rights,” “dignity” was outlined in detail. The National Security Strategy defined the “nonnegotiable demands of human dignity” as consisting of the following elements: “the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal justice; respect for women; religious and ethnic tolerance; and respect for private property.”²⁶⁶ The eclectic list is remarkable in that it is wholly divorced from any that has ever appeared in international human rights instruments. Through this unilateral reordering, the administration redefines who is on the side of human rights (those on the side of freedom, dignity, and capitalism) and who is against human rights (those on the side of tyranny and indignities).²⁶⁷

While the list declares that limits should be placed on the power of the state, little responsibility is conferred on the state to do anything to promote and protect rights, such as reducing the level of structural violence within society.²⁶⁸ At the same time, under this formulation individuals have very little power to assert any rights claims against the state. The list itself is contradictory; it calls for “equal justice,” but women are merely due “respect” and religious and ethnic groups are due “tolerance.” Further, despite Bush’s call for the “rule of law” and “justice,” in the absence of a clearly articulated and recognizable set of norms, these rights are difficult to enforce and create passive actors without the agency to make legal and political claims.

Far from reflecting a universal consensus, the Bush catalog of rights is a random rendition of the administration’s current priorities. The listing omits nearly all of the human rights deemed “nonderogable” in international human rights treaties (and, thus, not subject to any exceptions such as national emergency or necessity),²⁶⁹ including the right to life, freedom from torture, and freedom from slavery. Also missing is any mention of the many human rights associated with civic participation and democracy—a popular (and nonpartisan) tenet of American assistance abroad based on the belief that democracy brings with it peace and freedom. The single item that is elevated to a higher status than that recognized in international human rights law is the right to property. The inclusion of “property rights” in the new template and the exclusion of all other social and economic rights is consistent with the administration’s overall policy agenda that makes U.S. trade and investment a key concern.²⁷⁰

In contrast to the National Security Strategy, multilateral instruments discuss human dignities within the context of broader human rights. The preamble of the UN Charter states that one purpose of the organization is to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”²⁷¹ The first line of the Universal Declaration of Human Rights states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and

peace in the world.”²⁷² Similar recognition of the “inherent dignity” and “the equal and inalienable rights of all members of the human family” is reaffirmed in the International Covenant on Economic, Social, and Cultural Rights,²⁷³ and in the International Covenant on Civil and Political Rights.²⁷⁴ At the Second World Conference on Human Rights in June 1993, representatives of 171 countries (including the United States) reaffirmed these principles when they adopted a Declaration and Programme of Action, which states in the second paragraph of the preamble that:

all human rights derive from the dignity and worth inherent in the human person, and . . . the human person is a central subject of human rights in fundamental freedoms, and consequently should be the principal beneficiary and participate actively in the realization of these rights and freedoms.²⁷⁵

Human rights constitute one way of upholding human dignity, yet dignity alone is not sufficient for human rights.²⁷⁶ As these international human rights instruments make clear, “dignity” is one core element of human rights, “equality” another, and “worth” a related third.²⁷⁷ Yet this is where current U.S. human rights policy has gone awry. The modern idea of human rights requires—indeed is premised upon—the presence of all three concepts. One cannot embrace the idea of human rights and also hold that these rights apply to *some* individuals, or that only *some* states have a responsibility to respect human rights.²⁷⁸ At the same time, one cannot believe in the idea of human rights and also believe that they are earned, or that some individuals may be more worthy of human rights than others. The new foreign policy announced by the Bush administration features championing “aspirations for human dignity” as a primary tenet of American foreign policy,²⁷⁹ but absent from the policy is the full recognition of the principles of equality, worth, and equal value.

The Practice: Exceptional Exceptionalism/Arch-Unilateralism

Indications that the Bush administration was on “rough ground” on human rights came early in the administration.²⁸⁰ In 2001, for the first time since the founding of the UN Human Rights Commission in 1947, the United States lost its seat on the influential body. Three European countries were elected to the three slots reserved for Western industrialized nations. Because each country is elected by its own region, America’s European allies were largely responsible for its defeat.²⁸¹ This result was viewed largely as a payback for years of U.S. manipulation of the commission’s decision-making process to advance a U.S. foreign policy agenda. The U.S. representatives to the commission, critics claimed, would go so far as to attack the human rights records of countries they did not like while shielding regimes with poor human rights records when doing so advanced other American foreign policy concerns. Perhaps more surprising than the result of the vote was the arrogant reaction of the United States. Acting as if it were denied something to which it was automatically

entitled, the U.S. Congress decided to withhold \$244 million in dues owed to the United Nations. As Stephen Zunes has observed, this set a dangerous precedent:

Countries in the world are voted on and off various UN agencies and commissions with regularity, yet this is the first time a country has withheld funds because it lost a vote. Countries are obliged to pay their UN dues regardless of whether a particular vote goes their way. If every country withheld its dues because of the irritation of losing a vote on a particular agency or commission, virtually all funding for the world body would cease.²⁸²

The Human Rights Commission vote signaled that even European “friends” were not willing to give the United States greater international status than it already had.

Even more telling, however was the U.S. response to efforts to replace the United Nations Human Rights Commission with a new body, the Human Rights Council. The U.S. was extremely active in its criticism of the commission.²⁸³ Still wounded by its failed election attempt, the U.S. joined in the criticism by states that saw the commission as excessively political.²⁸⁴ Outraged that states with long records of human rights abuses should be permitted to serve on the commission, the U.S. proposed that service on the commission be limited to states that can pass a human rights litmus test. The new body that emerged from the negotiation process did limit membership, however it did not completely adopt the American proposal for reform. Moreover, the new council, over the objections of the United States, decided that it would first investigate the records of its members—a decision that troubled the United States, given the emerging controversies over American abuses in the “war on terror.” Contending that some of the other countries vying for council seats “systematically abuse human rights,” the United States refused to run for the Human Rights Council.²⁸⁵ Thus, the first election of the members of the newly established Human Rights Council (HRC) was held by the General Assembly on May 9, 2006, without the United States on the ballot and, one month later, for the first time in UN history, a major new United Nations human rights body would begin without American participation.²⁸⁶

The American ambassador to the UN, John Bolton, tried to soften what appeared to be the United States playing the role of spoiler:

I believe rather strongly that our leverage in terms of the performance of the new council is greater by the U.S. not running and sending the signal “this is not business as usual” this year than if we were to run.²⁸⁷

In other words, the United States believed that it was so exceptional that it could influence major UN organizations without even joining. Indeed, at the first meeting of the Human Rights Council, the United States did its best to act as if it were a member, sending a delegation of forty-two observers. Only

France had more people in attendance (and, unlike the United States, France was a Member State).

Another story illustrative of American exceptionalism under the Bush administration concerns the new International Criminal Court. In April 2002, the minimum number of ratifications necessary to bring the ICC treaty into force was met. The establishment of the court was celebrated in many parts of the world—particularly in the European Union—as “one of the most important human rights initiatives since the adoption of the Universal Declaration of Human Rights.”²⁸⁸ The United States had conditioned its support for the creation of a permanent ICC on the UN Security Council’s control of cases submitted to the court. The U.S. proposal ensured that the court would not have jurisdiction over American nationals for crimes against humanity and war crimes. In Tina Rosenberg’s words, that was an “everybody but us” position that would “invite the other nations of the world to look at the court as something that the United States has designed for its own purposes.”²⁸⁹ This was understandably unacceptable to the members of the UN Security Council.

Having failed to create a fail-proof mechanism for exempting the United States from the court’s jurisdiction, President Bush took the unprecedented step of announcing to the UN that he was “unsigned” the ICC.²⁹⁰ Knowing well that this step still did not eliminate any possibility for the court to gain jurisdiction over a U.S. national, the Bush administration instructed its diplomats to pressure allies into signing bilateral agreements exempting U.S. soldiers from prosecution or extradition to the court.²⁹¹ These strong-arm tactics led to the cutoff of military aid to thirty-five countries who refused to exempt their personnel from extradition.

A sharp fight broke out between the United States and its European allies in the middle of 2002 when, as leverage in its attempt to gain immunity for U.S. peacekeepers, the United States vetoed a resolution extending the UN peacekeeping mission in Bosnia. This move successfully pressured the UN Security Council into agreeing to exempt U.S. peacekeepers from being arrested or going to trial under the ICC rules for a year, with the option of annual renewal.²⁹² When in June 2003 the exemption was renewed, Kofi Annan, secretary-general of the UN, expressed his doubts about the renewal of the exemption, stating that he hoped that the renewal would not become a yearly routine, and that, should that happen, “it would undermine not only the authority of the ICC, but also the authority of this council, and the legitimacy of United Nations peacekeeping.”²⁹³ Even after the dust seemed to settle on the ICC and the focus of global leaders turned elsewhere, American exceptionalism on peacekeeping continued to draw intense criticism as the United States has been roundly criticized for unilateralism, undermining its relationships with allies and weakening international human rights norms.²⁹⁴

The Bush administration’s record on signing human rights treaties has done little to mend its image. Bush was elected on a campaign pledge to undo unnecessary treaties, and his view on international treaties throughout his

presidency swung between disdain and opportunism. The administration demonstrated opportunism in calling for criminalizing the possession of biological arms and the creation of a UN procedure to investigate suspected violations, calling these “improvements” to the 1972 Biological and Toxic Weapons Convention, which banned germ weapons.²⁹⁵ On the other hand, the administration demonstrated its disdain for international instruments on many other occasions. While initially supporting ratification of CEDAW, the administration backpedaled on its support due to opposition from right wing anti-choice activists.²⁹⁶ Bush has also continued the U.S. opposition to the Mine Ban Treaty and to a ban on children under the age of eighteen serving in the military.²⁹⁷ Following the same exceptionalist path, the United States refused to ratify the comprehensive nuclear test ban treaty and has backed away from its commitments to Kyoto emission control standards that mitigate the effects of global warming.²⁹⁸

Another good indicator of the administration’s degree of respect for the U.N. treaty monitoring process is the manner in which they handled their reporting obligations under the Convention on the Elimination of all Forms of Discrimination. The administration not only submitted its report four and a half years late, they also did not use their own staff to write it. They contracted the job out to a single civil servant with no prior experience in the area. That the contractor was highly competent and the report turned out to be quite useful was more of a mistake than a matter of design.

The United States has also played the role of spoiler with respect to international efforts to promote the rights of children and people with disabilities. The United States has long stood out as the only country with a functioning government (the other standout, Somalia, does not have a functioning government) that has refused to ratify the United Nations Convention on the Rights of the Child. One of the main reasons for this failure is the U.S. practice of allowing individual states to decide for themselves on the legality of capital punishment for minors.²⁹⁹ Not only did the Bush administration fail to make progress on ratification, it also used its influence at the UN to water down the final statement emerging from the first UN General Assembly special session on children in 2002.³⁰⁰ Although at times a strong supporter of the recently adopted United Nations Convention on the Rights of Persons with Disabilities, the United States did not sign the treaty when it opened for signatures, while 130 other countries did so within three months.

Human Rights and “the War on Terror”

The relationship between President Bush’s “war on terror” and his administration’s policy on human rights is informed by two assumptions. First, the administration accepts the notion of “ordered liberty,” that is that liberty and security are complementary.³⁰¹ As John Ashcroft told the Senate Judiciary Committee: “Without security, there is no liberty; without liberty, no security.”³⁰² The implications for human rights is clear. Ideally, the balance between liberty and security would permit full enjoyment of human rights.

However, in times of crisis, people may need to give up some of their human rights in exchange for security.

Second, the administration assumes the legality and morality of the doctrine of preemption in intervention, which enables the United States to use military force to safeguard American security whenever there is a “potentially materializing danger.” In an address at West Point in 2002, President Bush explained this approach, now dubbed the “Bush Doctrine,” in the context of new dangers presented by 9/11 and its aftermath:

If we wait for threats to fully materialize, we will have waited too long . . . the war on terror will not be won on the defensive. We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge.³⁰³

Confirming this new stance regarding preemption, Vice President Dick Cheney vowed before a group of American Veterans in August of 2002, “Should we be able to prevent another, much more devastating attack, we will, no question. This nation will not live at the mercy of terrorists or terror regimes.”³⁰⁴ The objective of the “war on terror” has been said to include restoring security so that the terrorists can be defeated and human rights can thrive.³⁰⁵

How the Bush administration has applied these assumptions about the concept of ordered liberty and its doctrine of preemption can be examined through analysis of its program of militarized nation-building and its strident unilateralism and exceptionalism in U.S. counterterrorism strategies. Each of these topics is discussed in turn.

1. *Militarized nation building*

The “war on terror” presented the Bush administration with an opportunity to rethink its engagement with the world. Candidate Bush had originally promised a more stay-at-home foreign policy wherein military troops would be deployed sparingly. “I don’t think our troops ought to be used for nation building,” he told the nation during the second presidential debate in October 2000. “I think our troops ought to be used to fight and win wars.”³⁰⁶ On the campaign trail in February 2000, he stated, “I’m going to say to our friends if there’s a conflict in your area, you can put troops on the ground to be peacekeepers and America will be the peacemakers.”³⁰⁷ Following through on this promise, in May 2001, the Bush administration withdrew 750 troops from Bosnia, and in May 2001, Defense Secretary Donald Rumsfeld announced that the military job was done in Bosnia and the remaining troops should be brought home.

The “war on terror” in Afghanistan and Iraq, however, brought the Bush administration squarely into the nation-building business and secured its place as the central player in the democracy-promotion industry. The administration tried hard to distinguish its approach from that of the Clinton administration, suggesting more of a “tough love” and “hands off” approach instead of the Clinton bear hug. “In some ‘nation building exercises,’ well-intentioned

foreigners arrive on the scene, look at the problems, and say, 'Lets go fix it for them.' . . . This is the opposite of what the coalition is trying to accomplish in Afghanistan," Rumsfeld said in a February 2003 speech. "Our goal is not to create another culture of dependence, but rather to promote Afghan independence because long-term stability comes not from the presence of foreign forces, but from the development of functioning local institutions."³⁰⁸ But the Clinton administration had also promised to support local institution building and avoid creating a culture of dependence.³⁰⁹

President Bush's approach to nation building in many ways suggested an even more intrusive approach to nation building than was ever endorsed by the Clinton administration. In a speech before the American Enterprise Institute in February 2003, he suggested that the World War II allied occupations and reconstructions of Germany and Japan provided good models for the Middle East. "After defeating enemies, we did not leave behind the occupying armies, we left constitutions and parliaments," he reflected on the postwar occupation, adding "we established an atmosphere of safety, in which responsible, reform-minded local leaders could build lasting institutions of freedom. In societies that once bred fascism and militarism, liberty found a home."³¹⁰ American-style liberty could find a home, he implied, through similar wholesale occupations in the Middle East. The objectives of the "war on terror" thus were staggeringly ambitious. President Bush had committed himself not only to win a war to remake Iraq, but to accomplish a much broader effort of bringing democracy to the rest of the Middle East.³¹¹

The Clinton administration's pattern for postconflict reconstruction was, in the words of one foreign service officer who served on postconflict reconstruction and development projects in both the Clinton and George W. Bush administrations, "We go in and create a safe enough environment, build institutions, write laws, and hold elections."³¹² The Bush administration altered the formula in three ways.

First, there was no publicly announced formula. Instead of exposing itself to accusations of following a poor plan for nation building, the Bush administration followed *no plan* for nation building. By the summer of 2003, with American soldiers still being killed and injured in a war that had long been declared "over" and the deployment of reservists in Iraq stretching longer and longer, military families grew increasingly frustrated,³¹³ and the American public wondered, "Where's the plan?"³¹⁴ While the Department of Defense had in fact drawn elaborate plans for postconflict scenarios in Iraq and Afghanistan, much to the bewilderment of the drafters of those plans the Bush administration failed to follow them. "There is no way the Bush administration should not have known that massive looting and chaos would follow the end of Saddam Hussein's regime," said one retired DOD employee who had worked on postconflict planning for Iraq, frustrated that the failure to follow his advice was resulting in the deaths of U.S. soldiers.³¹⁵ "I had told them that a post-Saddam Iraq would take ten years to stabilize, and 250,000 to 300,000 troops, but this administration said 75,000 troops [and promised they would be] in and out."³¹⁶ Other military and civilian foreign service officers

interviewed for this project similarly spoke of being involved in creating plans for postconflict scenarios for Iraq that were never followed. “It was like [the Bush administration] was in denial,” said one retired military officer.³¹⁷

Second, while light on planning, nation building Bush-style was extra heavy on ideology. The administration made explicit that its support of democratization endeavors and postconflict reconstruction would be tied to the promotion of American values, promising that those conflict areas moving most closely in line with American values would be rewarded. For example, in announcing a 50 percent increase in development aid in March 2002—the “Millennium Account”—the president made clear that the aid was conditioned on support of American values.³¹⁸ Humanitarian organizations unwilling to declare their allegiance to American values need not apply for U.S. resources to work in Iraq—this was the message projected from the U.S. Agency for International Development during the Bush era.³¹⁹

Third, the Bush administration also indicated its willingness to use military force to impose its desired version of postconflict democratization, employing military force as needed. Harold Hongju Koh, the former assistant secretary of state for human rights in the Clinton administration, testified before Congress in July 2003 about this troubling shift in policy.³²⁰ “Since the U.S. invasion of Afghanistan, our democracy-promotion efforts seem to have shifted toward military-imposed democracy, characterized by United States–led military attack, prolonged occupation, restored opposition leaders and the creation of resource-needy post conflict protectorates,” said Koh. He warned that at present,

a new and discouraging, four-pronged strategy seems to be emerging: “hard,” military-imposed democracy-promotion in Iraq and Afghanistan; “soft,” diplomatic democracy-promotion in Palestine; optimistic predictions of “domino democratization” elsewhere in the Middle East; and reduced democracy-promotion efforts elsewhere.³²¹

By the time George W. Bush raised his hand for a second term in office, the practice of militarized democracy building had solidified. The United States had once again taken on the responsibility of world protector and chief proponent of democracy. In a 21 minute speech that invoked the word “freedom” more than two dozen times, Bush’s second inaugural speech emphasized the spread of liberty and opposition to dictatorships as the “calling of our times,” and he committed his presidency to the support of democratic movements and reformers “in every nation and culture with the ultimate goal of ending tyranny in our world.”³²² This strong language sent a shock through foreign policy circles. The *Washington Post* described a “profound break” from America’s traditional foreign policy and alliances, warning that President Bush would begin expanding his declared doctrine of military preemption and attempt to impose democracy forcibly on governments around the world.³²³ However, the White House insisted that the speech never was intended to signal a major change in U.S. policy or relationships. In a hastily arranged news conference set

to clarify the speech, a White House spokesman emphasized that ending tyranny would be the “concentrated work of generations” and “not primarily the task of arms.” “It is not a discontinuity, not a right turn,” he said, but rather “a bit of an acceleration, a raising of the priority” of promoting freedom around the world.³²⁴ The very next day, former president George H. W. Bush visited the White House press room and delivered a similar message, cautioning that “people want to read a lot into it—that this means new aggression or newly asserted military forces. . . . That’s not what the speech is about. It’s about freedom.”³²⁵ Freedom, however, was viewed as closely linked to (if not synonymous with) security.

When it came time to announce the 2006 National Security Strategy of the United States, the second Bush administration had another good opportunity to explain the link between freedom and democracy promotion and security. The need to clarify the relationship between the two concepts was not lost on the drafters of the 2006 strategy. That document states:

Our national security strategy is founded upon two pillars:

The first pillar is promoting freedom, justice, and human dignity—working to end tyranny, to promote effective democracies, and to extend prosperity through free and fair trade and wise development policies. Free governments are accountable to their people, govern their territory effectively, and pursue economic and political policies that benefit their citizens. Free governments do not oppress their people or attack other free nations. Peace and international stability are most reliably built on a foundation of freedom.

The second pillar of our strategy is confronting the challenges of our time by leading a growing community of democracies.³²⁶

A key avenue for U.S. support of the “growing community of democracies,” was through U.S. foreign assistance, including direct infusion of U.S. dollars for infrastructure development and economic revitalization, as well as military and security assistance.³²⁷ Strategic allies in the “war on terror” have received billions of dollars in new military and security assistance since 9/11. According to the Center for Public Integrity, an independent investigative journalism organization, much of the new funding has been delivered with little or no congressional or civilian oversight.³²⁸ As political scientist Mel Gurtov observes, “Ignoring repression has become a license for it in the name of fighting terrorists—a license that has been used worldwide.”³²⁹

In the post-9/11 period, U.S. military assistance has grown exponentially, with significant sums being devoted to weapons provision, but also to military training activities through these and other military training programs.³³⁰ Foreign Military Financing (FMF), which provides grants for countries to buy U.S. military equipment and services, rose from \$3.57 billion in FY 2001 to a requested \$4.12 billion for FY 2003.³³¹ Funding for International Military Education and Training (IMET), one of many foreign military training

programs, rose from \$58 million in FY 2001 to a requested \$80 million for FY 2003, a jump of 38 percent.³³²

Notably, these new policies have not only involved resorting to military action, or the threat of action, but also constructing an arc of new facilities in such places as Kyrgystan, Uzbekistan, Pakistan, Qatar, and Djibouti that the Pentagon calls “lily pads.”³³³ They are seen not merely as a means of defending the host countries—the traditional Cold War role of such installations—but as jumping-off points for future “preventive wars” and military missions.³³⁴ Deputy Secretary of Defense Paul Wolfowitz, an architect of the Iraq War, articulated some of the thinking behind the new posture in an interview with the *New York Times* in 2002, saying the function of the string of new bases in Central Asia, the Middle East, and Africa “may be more political than actually military.”³³⁵ The new installations, he added, would “send a message to everybody, including strategically important countries like Uzbekistan, that we have a capacity to come back in and will come back in—we’re not just going to forget about them.”³³⁶

2. *Strident unilateralism and exceptionalism in counterterrorist strategy*

Unlike its sudden embrace of (selective) nation building, there would be no Bush administration policy reversal on unilateralism. Its decision to seek UN Security Council resolutions condemning Iraq’s defiance of earlier Security Council resolutions and authorizing the U.S.-led intervention may appear to demonstrate the administration’s support of multilateralism. However, President Bush repeatedly made clear the U.S. intention to act alone, without UN Security Council approval. “Nations are either with us or against us in the war on terror,” he said,³³⁷ painting the world in black-and-white terms. As Laura Neack observes in her post-9/11 analysis of the foreign policy of the Bush administration, “Unilateralism remained the key operating mode, although the United States would fully expect others to fall behind it.”³³⁸

In his 2003 State of the Union address, President Bush explained that the American approach to terrorism is utilitarian in nature. “America’s purpose is more than to follow a process,” he announced, “it is to achieve a result: the end of terrible threats to the civilized world.”³³⁹ As the leader of the “free” world, he contended, the United States has unbridled discretion to make a utilitarian calculus in the name of the American people—and indeed all free people. “All free nations have a stake in preventing sudden and catastrophic attacks,” he claimed, and continued:

And we’re asking them to join us, and many are doing so. Yet the course of this nation does not depend on the decisions of others. Whatever action is required, whenever action is necessary, I will defend the freedom and security of the American people.³⁴⁰

In the same address, the president told his American audience that “we’ve arrested or otherwise dealt with many key commanders of al Qaeda.”

Even more ominous for the human rights of those arrested, the president declared,

All told, more than 3,000 suspected terrorists have been arrested in many countries. Many others have met a different fate. Let's put it this way—they are no longer a problem to the United States and our friends and allies.³⁴¹

This “security first” and “ends justifies the means” approach to terrorism led to a crackdown on civil liberties in the United States. One of the most prominent measures giving official approval to the crackdown was the Domestic Security Enhancement Act of 2003, which authorizes secret arrests, strips Americans of their citizenship for peacefully supporting groups deemed “terrorist,” expands the basis for deportation without a hearing, and exempts habeas corpus provisions from the judicial review of certain immigration proceedings.³⁴² In the weeks following September 11, 2001, a massive domestic sweep of 1,100 mostly young Arab men by the Federal Bureau of Investigation (FBI) mirrored an aggressive international roundup of hundreds of al Qaeda suspects in fifty countries coordinated by the CIA and foreign intelligence services.³⁴³ These and related actions have resulted in a general attack on civil rights both domestically and internationally on the part of the Bush administration and the military, including approving CIA assassinations, establishing secretive military tribunals, massive arrests of young Arab men, discussing (and perhaps implementing) torture as a “necessary” interrogation measure, and breaching the Geneva Conventions in the treatment of the detainees at the U.S. naval base at Guantánamo Bay, Cuba. Concluding that executive orders do not preclude the president from “lawfully” fingering a terrorist for assassination by covert action, the Bush administration empowered the CIA to carry out such missions in its global campaign against terror and expanded the range of potential targets.³⁴⁴

Implementation of White House policies billed as counterterrorism depended heavily on executive orders. As political scientist Claire Apodaca observes in her authoritative analysis of U.S. human rights policies:

From 2001 to 2005, President Bush issued 178 executive orders, more than any other president in U.S. history. By doing so, Bush clearly indicated his desire to appropriate legislative powers . . . Bush's justification was that the war on terror required swift, surprise, and perhaps covert operations that would be impossible to undertake if the White House had to get advance approval from Congress.³⁴⁵

Bush signed an executive order on November 13, 2001, establishing secret military tribunals to try al Qaeda members and others accused of terrorism, citing “extraordinary times” and “national security interests” and protecting “the safety of potential jurors as reasons for circumventing the U.S. court system and international law.”³⁴⁶ Bush was passionately denounced by a small but loud chorus from both the domestic political Left and Right as well as by European commentators for this sublimation of human rights and

overextension of executive power. As Anne-Marie Slaughter, dean of the Woodrow Wilson School of International Affairs at Princeton, has cautioned:

At a deeper level, such trials challenge Americans' identity as a people. Military commissions have been used rarely in the past, principally to try to hang spies caught behind enemy lines. Now such commissions are proposed as a long-term mechanism to achieve a principal war aim—finding and trying terrorists. But America is also, according to Mr. Bush, fighting for the values embodied in its constitution, against an enemy that would destroy its way of life. How then can it violate those values in the process?³⁴⁷

The Washington, D.C., advocacy director for Human Rights Watch, Tom Malinowski, has warned that the order will open the door for the world's military dictators to follow suit. "In effect," he notes,

the administration has one critical choice: It can let Mr. Bush's order stand as it is, and let it become a virtual code of misconduct for authoritarian governments around the world. Or it can show what the U.S. system of military justice was meant to show: that America does not abandon its commitments to human rights in times of conflict, but affirms it as an enduring source of national strength.³⁴⁸

Along with the creation of the military tribunals, an aggressive FBI roundup was championed by Attorney General John Ashcroft. The Justice Department issued a list of five thousand young men who entered the United States since 2000 from, predominantly, the Middle East. At that, opponents cried racism and racial profiling. "This type of sweeping investigation carries with it the potential to create the impression that interviewees are being singled out because of their race, ethnicity or religion," stated Nihad Awad, executive director of the Council on American-Islamic Relations, an Islamic advocacy group based in Washington, D.C.³⁴⁹ As allegations of unjust and unlawful treatment poured in to civil rights attorneys' offices across the country, a class action lawsuit was filed against the government for ethnic and religious profiling.³⁵⁰ Immigration lawyers and human rights advocates also have repeatedly submitted complaints of civil rights violations on behalf of detainees held in the Metropolitan Detention Center in Brooklyn, New York, where many men are being held without being charged for terror-related crimes while allegedly there is secret evidence against them.³⁵¹

The press began floating articles about the frustration that both investigators and many in the general public were feeling over the inability to get desired information out of the detainees. Some investigators began to complain that traditional civil liberties would have to be put aside if they were to extract information about the 9/11 attacks and future terrorist plans.³⁵² One seasoned FBI interrogator lamented:

We are known for humanitarian treatment, so basically we are stuck. Usually there is some incentive, some angle to play, what you can do for them. But it could get to that spot where we could go to pressure [*sic*] where we won't have a choice, and we are probably getting there.³⁵³

Alternative tactics discussed concerned extraditing suspects to third countries where “security service sometimes employ threats to family members or resort to torture.” U.S. domestic law was cited for its disallowance of courtroom evidence obtained through physical pressure, inhumane treatment, or torture. Furthermore, domestic law allows for victims to sue or for the government to charge battery. A former FBI agent complained:

You can't torture, you can't give drugs now, and there is a logic, reason, and humanity to back that. But you could reach a point where they allow us to apply drugs to a guy. But I don't think this country would ever permit torture or beatings.³⁵⁴

In January 2002, photos were released of Taliban and al Qaeda prisoners being held in what appeared to be “sensory deprivation” conditions—in masks, earmuffs, heavy wool caps and gloves, with their hands and feet bound. The treatment of prisoners by the U.S. military at its naval base in Guantánamo Bay caused a worldwide outcry.³⁵⁵ European diplomats, lawmakers, and analysts openly criticized Washington, and other European Union officials and the International Red Cross raised questions as to the physical and legal status of the prisoners. One ambassador charged the United States with “international law a la carte, like multilateralism a la carte. It annoys your allies in the war against terrorism, and it creates problems for our Muslim allies, too. It puts at stake the moral credibility of the war against terrorism.”³⁵⁶

The Bush administration's guiding principle regarding the status of the detainees in Guantánamo Bay and detainee rights under international law has been best summarized in a *Washington Post* editorial that said that the “Bush administration would respect international law only so far as it chose to.”³⁵⁷ Indeed, President Bush flatly declared that he could ignore international treaties, stating “I have the authority to suspend Geneva [Conventions] as between the United States and Afghanistan . . . [and] I reserve the right to exercise this authority in this or future conflicts.”³⁵⁸

The issue of torture was taken up by the U.S. Justice Department in the summer of 2002, after the CIA sought guidance as to how it should treat prisoners held at Guantánamo Bay and elsewhere.³⁵⁹ The Justice Department's Office of Legal Counsel produced a fifty-page memo that attempted to broaden the understanding of the legal definition of torture.³⁶⁰ This memo reached three principal conclusions: (1) that President Bush could authorize torture even though our laws and treaties prohibit it; (2) the interrogators could cause substantial pain without crossing the torture threshold; (3) that even if those interrogators were later prosecuted for engaging in torture, there were legal defenses they could use to avoid accountability.³⁶¹ The memo attempted to create a truly remarkable “self-defense” exception for torture. It reasoned that an interrogator's actions would be “justified by the executive branch's constitutional authority to protect the nation from attack.”³⁶² This was contrary to well-established international law. There simply is no self-defense exception to torture, either by an individual or by the state. The Convention

Against Torture, Article 2 provides that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.”³⁶³

To reach its conclusions, the Office of Legal Council redefined torture in a manner that departed radically from both U.S. and international understandings of the prohibition against torture.³⁶⁴ According to the new reasoning, for an act to constitute torture, it must be of an “extreme nature” in that it “must inflict pain that is difficult to endure.”³⁶⁵ The memo explained that “physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.”³⁶⁶ The memo severely limited the possibility that mental pain or suffering can amount to torture, stating that “it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.”³⁶⁷

Applying the new definition of torture, the following interrogation techniques, which clearly went beyond earlier practice, were approved by the Secretary of Defense on December 2, 2002: (1) using stress positions such as standing for a maximum of four hours; (2) detention in isolation up to thirty days; (3) placing a hood over a detainee’s head during transportation and questioning; (4) deprivation of light and auditory stimuli; (5) removal of clothing; (6) interrogation for up to twenty hours; and, (7) using detainee’s individual phobias, such as fear of dogs, to induce stress.³⁶⁸ After intense public pressure, this list of tactics was reconsidered and rescinded.³⁶⁹ However, the Secretary of Defense continued to press for an expansive definition of permissible interrogation techniques.³⁷⁰

The moral credibility of the Bush administration was called into question in April 2004, when the television news magazine *60 Minutes II* revealed photographs of U.S. military personnel torturing and abusing prisoners at the Abu Ghraib prison in Iraq. President Bush responded by claiming that the scandal was the work of a “few American troops who dishonored their country.” However, “numerous critics—not just in the human-rights community, but in Congress and the U.S. military as well”³⁷¹ believed that accountability extended to the upper ranks of the Pentagon. To be sure, an internal investigation into the army’s prison system revealed the “systematic and illegal abuse of detainees,” noting in particular the “sadistic, blatant, and wanton criminal abuses” at Abu Ghraib.³⁷² Following the Abu Ghraib scandal, reports of prisoner abuse in Iraq, Afghanistan, and Guantánamo Bay continued, with UN human rights investigators calling for the closure of the U.S. detention camp at Guantánamo Bay in February 2006.³⁷³ The report claimed that some aspects of detainee treatment amounted to torture, including the use of excessive force and force-feeding. Furthermore, the report maintained that “detention of inmates for years without charge amounted to arbitrary detention.”³⁷⁴

Throughout its entire second term in office, the Bush administration vigorously sought to maintain interrogation practices that violated the 1949 Geneva Conventions. In late October 2005, Vice President Cheney and CIA

director Porter Goss publicly urged Congress to exempt the CIA from the McCain Amendment, which banned torture of any detainee in U.S. custody.³⁷⁵ In the wake of publicized prisoner-abuse scandals committed by the U.S. military in Afghanistan and Iraq, the energetic lobbying effort led by Cheney and Goss heightened concerns among lawmakers and human rights groups about the treatment of detainees in the secretive CIA system.³⁷⁶ The administration did little to alleviate suspicions when President Bush attached a “signing statement” to the amendment, declaring that the president had the right at any point not to comply with the ban on cruel, inhumane, and degrading punishment. The executive branch, he declared, would interpret the amendment “in a manner consistent with the constitutional authority of the President to supervise the unitary Executive Branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power.”³⁷⁷

Despite the public outcry generated by reports of consistent and ongoing prisoner abuse in Guantánamo and in other detention facilities holding U.S. prisoners in the “war on terror,” the Bush administration was adamant that prisoners in the “war on terror,” including those at Guantánamo, are not protected by the Geneva Conventions.³⁷⁸ Another tactic employed by the Bush administration in its attempt to avoid culpability for its interrogation practices is often referred to as “outsourcing torture.”³⁷⁹ Substantial evidence exists that the United States has “been covertly transferring terrorism suspects to other countries for interrogation—notably Jordan, Egypt, and Syria—which are known for employing coercive methods.”³⁸⁰ United States involvement in these transfers—known as extraordinary renditions—serves as a poor example to other states and comprises an additional violation of international law and human rights protections.³⁸¹

In defiance of the White House position, the U.S. Army released a new field manual in September 2006 that strengthened preexisting language barring torture and upholding the Geneva Conventions.³⁸² The manual incorporated the full text of Common Article Three of the Geneva Conventions, which requires humane treatment of all detainees and oversight by an impartial international organization like the International Committee of the Red Cross. As the Council on Foreign Relations noted in its discussion of the new regulations on military interrogations, “in contrast to the previous version of the manual [published in 2002], this edition states that the Geneva Conventions are to be applied to all detainees in U.S. military facilities.”³⁸³ The new manual also made clear that all military personnel are responsible and accountable for immediately reporting suspected detainee abuse. White House opposition to the manual delayed its publication for a year.³⁸⁴

The White House’s chilly reacceptance of the new field manual’s guidelines on interrogations served to expose the broad schism between the Bush administration and the armed forces. At a morning briefing for the manual’s release, Pentagon officials used the opportunity to denounce the use of torture for any purposes, pointing out its ineffectiveness in obtaining reliable intelligence and underscoring.³⁸⁵ That same afternoon, however, President Bush made clear that he did not consider the bans against cruel and degrading treatment in the

manual to apply to CIA officials. In a speech that sharply contrasted with the Pentagon speech in both tone and substance, President Bush confirmed the existence of a secret CIA detention program, defended CIA officials' use of "alternative" interrogation methods, and called on Congress to pass proposed legislation on military commissions to try detainees at Guantánamo Bay.³⁸⁶ President Bush confirmed that a "small number" of detainees were still being kept in CIA custody. "The most important source of information on where the terrorists are hiding and what they are planning is the terrorists themselves," Bush said. "It has been necessary to move these individuals to an environment where they can be held in secret, questioned by experts and, when appropriate, prosecuted for terrorist acts."³⁸⁷ The Bush administration denied that CIA interrogations involve torture, it disclosed that CIA interrogators are permitted to use agency-approved "Enhanced Interrogation Techniques," which include actions that are neither allowed under U.S. military law, nor under the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the United States is a party.³⁸⁸

What Were the Constraints?

The greatest influence on the Bush administration's decision making regarding human rights were the terrorist attacks on September 11, 2001. The public expected the United States to be a leader on human rights and to address the link between between deprivations of human dignity and the terrorists attacks on 9/11. At the same time, however, the public demanded that the nation restore security and defend itself from future attacks. Responding to the general climate of fear and insecurity, Congress quietly took a back seat to the executive, watching the sacrifice of human rights from the sidelines. There, they were joined by many high-profile journalists, activists, and analysts, who also (at least initially) feared being cast on the wrong side of good and evil. The Bush administration thus was emboldened to embark on its "war on terror" with very few constraints.

The war that did ensue in Afghanistan, at least initially, won over many human rights advocates and scholars usually critical of U.S. interventionism. In a clear departure from his usual stance, Richard Falk stated, "This war in Afghanistan against apocalyptic terrorism qualifies in my understanding as the first truly just war since World War II."³⁸⁹ Similarly, Harold Meyerson of the *American Prospect* credited Bush's strategy with being "a case where a liberal value became one of the strategic guides to the conduct of war."³⁹⁰ Such "liberal values" were ones that "[kept] civilian casualties and other collateral damage to a minimum, that gave a high priority to humanitarian assistance for the people of Afghanistan and that played to feminists by focusing criticism on the Taliban's policy of oppressing women."³⁹¹

To maintain public support, the administration explained the wars in both Afghanistan and Iraq in human rights terms. President Bush, cabinet members, and military leadership submitted to multiple interviews and gave numerous broadcast speeches emphasizing the delivery of U.S. relief supplies.³⁹² In many

respects then, rather than serving as a check on White House strategies, the media acted as a catalyst.

To take one example, the turning point of public opinion on the war in Iraq was the media coverage over the rescue of American soldier Jessica Lynch. The media was ecstatic about Lynch's rescue, and the story gave the public an uplifting image of a courageous, young, and pretty American woman being saved from the hands of the enemy rather than the slow, agonizing war it had seen in the first few weeks of fighting.³⁹³ The story of the battle to save Private Lynch, however, was an overstated affair. Media at the time portrayed her rescue as a daring mission of U.S. forces raiding a compound of Saddam Hussein's henchmen. As the dust from the fighting settled, however, the conditions from which Lynch had been gloriously rescued turned out, in fact, to have been not nearly so bad as depicted in media accounts. The "multiple gunshot wounds" that she had reportedly suffered were in actuality broken bones. The U.S. troops had rescued Lynch from an "undefended compound" (which was a hospital). Lynch, who was in the care of Iraqi doctors and nurses, had been well fed and cared for during her captivity.³⁹⁴ One journalist observed that:

Americans were primed to expect a story of rescue—not just because our president told us that we would save Iraq and ourselves, but because for more than two centuries our culture has made the liberation of captives into a trope for American righteousness.³⁹⁵

The media's role in shaping public opinion was prominent. In Iraq, as with the bombing of Afghanistan, reporters were side by side with American forces; television coverage, with live images of the wars, was constant on many U.S. news stations.

Another factor influencing the administration's behavior was the vociferous debate over whether the United States should, or even, could, go it alone in Afghanistan and Iraq. Secretary of State Powell, his deputy Richard Armitage, and Anthony Zinni, envoy to the Middle East, advocated a "go slow" policy with regard to expanding the "war on terror" and working with international allies in our diplomatic efforts. A more aggressive stance was taken by Rumsfeld, Deputy Defense Secretary Paul Wolfowitz, Bush's counterterrorism chief Wayne Downing, and Cheney's chief of staff Lewis Libby, who advocated a quick, unilateral attack on Iraq.³⁹⁶ Rumsfeld camp's go-it-alone stance showed a victory of their influence on the president over Powell's camp. Furthermore, it indicated the dominance of the new foreign policy ideology of the United States, which is that while multilateralism may be one alternative, hegemonic action could be embraced and accepted regardless of the approval of international and domestic human rights organizations.

Thus, the Bush administration barely yawned when international and domestic human rights organizations began criticizing their tactics. The Bush administration paid little attention to the human rights NGOs that petitioned the UN's Committee on Human Rights to reprimand the United States in its

2003 report for treatment of detainees at Guantánamo Bay and in U.S. prisons, as well as for the creation of U.S. military tribunals to try suspects. It also did not heed UN High Commissioner for Human Rights Mary Robinson's demand that the United States recognize the Guantánamo Bay captives as prisoners of war. On the contrary, the United States retaliated against Robinson by failing to support her reappointment.³⁹⁷

Even after the main United Nations body addressing the question of torture—the Committee against Torture (CAT)³⁹⁸—chastised the United States for violating the human rights of those held captive in the “war on terror,” the United States barely sighed. In a well-publicized document released in April 2006, the CAT rejected U.S. claims that the Convention against Torture did not apply to U.S. personnel acting outside of the United States or during wartime. CAT called on the United States to close all secret prisons; hold accountable senior military and civilian officials who authorized, acquiesced, or consented to acts of torture committed by their subordinates; and end its practice of transferring detainees to countries with known torture records. It also criticized the indefinite detention of prisoners in Guantánamo Bay and called for its closure.³⁹⁹ The White House did not adopt any of CAT's recommendations.

Nor did the administration of George W. Bush allow its own federal courts to act as a legitimate and significant check on its conduct. Instead of submitting to the authority of the U.S. federal court system, the Bush administration attempted to circumvent it altogether by classifying detainees in the “war on terror” as “unlawful combatants,” a designation that White House lawyers contended took the matter out of the jurisdiction of civilian federal courts. This meant that detainees in Guantánamo were denied the same due process rights and other legal guarantees ordinarily accorded to U.S. prisoners. Much to the surprise of the White House, however, a number of military and civilian courts stood up to the Bush administration's hardball tactics and refused to jettison U.S. due process guarantees. For example, in a single day in June 2007, military judges in separate decisions dismissed war crimes charges against two of the Guantánamo detainees.⁴⁰⁰ Without ruling on the guilt or innocence of the detainees, the judges in those cases made essentially the same determination that the military had not followed the procedures established by the Military Commissions Act (2006), which requires a finding that a detainee is an “unlawful enemy combatant.”⁴⁰¹ The military commission was empowered to hear only those cases where such a classification had been made. The combatant status review tribunals, or CSRTs, had determined only that the detainees were enemy combatants, without making the added determination that their participation was “unlawful.”

Even after President Bush packed the Supreme Court with conservative justices, he still faced considerable resistance to his policies, which patently ran contrary to well-established law. In a case known as “*Hamdan*” (a case brought by Osama bin Laden's alleged ex-driver, Omar Ahmed Hamdan), the Supreme Court ruled that the Bush administration does not have the authority to try terrorism suspects by military tribunal, reasoning that the proceedings violated Geneva Conventions.⁴⁰² The ruling was generally viewed

as a harsh blow to Bush administration policy. However, the court did not demand the release of prisoners held at Guantánamo, but instead gave the administration an opportunity to come up with alternative means of trying those held.

The Bush administration could have responded to *Hamdan* in two distinct ways: (1) the initial military commission proceedings could have been moved to a U.S. federal court, and many prisoners could have been immediately released; or (2) the administration could search for an alternative process for trying those already being held and for those likely to be picked up in the future in the “war on terror.” The Bush administration took the second tack. In response to the *Hamdan* ruling, the White House pushed a law through Congress that prohibited Guantánamo Bay detainees from challenging their confinement in federal courts. Under the law, detainees’ cases could only be heard in military commissions, not in civilian courts. The White House won a major victory when, in February 2007, the law was upheld by an appeals court hearing in the District of Columbia. In an apparent victory for the Bush administration, in April 2007, the U.S. Supreme Court declined to review the February ruling.⁴⁰³ However, on January 29, 2007, the court reconsidered its position and voted to review the case.⁴⁰⁴

In addition to doing its best to avoid judicial review of its actions, the Bush administration also artfully avoided congressional oversight. By continually raising the specter of 9/11 as justification for its actions, the White House has created a “follow the leader” phenomenon whereby Congress falls reticently in line with the White House agenda for protecting the nation. Efforts of Congress to act as a constraint on the administration of George W. Bush were particularly feeble at first, as few members of Congress dared risk being seen as on the wrong side of the global crusade of good versus evil. After American soldiers returning from the front began joining the growing public opposition to the war in Iraq, some representatives were emboldened in their own public critiques of the “war on terror.” However, by this time the White House had already been able to push through Congress a series of legislative measures augmenting executive power, and had established a pattern of implementing controversial measures unilaterally. For example, wholly without congressional input, the Bush administration oversaw a secret domestic spying program through the National Security Agency (NSA) that authorized warrantless eavesdropping on overseas telephone calls and e-mail of U.S. citizens with suspected ties to terrorists. Criticized by members of both parties for overstepping his constitutional bounds, Bush “contended that his ‘obligation to protect’ Americans against attack justified a circumvention of the traditional process in a fast-moving, high-tech battle with a shadowy enemy.”⁴⁰⁵ Rather than introducing legislation explicitly permitting such domestic spying, Bush briefed select congressional leaders on the program, but those lawmakers said they were sworn to secrecy and therefore unable to take action.⁴⁰⁶

Throughout its tenure, the Bush administration acted as if the “war on terror” gave it broad license to do virtually anything it desired—as long as the action could be connected to fighting terrorism and promoting American

national security. Bush's "grab for the unilateral authority to wage war, precluding judicial review of executive action, made a mockery of the separation of powers and the structure of checks and balances that undergrid the framework of the American political system."⁴⁰⁷ By terming his response to 9/11 a "war," George W. Bush had become a self-proclaimed "war president," and under the mantle of "wartime," he acted with few constraints. Congressional oversight was ignored through historically unprecedented use of executive orders; judicial review by the federal judiciary was sidestepped through attempted manipulation of well-established international law and the construction of new prisoner classifications and tribunals; and the media and civil society watchdog organizations were hindered in their efforts by enhanced secrecy and a general climate of intolerance toward dissent.

What Was the Degree of Norm Embeddedness?

The range of possibilities for human rights foreign policy is informed by three sets of choices: domestic or international definition of norms; unilateral or multilateral action; and a focus on application of human rights norms at home or abroad.⁴⁰⁸ In applying domestic norms unilaterally to the behavior of certain (enemy) states, the administration of George W. Bush appears to be patterning itself after the second Reagan administration, which made similar choices on human rights policy. Indeed, the language of the new National Security Strategy is strikingly similar to statements on human rights made by members of the Reagan administration. For example, in a speech in February 1984, Secretary of State George Shultz explained that Americans, in contrast to other people, define themselves "not by where we come from, but where we are headed: our goals, our values, our principles." Freedom, Shultz said, is a central goal for Americans. In response to domestic expectations then, "moral values and a commitment to human dignity have not been an appendage to our foreign policy [in the Reagan administration], but an essential part of it, and a powerful impulse driving it."⁴⁰⁹ This idea is echoed in President Bush's belief in what he terms "a distinctly American internationalism."⁴¹⁰

Like the administration of George W. Bush, the second Reagan administration articulated the difference between the United States and its enemies in moral terms, as "the difference between tyranny and freedom."⁴¹¹ Also, like the current administration, the second Reagan administration used international human rights norms strategically, as a tool for furthering its interests rather than as a means for evaluating its own behavior. The Reagan administration was not isolationist; rather, it supported "a commitment to active engagement, confidently working for our values as well as our interests in the real world, acting proudly as the champion of freedom."⁴¹²

Comparing these words to those of the 2002 National Security Strategy, it may at first glance appear as if President Bush's staff took a page right out of the Reagan administration's foreign policy scrapbook. Notably missing, however, is a significant element of the Reagan human rights strategy—namely, the willingness to utilize, albeit selectively, international human rights treaties and

mechanisms. While not fully embracing multilateralism, the second Reagan administration demonstrated at least a pragmatic understanding of the modern human rights regime. Throughout its tenure the Reagan administration sought to use multilateral institutions as an “instrument of [U.S.] human rights policy.”⁴¹³

The second Reagan administration’s commitment to multilateral approaches to human rights problems should not be overstated. It invoked treaties selectively, reading in the kinds of civil and political rights most familiar to U.S. constitutional law, and reading out economic, social, and cultural rights that are largely foreign to U.S. legal traditions. Nonetheless, the second Reagan administration still recognized the existence and potential importance of international human rights instruments and organizations. The decision of the administration of George W. Bush to depart from this practice is radically regressive.

At the same time, the Bush administration carries forth the worst tendency of the first Reagan administration: the practice of overlooking gross human rights abuses whenever a government sides with the United States in a fight with an enemy. The Bush administration abruptly dropped its push for religious freedom in China when, after 9/11, it needed intelligence information about Muslim militants.⁴¹⁴ Relations with the Chinese thawed almost overnight; as the *Washington Post* noted:

The U.S. relationship with China has changed almost as dramatically as that with Russia since September 11, and for some of the same reasons. Public prickliness has disappeared as the government of Jiang Zemin has supported the U.S. campaign against terrorism and even the bombing in Afghanistan—the first time China has supported U.S. military action since the end of the cold war. In return, China, like Russia, expects new understanding for its brutal repression of a Muslim minority, the Uighurs, on the grounds that this too constitutes counterterrorism.⁴¹⁵

In his October 2001 visit to Shanghai, Bush did gently remind his hosts that “the war against terrorism must never be an excuse to persecute minorities,”⁴¹⁶ yet these words were not backed with action. Freedom of religion would remain on the back burner.

Another example of the sacrifice of human rights in the name of security is present in the U.S. relationship with Russia. In recent years, U.S. officials have publicly criticized Russian human rights abuses in its war with the secessionist rebels in Chechnya. But in the wake of Moscow’s offer to let the United States use its bases and airspace in the war against terrorism, Bush abruptly changed the policy, instead calling on rebels to cut their ties with “international terrorist groups” and to enter into peace talks with Moscow.⁴¹⁷ Bush went further, seeking normal trade status with Russia, despite calls to link it with improvements in Moscow’s human rights record.⁴¹⁸

A similar regression of human rights practices occurred toward Uzbekistan. The U.S. government largely abandoned its concerns over the Uzbeki government’s jailing of Muslim activists and religious freedom in that country. As

U.S. Air Force planes made this country its temporary home in the Afghan War, the Bush administration embraced its new ally.⁴¹⁹ In thanks, the country received \$160 million in U.S. aid money for 2002, and in 2003 Bush lobbied Congress to lift trade restrictions on Uzbekistan.⁴²⁰ However, as with China and Russia, the United States has not entirely sidelined human rights and democratic institution building, at least not on paper. In the “declaration of strategic partnership” signed between Secretary of State Powell and the Uzbeki foreign ministry, the government commits itself to broad political and economic reforms, including establishing a multiparty system; ensuring free and fair elections; and promoting an independent media, judicial reform, and free market reforms. This agreement, then, is no different from what in a not-so-distant era was termed “democratic enlargement.”

The twist with the Bush administration, however, was the manner in which American exceptionalism influenced policymaking. President Bush’s belief that the world would be a better place if everyone would be more like the United States left a deep imprint on the way the United States approached the world. One illustration can be found in the document that was released as a companion to the 2002 National Security Policy clarifying the administration’s new foreign aid strategy. *Foreign Aid in the National Interest: Freedom, Security, and Opportunity*, a USAID publication, suggests that the United States must foster development around the world because “life, liberty, and the pursuit of happiness are universal.”⁴²¹ The gloss given to these “universals,” however, is a particular American influence on property ownership and material wealth. The only right mentioned by name is “property.”⁴²² The document makes its goals clear, declaring that “a world where all countries are becoming more prosperous would also be a profound affirmation of U.S. values and interests.”⁴²³

Challenging the Bush administration’s desire to utilize American strength solely to promote U.S. values and interests abroad is the broad support for humanitarian action within USAID and other government entities involved in such issues, such as the U.S. State Department’s Bureau of Population, Refugees, and Migration; its Bureau of Democracy, Conflict, and Humanitarian Assistance; and the Department of Defense’s humanitarian officer. USAID, under the leadership of its new administrator, Andrew Natsios, insisted that humanitarian and democratization policies receive greater attention in areas of conflict and potential conflict. Natsios created a new bureau at USAID, the Bureau for Policy and Program Coordination, which housed program, policy, and administrative decision making under one roof.⁴²⁴ He also made conflict a pillar of USAID’s work, creating a transition assistance office and conflict management fund with the stated purpose of giving “greater latitude to experiment with ‘non-traditional’ approaches.”⁴²⁵ The United States would thus “take a stronger leadership role in shaping the practices of development relief, breaking from its traditional reluctance to embrace the more political aspects of relief operations.”⁴²⁶ Natsios’s leadership at USAID pushed the Bush administration to realize the link between development assistance and conflict, and to understand the U.S. national interest in responding to humanitarian

crises. Although these crises were defined in terms of humanitarian and democratization needs, addressing them required paying attention to human rights concerns as well.

Under Natsios, USAID continued the creative work of the Office of Transition Initiatives (OTI). This outfit, which has been called USAID's "swat team" and "the entrepreneurial wing of USAID"⁴²⁷ works more closely with U.S. military and civilian authorities and does the kind of political work that many humanitarian and human rights organizations shun. OTI was credited for quietly supporting the broad range of Serbian NGOs, student groups, think tanks, labor organizations, and media that united to oust Slobodan Milosevic.⁴²⁸ Although OTI took care to show that it appeared as if indigenous organizations were always driving events, many were, if not designed, at least heavily inspired by outside coaching and resources. OTI continued its innovative work in the aftermath of the American bombing stage of the Iraqi war. OTI sent in the first-ever U.S. human rights "response team" charged with "getting information and mitigating human rights abuses in a hot post-conflict environment."⁴²⁹ Albert Cevallos, one of the leaders of the OTI team, notes that by identifying mass graves and property issues as "key points of potential conflict," OTI was able to "connect the dots" by linking "local and international NGOs" together and by providing resources to enable their projects to proceed. Cevallos expresses the attitude of many government employees working in postconflict areas when he comments, "To some extent it does not matter which [presidential] administration I'm dealing with. I'm out there trying to do the thing I do best."⁴³⁰

Individual and institutional efforts to integrate human rights into U.S. involvement overseas continued to develop rapidly during the Bush administration. Yet still there was much the administration could have done to support these developments. Increasing the resources and capacity of units with special expertise and a proven track record on human rights promotion in transitional areas—such as OTI—would have been a good start. Addressing issues related to security, coordination, and sustained commitment over time would also have led to greater success. Yet while the human rights capacity of government agencies like USAID continued to improve, it was ultimately the Bush administration that called the shots, and the administration that continued to employ human rights in an instrumental and exceptionalist manner.

That President Bush would stay loyal to this approach of advancing American values first was a hallmark of his presidency and served to distinguish him from his predecessor. As the two men were diametric opposites in terms of personality and temperament, drawing distinctions between the two was easy. Where Clinton had been inconsistent and reactive, Bush was resolute and preemptive. Where Clinton opened up his presidency to influence by a number of interested parties, Bush closed his office to all but the closest advisers. Where Clinton cultivated close ties with old allies and potential new friends and searched for ways to act in coalitions, Bush defined friends by the single litmus test of whether "you are with us or against us in the war on terror" and had no problem acting unilaterally.

Competing with the extreme unilateralism and exceptionalism that characterized much of the Bush administration was, at least in the second term, President Bush's strong preoccupation over his legacy. In a seeming 180 degree turn, President Bush's September 2007 speech before the United Nations General Assembly eschewed unilateralism and called instead for "[e]very member of the United Nations [to] join in [a] mission of liberation."⁴³¹ Consistent with his administration's tenuous relationship to human rights instruments and institutions, however, President Bush still used the term reluctantly, preferring instead "liberty." He saluted, for example, the nations that had "recently taken strides toward liberty," mentioning by name Ukraine, Georgia, Krgyzstan, Mauritania, Liberia, Sierra Leone, and Morocco. At the same time, also consistent with his earlier treatment of the topic, he equated human rights with choice for democracy, praising the "brave citizens in Lebanon and Afghanistan and Iraq [who] have made the choice for democracy."⁴³² Upon analysis, the most astounding attribute of the talk was its explicit recognition of civil and political rights: "feeding the hungry has long been a special calling for my nation." Today, more than half the world's food assistance comes from America.

CONCLUSION

The United States views itself as the moral leader of the world, and yet, under both Republican and Democratic administrations, it has employed human rights selectively, condemning the human rights abuses of its enemies while overlooking those of its allies. Each administration has objected to scrutiny of its own domestic violations of international human rights standards, including capital punishment for juveniles,⁴³³ the use of shock restraints and other practices in U.S. prisons,⁴³⁴ and, more recently, the treatment of terrorist suspects.⁴³⁵ America continues to send more weapons and economic aid to oppressive governments around the globe than any other nation.⁴³⁶ And, by ratifying fewer than half of existing international human rights agreements, the United States remains an outsider to many key human rights processes.⁴³⁷

Each administration has used different rhetoric to frame its human rights policy—rhetoric that has influenced public perceptions of that administration's approach to human rights policy. Because each president has invented new buzz words in an effort to brand as unique his approach to human rights and U.S. foreign policy, the public perception has tended to focus on the differences of one administration from another, while failing to notice their similarities. Yet, upon careful examination, the differences between the presidencies are eclipsed by one overriding similarity: the belief in American exceptionalism, with the United States applying one standard of human rights to itself and another to the rest of the world.

Table 1 is a snapshot comparison of the post-Cold War presidencies. The rhetoric differs considerably from administration to administration, as does the style and approach. For example, the pragmatic, nondoctrinal President George H. W. Bush tolerated NGOs and worked with international institu-

TABLE 1

Snapshot Comparison of U.S. Presidencies and Human Rights, 1988–2007

| | George H. W. Bush | Bill Clinton | George W. Bush |
|---|--|---|--|
| Human Rights Buzz Words^a | New world order; Freedom; Human rights | Democratic enlargement; Human rights; Peace building | War on terror; Human dignity; American values; Freedom; Liberty |
| Characteristics of Policy | Pragmatic; Managerial; Nondoctrinal ^b | Shifting idealism; Rhetorical; Media/Public-opinion driven | Pragmatic; Doctrinal; Unilateral; Militarily driven |
| Attitude toward NGOs^c | Increasingly tolerant; Partner or combatant | Partnership; Source of expertise; Cheap service provider | Adjunct to U.S. policies or adversarial |
| Emphasis of Human Rights Policy | Electoral democracy; Market reforms | Linking economic and political reform | Electoral democracy; Market reforms |
| Strategies | Diplomacy; Institution building; Sanctions; Assistance conditionality | Institution building; Participation in international institutions; Delinking aid; Adding human rights in peace agreement | Institution building; Unilateral intervention |
| Guidance for Human Rights Strategies | Shared interests; Shared ideals; U.S. as leader of “civilized world” | International law; International institutions; Regional considerations | American values; Providence |
| Trump Card for Human Rights | National interests; Risk to U.S. military | National interests; Risk to U.S. military | National interests |
| Treaties | Signed Torture Convention; Ratified ICCPR | Signed Children’s Convention; International Criminal Court; ICESCR; ^d Ratified Race Convention | Unsigned International Criminal Court |

^a Other buzz words used for human rights policies include *rule of law* and *democracy*.

^b See United States Institute of Peace, “U.S. Human Rights Policy: A 20-Year Assessment,” June 16, 1999 (comments of Susan Bergman).

^c Refer to chapter 4 of this volume for more on NGOs.

^d ICESCR = International Covenant on Economic, Social, and Cultural Rights.

tions, while his more doctrinal son George W. Bush took a more adversarial and unilateral approach. The Clinton administration had the strongest rhetorical policy on human rights, literally opening its doors to human rights advocates and openly identifying human rights as a central foreign policy concern. President Clinton also had the greatest respect for international law and institutions, signing treaties, for example, which President George W. Bush proceeded to unsign or ignore. Another critical factor affecting the approaches of different presidents has been each one's chosen source of guidance on human rights norms. Both President Clinton and President George H. W. Bush were globalists in their approach; they both recognized the legitimacy of international law, though Clinton more enthusiastically tried to shape it. In contrast, George W. Bush looks not to international law for guidance on human rights but to the U.S. Constitution and to providence. At the same time, he relies on his authority as a self-proclaimed war president to augment his own power and to avoid congressional, judicial, and civil society oversight.

Despite these differences in philosophy and approach to human rights, each president's human rights policy has ultimately been driven by the common theme of American exceptionalism. In all administrations, national interests trump the consistent application of a single standard for human rights. Furthermore, despite rhetoric to the contrary, each president has acted as if the United States is first among states that are less than equal. Human rights are envisioned as something applied to *others* in line with U.S. national interests. Even the Clinton presidency, which had a strong self-identification as a human rights presidency, suffered from a disconnect between globalist rhetoric and nationalist action—a disconnect that did not go unrecognized by rest of the world. Moreover, when under pressure, Clinton abandoned his idealist rhetoric altogether, as did the other post-Cold War presidents.

In no presidency to date can we say that human rights norms have been pervasively or consistently embedded in thought and action. Human rights have to some extent become institutionalized, but they do not have an automatic influence over identities, interests, and expectations. Ultimately, although their record on specific human rights issues has varied, every American president since Carter has used human rights in an exceptionalist and unilateralist manner that serves to undermine the idea of human rights. In particular, by exempting the United States from scrutiny under human rights norms, the administrations have undercut the notion that human rights apply to all on an equal basis. To the extent that the United States perceives itself as a human rights role model, it is setting a bad example for others.

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- *Asian States*: Bahrain (2007), Bangladesh (2009), China (2009), India (2007), Indonesia (2007), Japan (2008), Jordan (2009), Malaysia (2009), Pakistan (2008), Philippines (2007), Republic of Korea (2008), Saudi Arabia (2009), and Sri Lanka (2008);
 - *Eastern European States*: Azerbaijan (2009), Czech Republic (2007), Poland (2007), Romania (2008), Russian Federation (2009), and Ukraine (2008);
 - *Latin American & Caribbean States*: Argentina (2007), Brazil (2008), Cuba (2009), Ecuador (2007), Guatemala (2008), Mexico (2009), Peru (2008), and Uruguay (2009);
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- A provision denying the right of non-U.S. citizens to file writs of habeas corpus in the federal courts to seek review of their detentions.
 - Wording narrowing applicability of the Geneva Conventions under U.S. law, stating “[n]o alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.”
 - Provisions of the Act that amend the War Crimes Act of 1996 and in so doing allow government officials who authorized or ordered acts of torture and abuse to be immune from criminal prosecution and liability (see Christopher B. Hynes, Carrie Newton Lyons, and Andrew Weber, “International Legal Developments in Review: Public International Law,” *International Lawyer* 41, no. 683 (summer 2007)).
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THE NEW MILITARY HUMANISM UNDER ATTACK: HUMAN RIGHTS AND THE U.S. ARMED FORCES

On May 1, 2003, President George W. Bush addressed the nation from aboard the USS *Abraham Lincoln*, concluding with remarks to the servicemen and servicewomen, in which he implored:

All of you—all in this generation of our military—have taken up the highest calling of history. You’re defending our country, and protecting the innocent from harm. And wherever you go, you carry a message of hope—a message that is ancient and ever new. In the words of the prophet Isaiah, “To the captives, ‘come out’—and to those in darkness, ‘be free.’”¹

As the commander in chief of the armed forces, President Bush had the job of defining the role of the military in promoting U.S. national security objectives. The objective of the U.S. military, Bush told the crew of the *Abraham Lincoln*, was to promote freedom, democracy, and other American values throughout the world.

Although the words were the same, the tone was much different four years later, when U.S. Army general David Petraeus addressed, by letter dated May 10, 2007, the military leadership at the Iraq Multi-National Force Headquarters. He opened his remarks by solemnly affirming: “Our values and laws governing warfare teach us to respect human dignity, maintain our integrity, and do what is right. Adherence to our values distinguishes us from our enemy.”² These words, when uttered in 2007, were delivered in a context fundamentally different from the upbeat “rallying the troops” atmosphere in which President Bush had spoken in 2003 after declaring an apparent victory in Iraq. The intervening four years had been marked by damaging public revelations: reports of detainee deaths in U.S. custody in Iraq and Afghanistan,³ indiscriminate and excessive use of force by U.S. troops in Afghanistan and Iraq,⁴ U.S. responsibility for enforced disappearances,⁵ the resistance of the United States to applying even the

most basic provisions of humanitarian law to its own conduct. Although the U.S. military was not responsible for all of these wrongs, the public image of the military had plummeted, and the participation of U.S. soldiers in atrocities in many of the serious abuses was undeniable.

General Petraeus was particularly concerned about the results of a study by a U.S. military medical team surveying the attitudes of soldiers serving in Iraq. That study, conducted in the fall of 2006 and released in May 2007, showed a disturbing acceptance of official cruelty by the soldiers. Fewer than half of those surveyed agreed that noncombatants should be treated with dignity and respect, and only 40 percent said that they would report a fellow soldier for injuring or killing an innocent civilian.⁶ The study also found that 36 percent of soldiers and 39 percent of Marines believe torture should be allowed as a tool to gather information about insurgents, and 17 percent said all noncombatants should be treated as insurgents.⁷ In his impassioned appeal to his fellow officers, General Petraeus urged that the U.S. armed forces “use the survey results to renew our commitment to the values and standards that make us who we are and to spur re-examination of these issues.”⁸

That top military brass were, like Petraeus, eager to distance themselves from the many allegations of human rights and humanitarian law violations threatening U.S. engagement abroad is highly significant. In the 1990s and early 2000s, the military forged ahead in the institutionalization of human rights norms, and in so doing it was, in many respects, more demonstrably receptive to the role of human rights in security than civilian policy makers. By putting the military in situations in which their allegiance to human rights is continually tested, the Bush administration’s “war on terror” has presented a considerable challenge to the armed force’s nascent relationship to human rights. The “war on terror” has rolled back years of internal military reform aimed at improving military training and influencing military culture and severely damaged the public perception of the U.S. military’s ability to act in line with human rights norms.

Critics of the notion of a “new military humanism” have long been skeptical of its very existence, contending that it was just another guise for America exerting its power.⁹ For them, the reports of the involvement of U.S. military troops in atrocities in Afghanistan and Iraq exposed the hypocrisy of “military humanism” and proved the validity of their thesis. This chapter agrees that President Bush has attempted to use the armed forces to advance his own agenda and that in so doing he has often run roughshod over fundamental principles of international law. At the same time, the chapter also recognizes that the torture and abuses of prisoners in U.S. custody, and other abuses committed by members of the armed forces and the U.S. intelligence community in Iraq and Afghanistan are evidence of a breakdown in command discipline that military leaders allowed and even encouraged.¹⁰ As Human Rights First has observed in its careful documentation of detainee deaths:

the failure to deal adequately with these cases has opened a serious accountability gap for the U.S. military and intelligence community, and has produced a

credibility gap for the United States—between policies the leadership says it respects on paper, and behavior it actually allows in practice.¹¹

This chapter explores the credibility gap by reviewing the efforts undertaken by the U.S. military to reshape itself as a human rights and humanitarian oriented organization, examining both policies on paper and behavior in the field that predate the Afghanistan and Iraq wars. It is the rapid erosion of these reforms in the “war on terror” that has undermined the credibility of the U.S. armed forces. The image of the U.S. military has been reduced to the ugly photos coming out of detention facilities of smiling thugs triumphantly displaying their brutally beaten prey. But this is not the organization recruits sign up to serve. Young people enlist in the U.S. military for many reasons, but top on the list for nearly all of them is promoting freedom and honor, not thuggery and deceit. This chapter explains how the disgraced public image of the U.S. military does not match its self-image and, in fact, diverges from its training goals and efforts in the field.

The chapter is divided into three main parts: (1) an examination of changes in military identity, with a focus on the demographic makeup and attempted acculturation of new recruits; (2) a recent survey of the ways in which human rights has changed recent military operations; and, (3) three areas of particularly rapid change where human rights concerns arise: U.S. efforts to train foreign forces, the phenomenon of U.S. military abdication of responsibility through private contracting, and the implications of greater utilization of advanced weaponry. Read as a whole, these developments present the picture of a deeply wounded U.S. military struggling to retain its self-image as a human rights respecting body.

CHANGES IN MILITARY IDENTITY

I signed up to fight the Cold War and for a while I did . . . but not any more. I fly aid in and fly wounded kids out . . . and there is nothing abnormal about this. I expect [that I will be called on to do this.]

—U.S. Air Force officer, 2000¹²

When I enlisted, the Cold War was over and it was all about peacekeeping. We talked about when we should be sent somewhere, when people needed us . . . I have to admit that I would not have signed up for the [National] Guard if I thought we would be in a war . . .

—Army, National Guard, 2004¹³

The U.S. military has long operated under the belief that American military power could be used for a moral purpose. Members of the armed services have always viewed themselves as “morality promoters” of one sort or another (i.e., guarding against the evils of communism in the ’70s and ’80s and terrorism in

the new millennium). What has changed is the manner in which this sense of identity has been deliberately linked to human rights norms. These changes have been far more pronounced in the military's identity than in civilian policy-making branches of government. This can be explained by the command structure of the military and its culture of obedience to lawful orders. Although soldiers and officers may resist change,¹⁴ the parameters in which they can exercise their disagreement is more circumscribed than in the civilian branch of government. In this atmosphere, it is no wonder that while civilian bureaucracies like the State Department are slow to change,¹⁵ change within the military can occur comparatively faster.¹⁶

Military training, unlike training for civilian jobs, focuses on creating a shared culture and on shaping individual and group identities. While each branch of the service has its own distinct identity, an order to change certain socialization rituals and operational practices may have a profound impact on cultural norms, as well as on individual and group identities and behaviors. "Cultural norms produce consistent patterns of behavior by becoming institutionalized in community rules and routines," as Theo Farrell and Terry Terriff (two leading scholars studying U.S. military culture) explain. "[O]nce institutionalized, norms are either taken for granted or enforced through powerful sanctions."¹⁷ Even elites who disbelieve their own rhetoric and use it only to manipulate others may contribute to cultural change. On the one hand, they may "stir up beliefs that are genuinely held by community members," and, on the other hand, "they may end up 'buying into' their own rhetoric."¹⁸ Political analyst Jack Synder has referred to this process as "blowback."¹⁹

In reflecting on changes in their organizations, the civilian employees and military officers gave extremely different responses when questioned for the purposes of the present study.²⁰ When asked how the shift from the Clinton administration to the George W. Bush administration affected their everyday life, career foreign service officers responded with comments such as "we are now told to write shorter memos"; "the garbage is picked up more regularly"; "the names of things have changed, but little else."²¹ Foreign service officers who were active in some manner in the administration of George H. Bush or in prior administrations pointed to changes outside the administration that had an impact on their jobs, such as post-Cold War power shifts, the Vienna Conference on Human Rights in 1993 and the growing international consensus on some human rights issues, and the enhanced interest of Congress in human rights.

In contrast, the U.S. military personnel response to the same question about how their day-to-day activities have changed in the last two or three presidential administrations was definitive: "dramatically"; "it's a whole new place"; and "once we were warriors, now we're feeding refugees."²² One lieutenant colonel explained:

I joined up to keep America safe from the Soviet Union. I was one of the guys who loaded the bomb every day, just in case we needed to use it. I believed in what I was doing. Man, I did that a long time. . . . Now there is no Soviet Union and we got all

these enemies that aren't states. Now, I'm told to protect America by keeping the peace.²³

When interviewed, military personnel focused on what they perceived to be changes *within* the military, pointing to the projected public image of the military and changes in military training and military culture. Certainly these changes derive not only from developments within the military but are also reflective of the interplay between outside pressures on the military as an institution and the culture from within the military. An exploration of these areas reveals the military's openness and overall acceptance of human rights rhetoric while simultaneously hinting at the limits, shortcomings, and inconsistencies in the integration of human rights in military interventions.

Who Are these People: Projected Image and Reality

Warfare today has new rules—and calls for a different type of Soldier—a new warrior. They need to be mentally superior and creative, highly trained and physically tough. They will work in diverse conditions, act as a diplomat, get the job done in hostile situations, and, at times, establish virtual citizenship in a foreign country for months . . . Right now, the Army is looking for dedicated men with the highest mental and physical capabilities to become An Army of One in the Special Forces.

—Army webpage²⁴

The webpage asking, “What is the US Army?” has an answer that could be from a corporate recruitment brochure, although the photo at the top of the page is of soldiers chatting while getting out of a helicopter:

It's having individual strength and the support of an unstoppable team. It's you at your best. With training, technology, and support, you will become stronger, smarter, and better prepared for the challenges you face. You will gain invaluable skills, experience, and the opportunity to use them while working in a challenging environment.²⁵

Those who concocted this advertising blitz hope to sell young people on the idea that by joining the military they can improve themselves and do some good in the world—promoting the military as a helping profession, in other words. To a great extent this message is getting through. The recruits of the past signed up to “get money for college,” but also to “to fight for America” and to prove their manhood—“show my father I could do it.”²⁶ In contrast, today's recruits, while still interested in serving America, are more professionally-minded.²⁷ They seek more than cash for college, including skills and experience that will enhance their career potential in the long-term while providing a “cool adventure”²⁸ in the short term.

Due to the changing nature and scope of military engagements and the different skills nontraditional missions demand from military personnel,

military recruiters have had to reorient their strategy. Charles Moskos, a leading military sociologist, has described the role of the military officer as shifting from combat leader to manager, technician, and most recently, to soldier-statesman and scholar.²⁹ Recruiters seek higher-quality prospects who might fill these roles.³⁰ While the quality of recruits may have improved, and the military has been successful overall at meeting its recruitment goals, doing so has not been cheap or easy. The 2000 General Accounting Office report stated “DOD is experiencing a recruiting challenge that has called for an extraordinary increase in the attention and the resources focused on this area.” The report continued, “From fiscal year 1993 through 1998, the army increased its number of recruiters from 4,368 to 6,331 and increased its advertising expenditures from \$34.3 million in FY 1993 to \$112.9 million in FY 1999 (in FY 2000 constant dollars).”³¹

In the era of an all-volunteer force, the face of the American military has had to change dramatically.³² While women had comprised only 2 percent of military personnel in the United States during the years of the Vietnam War, by 1998 women comprised 14 percent of uniformed U.S. military personnel.³³ Studies conducted by military researchers and independent academics have demonstrated that women perform well as soldiers and have a positive effect on unit cohesion.³⁴ Consequently, military policies incorporating women have incrementally become more inclusive.³⁵ Some researchers have suggested women soldiers have a particularly strong role to play in today’s humanitarian missions. As Kim Field and John Nagel note:

It appears that men are less willing to serve in these [humanitarian] roles than they were to serve in traditional combat roles during the Cold War, making it even more important that women fill a larger role in the post-Cold War military.³⁶

The military has also changed considerably with respect to racial diversity. At the lower ranks, the military is perhaps the most racially diverse institution in the entire country. A 2003 study found that Latinos and blacks comprised 32 percent of all military personnel.³⁷ Yet simultaneously, the racial balance (like the gender balance) is far from equilibrium in terms of critical leadership positions. Blacks and Latinos comprised only 12 percent of officer corps in 2003.³⁸ Demographics from 1999, more specifically, indicated that among the 55,000 active duty navy officers, only 15 percent are female, only 7 percent are black, and a mere 4.5 percent Latino. In the Air Force, out of 3,500 fighter pilots, fewer than 50 are women, and slightly more than 12 of 800 bomber pilots are women.³⁹ The military is not balanced in terms of class and ideology, either. Troops are generally low-income, from the South, and with Republican political inclinations.⁴⁰

These disparities help explain the disconnection between the governing leadership of the military and those under their command in acceptance of the “peacekeeping” image. While older soldiers prefer more traditional military operations, many younger soldiers view peacekeeping and other nontraditional operations, particularly disaster relief activities, as more desirable than

traditional war scenarios.⁴¹ At the same time, Captain Jane Dalton says, “These guys don’t want to be bored. They want to really feel like they are doing something.”⁴² Members of the new generation in the armed services are also more concerned with quality of life issues, and are moving away from self-identification as warriors.⁴³

Now, perhaps more than ever before, new military recruits enter with the expectation that they will not have to engage in unfair or unintended killing of civilians.⁴⁴ In one study, military personnel were enthusiastic about their peacekeeping duties in Bosnia, indicated by reenlistment rates that were 50 percent higher for those units assigned to Bosnia than they were for other units in Europe in early 1998.⁴⁵ As the military becomes increasingly more open to women and many members of minority groups,⁴⁶ so too does the military personnel’s support change on the whole toward favoring humanitarian missions.

Support for the “solider as peacekeeper” identity is particularly strong among younger, female, and minority soldiers. Studies have found that both black and female soldiers (and, in particular, black female soldiers) are more likely to support humanitarian missions than other soldiers. In Operation Restore Hope in Somalia in March 1993, U.S. Army personnel in these groups held more positive attitudes toward the performance of U.S. troops there—and for humanitarian missions generally—than did white male soldiers in combat specialties.⁴⁷

Reports also suggest stark differences in support for peacekeeping missions based on age. The generation born after 1982, dubbed the “Millennium Generation,” or simply the “Millennials,” has no knowledge of a peaceful world:

During their most formative years, Millennials witnessed the devastation of the federal building bombing in Oklahoma City. They watched in horror as two Columbine High School students killed and wounded their classmates, and as school shootings became a three-year trend. And their catalyzing generational event—the one that binds them as a generation, the catastrophic moment they all witnessed during their first, most formative years—is, of course, the terrorist attacks on Sept. 11, 2001.⁴⁸

Given all the bad times the Millennials have lived through, one might expect them to be dark and gloomy, but, on the contrary, they tend to be optimistic about joining in on effort to build a better society. As a February 2007 study of the U.S. Coast Guard Academy concluded, this generation “strives to break from the previous one (Generation X, 1961–1981), wants to correct what they perceived as problems with the current midlife generation (Baby Boomers, 1943–1960), and fill a social void left by the departing generation.”⁴⁹

Members of the Millennium Generation who join the military tend to have characteristics that are supportive of humanitarian work and other alternative missions. Their work ethic has been described by management consultants as:

- **Confident.** Raised by parents believing in the importance of self-esteem, they characteristically consider themselves ready to overcome challenges and leap tall buildings. . . .
- **Hopeful.** They're described as optimistic yet practical. They believe in the future and their role in it. . . .
- **Goal- and achievement-oriented.** Many Millennials arrive at their first day of work with personal goals on paper. . . .
- **Civic-minded.** They were taught to think in terms of the greater good. They have a high rate of volunteerism. They expect companies to contribute to their communities—and to operate in ways that create a sustainable environment.
- **Inclusive.** Millennials are used to being organized in teams—and to making certain no one is left behind. They expect to earn a living in a workplace that is fair to all, where diversity is the norm—and they'll use their collective power if they feel someone is treated unfairly.⁵⁰

The comprehensive study of Millennials by the U.S. Coast Guard Academy supported this characterization and urged the Academy to teach the profession of being an officer as a “unique blend of skill, expertise and personal integrity.”⁵¹

Given the profile of the new Millennials, it should come as no surprise that the newest recruits to the armed forces are among those most horrified by reports of U.S. soldiers committing torture and other abuses. Nor should it come as a surprise that all branches of the armed forces report greater difficulty in reaching their recruiting goals. At the end of 2005, for example, the active army fell 6,627 recruits short of its annual 80,000 goal, with many potential soldiers deterred by the negative publicity on the war in Iraq.⁵²

Training and Retraining the Warriors

The nature of the world has changed. It requires someone to do it [address gross human rights abuses]. We're the ones. We just have to get the men ready. We can do it. We always have.

—John Fishel, professor of national security affairs, Center for Hemispheric Defense Studies, National Defense University⁵³

Traditional military culture follows from the traditional functional purpose of the military, which is “to fight and win the nation’s wars.”⁵⁴ Recruits internalize this purpose:

Young officers are trained and developed in their war fighting roles from the outset. Through a series of unit assignments, lieutenants and captains are schooled in the “muddy boots” heritage: the knowledge that “soldiering” is a profession driven by technical expertise in the art of war, singleness of purpose, and enduring core values.⁵⁵

“Tradition, morale, esprit, discipline, unity, cohesion, integrity”⁵⁶—these are all asserted to be central military values. At the same time, recruits are

taught to accept highly centralized, hierarchical structures and to seek “linear organization, precision of definition, objective values, abstractive communication found in low contexts, and factual inductive or axiomatic inductive decision-making structures.”⁵⁷ Some observers point out that the armed forces are making increased efforts at infusing the warrior spirit into their service cultures.⁵⁸ The dominant belief at top military ranks is that “warfighting still determines the central beliefs, values, and complex symbolic formations that define military culture.”⁵⁹ Despite increased humanitarian and peacekeeping missions and the different attitudes necessary for such interventions, a warrior spirit is nonetheless the dominant ideological foundation of the military.

Commanding troops trained in war fighting in a peacekeeping or peace-making mission is recognized as a challenge in the new military. “We are trained to go after the bad guys, but in places like Bosnia, the bad guys kept shifting,” said one soldier. “It was totally demoralizing. . . . We didn’t know who we were supposed to whack . . .”⁶⁰ Another soldier who was part of Operation Deliberate Force in Bosnia recalled:

We were all pretty demoralized because we didn’t know why we were doing what we were doing. And then the boss comes in one day and says, “O.K. guys, we are bombing Serbs to the bargaining table.” Then we could operate with righteousness.⁶¹

U.S. soldiers conducting peacekeeping assignments in Kosovo also spoke of a need for a clear and necessary mission to be conveyed by commanders. “When I first got here, I wondered why are we guarding the [Serbian Orthodox] churches. But then [when a church went unguarded], they blew it up. . . . [Then] I knew that we’re here so these guys don’t destroy [each other].”⁶²

Traditional military culture has been thrown into question as a result of the military casting itself as a humanitarian actor and responding to humanitarian crises. As Sam Sarkesian writes: “The involvement of the U.S. military in humanitarian crises requires a mindset and operational doctrine contrary to the military’s traditional *raison d’être* and organizational system.”⁶³ Warriors and peacekeepers are almost diametrically opposed to one another when it comes to the three key operational variables in foreign interventions: neutrality, consent, and force.⁶⁴ Generally speaking, warriors choose sides, don’t ask for permission, and use force. Peacekeepers seek to remain neutral, seek consent, and refrain from using force.⁶⁵

Warriors and peacekeepers weigh mission success differently. Warriors are told that they win when they achieve their military objectives and defeat an enemy. In contrast, the goal of the peacekeeper is “to produce conditions which are conducive to peace and not to the destruction of an enemy.”⁶⁶ Success for peacekeepers rests in a more complicated assessment of factors, such as their ability to prevent violence, refrain from force, and garner trust from the local population. While the warriors’ goals tend to remain constant over time, the goals of peacekeepers are forever changing. As explained in the *Joint Task Force Commander’s Handbook for Peace Operations*, the

critical variables of peace operations are the level of consent, the level of force, and the degree of impartiality. . . . These variables are not constant and may individually or collectively shift over the course of an operation. Success in peace operations often hinges on the ability to exercise situational dominance with respect to the variables; failure is often the result of losing control of one or more of them.⁶⁷

Because of the tremendous cultural gaps between warrior and peacekeeper, soldiers indoctrinated only in the warrior tradition are usually ill-prepared to undertake peacekeeping roles.⁶⁸ To succeed in peacekeeping, Graham Day urges, the United States must develop a “new warrior ethos.”⁶⁹ As General Wesley Clark testified to Congress right after he was relieved as the supreme allied commander in Europe in 2001, “The Army needs to teach its junior officers to find honor in peacekeeping.”⁷⁰ As the *Joint Tactics, Techniques, and Procedures for Peace Operations* recognizes, though warfighting skills are still necessary, deploying members of a peace operations force requires skills in negotiation and mediation, as well as other “nonstandard” skills.⁷¹

The military’s shift to humanitarian tasks has prompted deep debate within the armed services over the traditional role versus nontraditional missions, often referred to as military operations other than war (MOOTW). Some fear that the nontraditional missions “may be chipping away at the [services’] sense of itself.”⁷² Charles Dunlap worries that “people in the military no longer considered themselves warriors. Instead, they perceive themselves as policemen, relief workers, educators, builders, health care providers, politicians—everything but war fighters.”⁷³ These roles may be better served by civilians, many soldiers and civilians argue.⁷⁴

The officers who oppose U.S. military involvement in humanitarian missions express two main concerns. First, they argue that the military is already overtaxed and thus unable to take on anything else. Indeed, a recent study from the Center for Strategic and International Studies painted a bleak picture of a “stressed and over-committed” institution plagued by low-morale problems.⁷⁵ According to the Pentagon’s Joint Vision 2020,⁷⁶ the U.S. military should be capable of conducting peacekeeping and humanitarian operations (the low end of the conflict spectrum), full-scale nuclear war (the high end), and everything in between. That document makes clear that dominance across the conflict spectrum means superiority in any military operation, at any time or place, and in more than one theater simultaneously, if necessary. This portends even busier days for the U.S. military ahead.

Second, many fear that forces not engaged in combat are compromised in their readiness.⁷⁷ They claim that operations such as “nation building, peacekeeping, peacemaking, humanitarian, counter drugs” are “a *major distraction* from the battle-focused training needed to fulfill the Army’s traditional war fighting role.”⁷⁸ General Maxwell R. Thurman, for example, testified that after completing peacekeeping missions, “soldiers have to go through an extensive training regime to regain the level of operational proficiency which they held at the outset of that duty.”⁷⁹

To help create a “new warrior ethos” more receptive to military operations other than war (MOOTW), the armed services have introduced new training requirements. At specific peacekeeping training centers, combat units engage in simulation activities to learn how to use their authority—but not deadly force—to monitor communal tensions and resolve inter-ethnic conflict.⁸⁰ They also study the history, culture, geography, politics, and economy of the region to which they deploy. In short, they learn “a constabulary ethic, which calls for both impartiality and minimal use of force.”⁸¹ The behavior taught in the peacekeeping training strongly emphasizes acting in accordance with the “law of war” statutes, and these in turn place significant emphasis on acting in accordance with human rights norms.

The army’s Officer Personnel Management System (OPMS), while “superficially unrelated to operations other than war,” in practice “is a system which formalizes and focuses on the non-combat functions of officers” by specifically rewarding performance in these areas.⁸² This change represents a “tremendous cultural shift.”⁸³ Peacekeeping trainers recognize that they are requiring soldiers to accept something that is out of synch with the lesson they have already assimilated: the need for overwhelming force to achieve decisive results. The problem, then, is “of changing required mindsets, desired automatic reactions and conditioned responses, with insufficient time and training for reorientation of the soldier who must accomplish the tasks. The required mental transition is significant.”⁸⁴ The military joint publication on peacekeeping, Joint Pub 3–07.3, *Doctrine for Joint Operations other than War*, explicitly admonishes officers to ready troops for transitions from one mindset to the other:

Planning for mission specific training should be part of the force’s predeployment activities. Before the peacekeeping mission, training is provided to transition the combat ready individual to one constrained in most, if not all, actions. At the conclusion of the peacekeeping mission, certain actions are necessary to return the individual to a combat-oriented mindset.⁸⁵

The goal of this specific training is not just to teach new soldiering skills, but to influence military culture—in the words of one former officer, “to make [the soldiers] able to think like peacekeepers.”⁸⁶ Only if they “begin to think more like peacekeepers” can soldiers trained as warriors effectively complete their missions. Experienced military personnel involved in assessing peace operations suggest that in order to develop the frame of mind for peace operations, commanders must be exposed to the mindset and attitudes behind peace operations upon their initial entry into military duty.⁸⁷ “When they begin to think differently, they can use the skills they already have to protect civilians,” one officer explained.

The “unique Peace Operations skills/tasks span every Army echelon.”⁸⁸ Military personnel must take courses in human rights as a standard part of their training. The imprint of human rights norms on U.S. Army behavior is also furthered by the extensive training that the army conducts in peacekeeping and related topics, such as civilian-military relations.⁸⁹ In recent years, the

implicit and explicit inclusion of human rights principles in routine training exercises has steadily increased.

The U.S. Army's peacekeeping institutes provide a good illustration of the military's changing valuation of the worth of training for non-warrior roles.⁹⁰ The Army War College's Peacekeeping Institute (PKI) was founded in 1993 to "enable the U.S. Army to better participate in peace operations and other complex humanitarian emergencies" through leadership development, officer training, interagency cooperation, creation of peacekeeping doctrine, and coordination with NGOs and multilateral institutions.⁹¹ The PKI was involved in planning, training, or deployment of soldiers in conflicts in Bosnia, Haiti, Rwanda/Zaire, Angola, and Peru/Ecuador.⁹² Although the PKI was officially closed in 2003, the PKI's recognition of the importance of incorporating human rights into training programs has continued under its replacement organization, the U.S. Army's Peacekeeping and Stability Operations Institute (PKSOI).⁹³

As with the many training programs, the attempt to break down the dichotomy between the warrior and peacekeeper is manifest in personnel promotion and recognition policies. Members of the armed forces believe that success in their organization necessarily entails a successful combat record. To address this concern, military personnel policies and structures have adapted in order to recognize, validate, and even reward the experiences of soldiers who undertake humanitarian missions.

Some of these developments have been quite public, such as offering retention bonuses and promotions in direct connection to the acceptance of peacekeeping posts. To take one illustration, General Montgomery Meigs, who commanded U.S. troops in Bosnia, was subsequently promoted to four-star status as commander of the U.S. Army in Europe.⁹⁴ According to former Pentagon spokesman Kenneth Bacon, "The importance and complexity of major peacekeeping operations today makes the officers who command them prime candidates for promotion."⁹⁵ If this indeed is the new policy, it represents a sizable shift in policy and practice. The vast majority of military interviewed for this book agreed that peacekeeping is a valued service and that "a new warrior ethos" was indeed emerging. Still, they felt that opportunities for promotion would be limited unless peacekeeping was accompanied by more forms of traditional service. This kind of failure to fully value nontraditional military actions demonstrates the incomplete nature of the inculcation of human rights into the U.S. military.

THE CHANGING NATURE OF U.S. MILITARY INTERVENTIONS

What's the point of having this superb military if we can't use it?

—Madeleine Albright to Colin Powell (then chairman of the Joint Chiefs of Staff)⁹⁶

While the U.S. military was involved in humanitarian activities well before the 1990s, the level of commitment to such missions increased throughout the

1990s.⁹⁷ The demand for U.S. peacekeeping has mounted over time as violent conflicts have continued to erupt both intra-state (i.e., civil conflict between two warring groups) and trans-state (i.e., terrorism or other threats to security) and the U.S. military has remained the strongest force with a track record of willingness to intervene. When the United States has intervened, the operations have been ever more complex as more actors were involved in a broader mandate in the peace-building process, and more difficult to resolve as the root causes of conflicts have still remained unaddressed. Recent military campaigns reveal that human rights concerns have served as a justification for facilitating violence, rather than as an obstacle to violence.⁹⁸

Somalia

Operation Restore Hope in Somalia (1992–93) has been described as the first and perhaps only “true case of humanitarian intervention.” The country was in the midst of a civil war, a drought and food shortage causing the deaths of nearly a thousand Somalis each week, and a refugee exodus of 1,000 people per day. “Somalia was a real turning point,” says George Ward, the former ambassador to Nigeria (1996–99) and coordinator for humanitarian assistance in the Office of Reconstruction and Humanitarian Assistance in Iraq (appointed in 2003). “Somalia made people realize that when human rights reached a certain level, some kind of intervention was inevitable. There was an outcry among informed elites—people who knew what was going on—to do something.”⁹⁹ The express purpose of Operation Restore Hope was to support the United Nations in providing a secure environment for the safe delivery of humanitarian supplies to vulnerable populations.¹⁰⁰ The U.S. military escorted relief convoys carrying 100,000 metric tons of food, repaired and improved over 1,000 miles of roads, dug wells and repaired airfields, opened the ports of Mogadishu and Kismayu, and assisted humanitarian NGOs with technical assistance and supplies.¹⁰¹

The failure to act early on as the Somalia situation developed was in the public spotlight particularly because George H.W. Bush was in the midst of a reelection campaign against Bill Clinton. The issue of intervention in the situation was a key point of confrontation in debates and media questions. The announcement of Operation Restore Hope in Somalia came on the eve of the Republican National Convention, when Bush was behind in the polls.¹⁰² As Bush was leaving office, he was redoubling his efforts to ameliorate the conditions for the Somalis, calling a four-day long meeting of the Deputies Committee during his lame-duck time as president.

The human rights situation in Somalia was critical before the United States and the United Nations became involved. Only through the reluctant lead of the Pentagon did America decide to intervene. David Jeremiah, Powell’s top assistant, stated in a high level meeting with President Bush: “If you think U.S. forces are needed, we can do the job.”¹⁰³ Halberstam attributes this statement of willingness to intervene to internal Pentagon politics, which perceived an intervention in Somalia as a means of avoiding entering the Bosnian conflict, a

complicated knot of tension. Further, the Pentagon's readiness to intervene in Somalia came at a time when there was a perceived need for the military to take on a humanitarian intervention mission somewhere.¹⁰⁴ The Pentagon issued an official mission statement for Somalia that underscored the fact that the purpose of the intervention was to provide humanitarian aid.¹⁰⁵ At the same time, Defense Secretary Dick Cheney told a CNN audience that "[t]he mission is very clear indeed, it's a humanitarian mission."¹⁰⁶ Cheney acknowledged that the U.S. role in Somalia could establish a "useful precedent" and suggested that the Pentagon would be open to similar requests in the future.¹⁰⁷ On the ground, Field Commander Robert Johnston explained that the deployment of his Marines would be strictly humanitarian and that his "soldiers would use only whatever force was necessary to protect themselves and food convoys."¹⁰⁸

Adding further support for the mission, Colin Powell, then chairman of the Joint Chiefs of Staff, authored an article for *Foreign Affairs* justifying U.S. intervention in Somalia on humanitarian grounds.¹⁰⁹ He asserted that the U.S. forces in Somalia would be a "helpful, supportive, humanitarian army that will take care of human needs."¹¹⁰ Powell stated what the Pentagon was willing to do for the 1.5 million Somalis facing starvation: "If there are those who look to us for sustenance and medical care and dental care and protection, that is something we are prepared to do and are willing to do as part of our mission."¹¹¹ In saying this, Powell was supporting a new role for the United States military, as willing provider to foreign nations desperate need of assistance. Powell had earlier enunciated his doctrine of—as Chip Carey says—"certain victory cum superior power cum national interests cum U.S. public support."¹¹² Powell summarizes his doctrine this way: "[I]s the national interest at stake? If the answer is yes, go in, and go in to win. Otherwise, stay out."¹¹³ Powell would somehow have to justify humanitarian actions under these criteria.¹¹⁴

Operation Restore Hope proved the main limiting principle that the Powell doctrine implicitly placed on humanitarian missions: military casualties must be kept to a minimum. Throughout the summer of 1993, attempts to oust Aidid continued and several foreign journalists and U.S. troops were killed in attacks by Somalis. Officials in Washington became aware of the vulnerability of American troops, and some officials in the new Clinton administration began to argue that the risk was too great for the troops. The Pentagon asserted, as they had all along, that the U.S. public and U.S. Congress would not tolerate high numbers (or, for that matter, any number) of casualties among U.S. soldiers unless the mission was absolutely vital to U.S. interests.¹¹⁵ Zbigniew Brzezinski, the political scientist who served as national security adviser to President Jimmy Carter from 1977 to 1981, decried this development as "a new technological racism" based on the premise that the life of "one American service-man is not worth risking in order to save the lives of thousands."¹¹⁶ Secretary of State Madeleine Albright wrote in a *New York Times* article in August of 1993 that:

The decision we must make is whether to pull up stakes and allow Somalia to fall back into the abyss or to stay the course and help lift the country and its

people from the category of a failed state into that of an emerging democracy. For Somalia's sake, and our own, we must persevere.¹¹⁷

The disaster that everyone feared took place on October 3, 1993, when eighteen U.S. soldiers and approximately a thousand Somalis died in a Black Hawk air attack on General Aidid's compound. U.S. officials immediately called for the withdrawal of troops. After the well-intentioned humanitarian intervention in Somalia turned into a highly publicized blood bath and an ineffective coup attempt against Aidid, protecting human rights plummeted as a national priority in the United States. Certainly, the UN shared the blame for the disaster in Somalia for many reasons. Karin von Hippel, political affairs officer to the UN secretary-general for Somalia, identified some of them: poor coordination; overconcentration in Mogadishu at the expense of the rest of the country; the special representative of the secretary-general of UNOSOM II (Jonathan Howe) offering a \$25,000 reward for Aidid's capture, dead or alive; the ramifications of mutual antipathy between Boutros Boutros-Ghali, then secretary-general of the United Nations, and General Aidid; and the frequent change of the person acting as the special representative of the secretary-general and of the humanitarian coordinators. The American public, however, did not continue to support humanitarian intervention in a reformed UN. Instead, it withdrew support for humanitarian missions altogether. While arguably still a component of American "national interests," it appeared that humanitarian missions and upholding human rights in other countries through military actions would be undertaken only in cases that presented minimal risk to American soldiers.

The "trauma of Somalia shook Washington and affected decisively the formulation of policy on peace operations," remembers Ambassador George Ward, then principal deputy of state for International Affairs and Organizations Affairs.¹¹⁸ In May 1994, after a year of study, President Clinton issued Presidential Directive 25 ("PDD-25") which set strict criteria for engagement of U.S. military personnel: (1) there must be minimal risk to U.S. combatants; (2) there must be an identifiable interest at stake; (3) the mission must be clearly defined in size, scope, and duration; (4) there must be sufficient resources and political will to carry out the mission; and (5) there must be an identifiable "exit strategy" for the United States.¹¹⁹ The terms of PDD-25, however, "did not dictate the outcome of any policy discussion on the wisdom of U.S. involvement." As Eric Schwartz, a former member of the National Security Council during the Clinton administration, points out, PDD-25 "established guidelines to inform decision-making, but left to decision-makers the key responsibility of weighing the various factors in determining the appropriate government response."¹²⁰

The Clinton peacekeeping policy favored the use of NATO for peacekeeping (over the United Nations), and specified that to the extent the United States would participate, U.S. forces would remain under the command and control of U.S. officers. The chain of command for other forces, however, would run through the United Nations. In response to the debacle in Somalia,

the U.S. Congress added its own restrictions to the deployment of U.S. forces in peace operations. It required the administration to “report monthly in detail to all commitments of American forces.”¹²¹ Furthermore, Congress mandated that it be shown the text of any Security Council resolution authorizing a peace operation before the U.S. permanent representative to the United Nations votes on it.¹²²

Rwanda

The 1990s presented numerous other opportunities for engagement in low-risk humanitarian missions, and the U.S. approached each one with great caution. Thus, in Operation Support Hope in Rwanda/Zaire (1994), the U.S. military provided humanitarian assistance to refugees fleeing genocide, including delivering aid supplies, training soldiers in civil/military relations, and conducting demining operations. The intervention came only after the genocide,¹²³ but the U.S., still reeling from the painful lessons of Somalia, was unwilling to intervene earlier.¹²⁴ “We told the administration that the information coming out of Rwanda put it clearly under the Genocide Convention,” said one State Department lawyer, “but they didn’t like that because calling it genocide would mean the U.S. was obligated to act. They told us to come up with a way of describing what was happening without calling it genocide.” The original formulation was “acts of genocide” and initial resistance to the intervention placed the issue at a whisper-level among U.S. decision makers.¹²⁵ It took President Clinton until the end of his term to publicly call the systematic killings in Rwanda genocide.¹²⁶

Critics of the effort in Rwanda point to the great extent that the operation undermined international cooperation. Human rights advocates criticized Clinton for failing to respond to early signs of impending violence and then for failing to put forth a plan to quell the violence once it began, citing the perceived lack of national interest and pressure as the culprit. Only as the death toll soared and pressure mounted was Clinton moved to respond.¹²⁷ When Operation Support Hope finally did enter Rwanda on its humanitarian mission, over two thousand military personnel were involved.¹²⁸ This intervention illustrates American’s willingness to use the military to support human rights norms even when there were no “vital” interests at stake—but only under the condition that the intervention poses no significant risk to American soldiers.

Haiti

One international quagmire that Clinton inherited from George Bush, Sr., was the crisis in Haiti. Haiti provided a different test for American’s view of itself and its military moral actors. Three years earlier, after a coup had ousted Jean-Bertrand Aristide, the Bush administration imposed economic sanctions. The sanctions were having no discernible positive impact on the new regime, and were harming the poorest civilians and causing a humanitarian crisis that sent Haitians fleeing for the United States. Despite his campaign speeches

condemning Bush's policy of interdicting the boats and summarily sending the civilians back,¹²⁹ Clinton reinstated it shortly after assuming office.¹³⁰ The new Clinton policy stated that these Haitians were economic migrants, and thus, the United States had no legal obligation to them and could return them at will.¹³¹

The backlash to the policy regression was fierce as religious groups, human rights organizations, the Congressional Black Caucus, and other Haitian and African-American leaders cried foul.¹³² One foreign policy scholar noted, "attempting to extend democracy through trade embargoes violates two fundamental norms of the society of states—the prohibitions against intervention in the internal affairs of states and against doing harm to the innocent."¹³³ Due to growing domestic and foreign pressure and condemnation, Clinton modified this policy several times and ultimately launched the first U.S. military intervention into a Latin American country to restore democracy, Operation Uphold Democracy in Haiti (1994), an act that raised a new set of human rights concerns.¹³⁴

American military involvement was only contemplated after Haitian refugees began streaming onto U.S. soil. The United States made an attempt at addressing the matter in the long negotiations of the Governors Island Agreement in October 1993, which failed and led to more violence against Aristide supporters and more U.S. and UN economic sanctions.¹³⁵ Another early U.S. humiliation was the incident on October 11, 1993 (only one week after the Black Hawk incident in Somalia), when President Clinton sent two hundred American troops to Haiti. The troops on the deck of the USS *Harlan County* were met at shore by a jeering, hostile crowd, where many people were heard shouting "Somalia! Somalia!" The boat waited off shore and turned back home the next day.¹³⁶ The embarrassment hurt the Clinton administration, and the issue was tabled for a whole year to let the situation cool.

As military planners debated the rules of engagement once they were on the ground in Haiti, the role of human rights norms emerged more clearly. In September 1994, with U.S. troops watching nearby, Haitian military authorities committed human rights abuses against a group of Haitians who were engaging in pro-United States demonstrations. As a result, General John Shalikashvili publicly ordered that U.S. troops "may be authorized to intervene by the senior U.S. commander on the scene" if they witnessed "grave abuses that threaten the life of the victim."¹³⁷ Over one thousand U.S. military police were deployed and instructed for the first time that they were to use force to protect Haitian citizens from Haitian police.¹³⁸

Most analyses of the event do not attribute much, if any, credit for the success, to the Pentagon, and Clinton's actions were generally reluctant towards actions in Haiti:

In the end, it seems clear that without the ongoing refugee issue and the pressure from the Congressional Black Caucus, Clinton would not have initiated an armed intervention that was opposed by the vast majority of Congressmen and the general public.¹³⁹

Ultimately, the military actions in Haiti were successful at temporarily relieving the human rights situation and in re-instituting Aristide to governance in the country.¹⁴⁰ As with the previous recent cases of U.S. military engagement, the intervention in Haiti was uneven, untimely, and subject to the constraint of U.S. force protection, meaning that few or no U.S. casualties would be tolerated.¹⁴¹

The Balkans

President Clinton also inherited the Balkan wars from President Bush. Clinton's strategy was always to pursue a diplomatic solution over a military one. In the debates over whether and how intervention should proceed in Bosnia in 1995, Pentagon resistance successfully limited the involvement of U.S. troops to such matters as behind-the-scenes training of local troops and policing the no-flight zone over Bosnia-Herzegovina. It took the massacre of more than 7,500 Bosniac men in Srebrenica on July 12, 1995,¹⁴² for the United States to engage in airstrikes against Bosnian Serb targets. Then, once the bombing began, the Pentagon did everything it could to bring U.S. troops home quickly. In his book, Richard Holbrooke explains that "the military did not like to put their pilots at risk in pursuit of a limited political objective, hence their desire to end the bombing as soon as possible."¹⁴³

Only after negotiations in Dayton promised to bring an end to the war did President Clinton commit to a sizable U.S. presence in Bosnia. As part of the Dayton Peace Accord, he agreed to some twenty thousand U.S. troops in the NATO Implementation Force in Bosnia-Herzegovina.¹⁴⁴ Their role, however, was limited. The Pentagon obstructed Holbrooke's attempts to make the disarmament of assault weapons an obligatory, rather than optional, part of the Dayton Accords.¹⁴⁵ Thus, without a firmer mandate, U.S. peacekeeping troops rarely attempted to forcibly disarm paramilitary forces. Shalikhvili, now chairman of the Joint Chiefs of Staff, told a television audience, "Our terms of engagement do not require police actions or to find arms in homes or clandestine locations."¹⁴⁶

Kosovo Albanians had been watching the Bosnian peace process from the sidelines, having been excluded from the Dayton negotiation process despite their demands for a regional solution. Many Kosovo Albanians grew impatient with their campaign of "passive resistance" to Serb aggression and instead supported a new tactic of more aggressive and armed resistance, with the Kosova Liberation Army (KLA) emerging as the vanguard by the end of 1997. In the hot spring of 1998, fifty-one members of an Albanian family were killed by Serb forces in retaliation for KLA provocation. U.S. secretary of state Madeleine Albright immediately condemned the attacks, warning, "We are not going to stand by and watch Serbian authorities do in Kosovo what they can no longer get away with in Bosnia."¹⁴⁷

In June 1998, NATO staged practice bombing raids in Albania and Macedonia in attempt to threaten Milosevic to back down. Milosevic called NATO's bluff. In the summer of 1998, Serb forces began a scorched earth

policy of destroying whole villages.¹⁴⁸ Up to 300,000 people were displaced from their homes in this stage of the conflict.¹⁴⁹

In October 1998, U.S. special envoy Richard Holbrooke negotiated an agreement with Serbian president Slobodan Milosevic to decrease Serb forces in Kosovo and to allow two thousand unarmed “verifiers” into the territory under the control of the OSCE (Organisation for Security and Cooperation in Europe). The United Nations Security Council issued a resolution “welcoming” the October agreement and “demand[ing] immediate action from the authorities of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership to cooperate with international efforts to improve the humanitarian situation and to avert the impending humanitarian catastrophe.”¹⁵⁰ The verifiers were deployed, but Milosevic reneged on his agreement to reduce his forces in Kosovo. Despite the presence of the international verifiers, sporadic fighting continued.¹⁵¹

The turning point for many U.S. diplomats was when, in January 1999, Serb forces killed forty-one civilians in the Kosovo village of Racak.¹⁵² Over the attempts of Serb authorities to block international war crimes investigators from entering Serbia, international forensic efforts managed to investigate the incident. They found that the dead were indeed civilians, not KLA troops as claimed by Serbian officials. The KLA retaliated and the fighting escalated.

In March 1999, a group of nations—“the Contact group” (the United States, Britain, France, Germany, Italy, and Russia)—brought Kosovar and Serbian negotiators together in Rambouillet, France. The message was clear: sign or be bombed. All international verifiers were pulled out of Kosovo in preparation for the threatened bombing. Meanwhile, Serb forces and heavy weapons flooded into Kosovo. U.S. special envoy Richard Holbrooke continued to meet with Milosevic, but the Serbian leader refused to sign the Rambouillet agreement. On March 23, 1999, Operation Allied Force in Kosovo commenced as NATO war planes began military air operations and missile strikes against targets in Serbia proper, Montenegro, and Kosovo.

The Clinton administration considered but refused to base its actions in Kosovo solely on humanitarian grounds. Instead, the Clinton administration, like other international leaders who have intervened in nation-states in the past,¹⁵³ offered an array of justifications. Although humanitarian concerns were included “because we care about saving innocent lives,”¹⁵⁴ they were rolled together with other factors, most prominently: (1) the need for regional stabilization, or in Clinton’s words, “because our children need and deserve a peaceful, stable, free Europe”;¹⁵⁵ (2) national security concerns relating to a long war and a large refugee flow, “because we have an interest in avoiding an even crueler and costlier war”;¹⁵⁶ and (3) the need to protect NATO’s reputation, because looking the other way “would discredit NATO, the cornerstone on which our security has rested for 50 years.”¹⁵⁷ As Clinton explained these factors to the nation in his first public address on NATO intervention in Kosovo, he emphasized America’s economic and security concerns, not humanitarianism:

[I]f America is going to be prosperous and secure, we need a Europe that is prosperous, secure undivided and free. . . . That is why I have supported the political and economic unification of Europe. That is why we brought Poland, Hungary and the Czech Republic into NATO, and redefined its missions . . .¹⁵⁸

One Clinton staffer who helped craft the “mutually reinforcing factors for intervention” in Kosovo explained that the president was deliberately vague. “We tried to make sure that any [intervention] decision was as narrow as possible. We did not want to establish a new doctrine.”¹⁵⁹ The idea, said another Clinton staffer, was to craft such a long and specific list of reasons for the intervention that no case in the future could possibly meet the criteria.¹⁶⁰ The public, however, heard the human rights justification loud and clear.¹⁶¹ Although human rights were one set of concerns out of many motivating the U.S. military action in Kosovo, they were prominent in the rhetoric surrounding both the initial decision to become involved¹⁶² and the decision to stay on as peacekeepers afterward.¹⁶³

After the strikes began, Defense Secretary William Cohen and chairman of the Joint Chiefs of Staff General Hugh Shelton appeared on the major television networks to justify the military action in human rights terms.¹⁶⁴ During the Kosovo bombing, military spokespersons similarly went out of their way to stress that they were doing all they could to limit injury to civilians, and thus to stay within the bounds of international humanitarian law. After the Kosovo bombing campaign ended, Cohen justified the action by reference to the humanitarian crisis: “Standing on the sidelines . . . as a witness to the unspeakable horror that was about to take place, that would in fact affect the peace and stability of NATO countries, was simply unacceptable.”¹⁶⁵ He added:

This was a fight over values. It’s a fight against ethnic and religious hatred, lack of tolerance for others, and the right to live in peace. The United States and NATO used force as a last resort and only after Milosevic refused to respond to diplomatic initiatives.¹⁶⁶

Secretary of State Madeleine Albright similarly championed human rights as the major motivator of intervention: “Developing a real democracy in the Federal Republic of Yugoslavia is crucial. And America has a fundamental interest in seeing the rule of law upheld, human rights protected and justice done.”¹⁶⁷ In Clinton’s speech announcing the beginnings of bombing in Kosovo, the primary justifications he cited were protecting innocent lives, avoiding an even crueler and costlier war on NATO’s doorstep, and for the peace and stability of a free Europe.¹⁶⁸ Significant evidence exists, however, that the United States was also thinking about protecting its investment in Bosnia.¹⁶⁹

The Pentagon was initially reluctant to intervene to protect ethnic Albanians from Serb oppression.¹⁷⁰ Pentagon officials argued that intervention was not in America’s “vital” interests because, unlike Bosnia five years earlier, these developments were occurring within Serbia’s sovereign borders and did not threaten NATO stability.¹⁷¹ They also doubted the efficacy of airstrikes in

achieving U.S. political objectives.¹⁷² Although not successful in preventing the war entirely, the Pentagon was successful in convincing Clinton to refrain from any use of ground troops.¹⁷³ During the Kosovo bombing, military spokespersons likewise stressed that they were doing all they could to limit injury to civilians, and thus to stay within the bounds of international humanitarian law.¹⁷⁴

The Kosovo campaign gave shape to what military commentators have identified as the Clinton Doctrine on intervention: “morals and values as much as geopolitics play a key role [in decision making surrounding intervention].” David Jablonsky asserts that in the Kosovo campaign “every cruise missile and bomb in that conflict [was] aimed not only at destroying the Serbian national will, but also at demolishing the idea that leaders could commit criminal acts so long as they acted in their country.”¹⁷⁵ At the conclusion of the Kosovo bombing, President Clinton, appearing before victorious NATO troops in Macedonia, announced that the universal condemnation of gross human rights abuses would be applied in the future “whether within or beyond” the borders of a state.¹⁷⁶

Afghanistan

Human rights was used as carrot and then as a justification for using sticks in Afghanistan. Just prior to the beginning of operations in Afghanistan, Powell held open the possibility of the Taliban receiving humanitarian aid if they handed over bin Laden.¹⁷⁷ The White House expressed a deep interest in the human rights of women and children as it commenced bombing, purportedly in their name. “As we strike military targets, we’ll also drop food, medicine and supplies to the starving and suffering men and women and children of Afghanistan.”¹⁷⁸ Washington promised to create “[a]n Afghanistan that is prosperous, democratic, self-governing, market-friendly, and respectful of human rights.”¹⁷⁹

As the bombing in Afghanistan began, General Richard Myers, the chairman of the Joint Chiefs of Staff, invoked humanitarian concerns, declaring that “these efforts are designed to disrupt and destroy terrorist activities in Afghanistan and to set the conditions for future military action as well as to bring much-needed food and medical need to the people of Afghanistan.”¹⁸⁰ The campaign was trumpeted as evidence that “pinpoint airpower had come of age.”¹⁸¹ Responding to criticisms over civilian deaths from the U.S. bombing, Defense Secretary Rumsfeld suggested that any harm done to civilians was more than outweighed by the harm committed by the Taliban against its own people, which he described in humanitarian terms:

On the other hand, if you think of what the Taliban have done, they have not only killed several thousand people in the United States. What they have done to the people of Afghanistan is a tragedy. The people are starving. They have killed any number of people. . . . It is truly a tragedy. And our hope is that it can end soon and that the Afghan people can be cared for and assisted. It’s not an accident that the

United States of America gave something like \$170 million for food assistance to Afghanistan well before September 11th. We do care about the people of that country.¹⁸²

In a speech shortly after the attacks and food drops began, the U.S. under-secretary of state for global affairs Paula Dobriansky explained the policy in human rights terms, urging that “[c]ompassion is an integral component of President George W. Bush’s foreign policy, and it motivates America, even in these trying times, to continue to lead the international effort to provide humanitarian relief to those most vulnerable.” She credited the policy of feeding the hungry with advancing U.S. interests:

The provision of food and medical supplies will reduce illness and mortality. Stabilizing the situation and facilitating a return to normal life will create the conditions under which longer-term development problems can at last be addressed. That process will remove openings that extremist groups otherwise would exploit. So humanitarian assistance to Afghanistan also serves as a vital tool in our overall fight against terrorism.¹⁸³

The air drops of food in Afghanistan were criticized on a number of grounds. They were widely viewed as merely symbolic and therefore making little progress toward feeding an estimated 7.5 million hungry Afghans.¹⁸⁴ A related concern was that the U.S. operation was damaging the effectiveness of humanitarian aid delivery in Afghanistan while jeopardizing future relief efforts. The president of *Médicins Sans Frontières*, Morton Rostrop, charged:

Those food drops are a superficial and misleading gesture. Decisions on humanitarian intervention should be based on needs alone, independent of military or political objectives. Otherwise those Afghans in greatest need of food and medical assistance will go without. If the military is involved in delivering humanitarian assistance, the aid can be regarded by opponents as an act of war. If humanitarian action is seen as partisan, aid and aid workers can be denied access to people in need.¹⁸⁵

When the color of the air-dropped food packs—yellow—was discovered to lure Afghans toward canisters of unexploded bomblets from cluster bombs—also, tragically, yellow—the human rights advocates and the press howled. Human Rights Watch demanded a halt to the use of cluster bombs altogether, claiming “They have proven to be a serious and long-lasting threat to civilians, soldiers, peacekeepers and even clearance experts.”¹⁸⁶ While the Joint Chiefs of Staff chairman General Richard Myers quickly acknowledged the potential for human disaster—“Unfortunately, they get used to running to yellow”—both he and Defense Secretary Rumsfeld said they had no intention of halting the use of cluster bombs due to their military importance in attacking masses of troops. As a conciliatory measure, they pledged to change the color from yellow to blue.¹⁸⁷ Using the military for humanitarian goals was harder than anyone first imagined.

Iraq

With respect to Iraq, the Bush administration also used the human rights card as it suited U.S. objectives. Before the war there began, he framed the conflict in human rights terms, attesting:

America believes that all people are entitled to hope and human rights, to the non-negotiable demands of human dignity. People everywhere prefer freedom to slavery; prosperity to squalor; self-government to the rule of terror and torture. America is a friend to the people of Iraq. Our demands are directed only at the regime that enslaves them and threatens us. When these demands are met, the first and greatest benefit will come to Iraqi men, women and children. The oppression of Kurds, Assyrians, Turkomans, Shi'a, Sunnis and others will be lifted. The long captivity of Iraq will end, and an era of new hope will begin.¹⁸⁸

When the bombing in Iraq began, the main justification for the bombing was the existence of weapons of mass destruction.¹⁸⁹ When no weapons of mass destruction were found, emphasis was placed on both the “freedom” given to Iraq and the oppression of the Iraqi people under Saddam Hussein’s leadership. “Every day Iraqis are moving toward democracy and embracing the responsibilities of active citizenship,” Bush proclaimed. “Every day life in Iraq improves as coalition troops work to secure unsafe areas and bring food and medical care to those in need. America pledged to rid Iraq of an oppressive regime, and we kept our word.”¹⁹⁰

Through the war in Iraq, the U.S. armed forces have reconstituted and reaffirmed their role as the defensive and offensive institution of the country, trained to kill in order to protect. Their official role as peacekeepers has diminished significantly given the Bush administration’s unilateral stance against international peacekeeping operations. Nevertheless, in the bid to win wars, the army has found itself involved in roles that approach the definition of peacekeeping and peace building.¹⁹¹ At the outset of the war in Afghanistan, the White House announced that U.S. troops would not take part in the peacekeeping mission, but would provide logistical support.¹⁹² The boundaries of “logistical support,” however, can be quite expansive. In particular, in both Afghanistan and Iraq, the U.S. military has been involved in the leadership and operation of peacebuilding efforts through endeavors known as Provincial Reconstruction Teams (PRTs). In Iraq, PRTs are joint military-civilian operations. In Afghanistan, American PRTs—unlike those in Iraq—are commanded by an Army lieutenant colonel and composed entirely of military personnel with the exception of a single representative each from the State Department, USAID, and the Department of Agriculture. As Robert Perito, a senior program officer for the Center for Post-Conflict Peace and Stability Operations at the United States Institute of Peace, explains:

Each PRT has two Army civil affairs teams of four soldiers each. One team was responsible for building small, quick impact development projects using local contractors; the other for the running of the PRT’s civil military operations center

(CMOC) that coordinates activities with the UN and NGOs. Force protection is provided by a U.S. Army National Guard platoon.¹⁹³

The U.S. model in Iraq, in contrast, features a complement of seventy-nine American military and three civilian government representatives. PRTs in both Afghanistan and Iraq are characterized by an emphasis on flexibility, a proliferation of national models, and an ad hoc approach to security and development.¹⁹⁴ PRTs stress governance, force protection, and quick impact development projects to “win hearts and minds.”¹⁹⁵ On January 10, 2007, President Bush announced an expansion of the PRT program to help accelerate Iraq’s “transition to self-reliance.”¹⁹⁶

The nontraditional roles undertaken by the U.S. military in Iraq have been accompanied by U.S. soldiers taking on new responsibilities on the home front. Under the banner of Homeland Security the U.S. military has expanded its operations within the domestic sphere significantly. In June 2005, the Department of Defense unveiled plans for a “Strategy for Homeland Defense and Civil Support,”¹⁹⁷ which “fundamentally change[s] the Department’s approach to homeland defense in an historic and important way.”¹⁹⁸ While the military has traditionally secured the United States by projecting power overseas, the new strategy calls on the military to also contribute to “an active and layered defense that is designed to defeat the most dangerous challenges quickly and at a distance.”¹⁹⁹

In addition to playing a supportive role for civilian authorities under the auspices of the Department of Homeland Security in the area of domestic preparedness for crisis situations, the army also has a leading military role in nonproliferation and counterproliferation activities, preparedness activities such as training first responders, and providing support to consequence management.²⁰⁰ On the home front, the army is not only expected to play the leading military role in border and coastal defense and continuity of government, but is also expected to provide other services such as emergency first aid, food, shelter, communications, clothing, and security.²⁰¹ These kinds of new demands on the U.S. armed forces further guarantees that, despite a renewed engagement in traditional war fights, nontraditional military operations will continue to be important.

AREAS OF RAPID CHANGE

While the identity and culture of the military have changed over the past decade so as to reflect a closer alignment with human rights, so too has the nature of operations. This section examines three areas in which rapid change has occurred: first, the military’s involvement in training foreign militaries and, second, the use of private contractors; and, third, the development and use of more technologically advanced weapons designed to mitigate casualties and reduce risk to civilians. Each of these areas of rapid change has implications for the U.S. military’s attempt to portray itself as a human rights respecting force.

Training of Foreign Soldiers

One of the best things we can do is to train foreign soldiers. It's great for them, and great for us . . . It helps us get out of there.

—Army officer, 2006²⁰²

The training of foreign soldiers has been much more controversial from a human rights standpoint than the training of the United States' own military, and for good reason. While the training of foreign military and civilian leaders could potentially improve human rights promotion, it is fraught with challenges. One hurdle for the U.S. military lies in the selection of participants to train. In many cases, the U.S. military does not know, or chooses not to know, the background of either their trainees or the local person (often a soldier or former soldier himself) who selected them.²⁰³ The U.S. military may be effectively ensuring that soldiers who engaged in grave abuses in the past are never brought to justice when they train these same soldiers. The specific techniques taught may also raise problems. While valid in some contexts, the techniques may serve to “improve the ability of a government or army to repress its own civilian population or to engage in hostilities with its neighbors.”²⁰⁴ In any event, by cooperating with a government or faction accused of human rights abuses, the United States may be interfering with local courts and other mechanisms for truth and reconciliation.

Foremost on the list of controversial foreign training programs is the former Army School of the Americas (SOA) at Fort Benning, Georgia. Human rights groups have organized mass protests in recent years against the SOA for its repeated dealings with dictators, generals, and soldiers who committed human rights abuses against their own people throughout Latin America.²⁰⁵ In 1996 the SOA was forced to admit through a Freedom of Information Act request that it maintained training manuals that advocated “motivation by fear, payment of bounties for enemy dead, false imprisonment and the use of truth serum.”²⁰⁶ In response, the SOA called this an “oversight” that was apparently corrected in the early 1990s; it subsequently changed its name to the Western Hemisphere Institute for Security Cooperation, and it has added several courses in human rights at the school.²⁰⁷ The change in name did not end the controversy over the institution, and reports of misuse of its training program—particularly allegations that the training is being used to teach torture techniques as interrogation measures—continue to undermine the reputation of the U.S. military.

The International Military Education and Training (IMET) program is another noteworthy training program that trains officers in over 100 countries in U.S. military doctrine and tactics with an annual budget of around \$50 million.²⁰⁸ Throughout the 1990s, Congress began to limit IMET training in particular countries such as Indonesia (1992), Guatemala (1997), and Zaire (1997) because of the linkage of IMET training to human rights abuses in those countries. As a result of these warnings from Congress, the Pentagon instead

used the army's Special Forces to train Indonesian soldiers through the Joint Combined Exercises and Training (JCET) program, which was later linked to Indonesian human rights abuses in places such as East Timor. This led the Congress to pass a law in 1998 prohibiting any IMET or JCET training to any foreign troops who have committed human rights abuses.²⁰⁹ The State Department Bureau for Democracy, Human Rights, and Labor now monitors the human rights component of foreign military training. The IMET program, now called the Expanded IMET (EIMET) because of the inclusion of foreign civilian officials in the trainings, includes new courses on democracy building and human rights.²¹⁰

Another foreign military training program to note is the African Crisis Response Initiative (ACRI), established by the Clinton administration in 1997 to train African soldiers in peacekeeping and rapid response to humanitarian emergencies.²¹¹ The courses are conducted by U.S. Army Special Forces, who are themselves trained by the U.S. Institute of Peace. The goal of the program, which is budgeted at approximately \$20 million annually, is to train up to 12,000 African soldiers in a "professional program of peacekeeping and humanitarian relief operations."²¹² According to the U.S. State Department, "[o]bservance of human rights, issues of humanitarian law, negotiation and mediation, and other humanitarian concerns relevant to peacekeeping are interwoven into the training program."²¹³

Training programs for foreign militaries have the potential to improve human rights compliance when trainers effectively communicate the relevance and importance of rights concerns and where trainees are given an opportunity to apply their new knowledge and practice developing skills. There is a potential dark side to training of foreign militaries, however. The same programs used for human rights promotion (and the printed materials used in such trainings) may be diverted to teach skills in avoiding human rights scrutiny and even in committing human rights abuses. This problem has come to light with respect to the treatment of prisoners from Afghanistan and Iraq. The similarity between the techniques taught in British interrogation manuals and the sexual humiliation of Iraqi prisoners at Abu Ghraib prison indicates that the abuse in Abu Ghraib was not an invention of maverick guards, but rather was part of a system of ill-treatment and degradation used by British special forces (known as "R2I"—resistance to interrogation).²¹⁴ British officers contend that the techniques, when committed in the proper manner, do not constitute torture. However, according to British military sources, the same techniques may be torture when they are practiced by ordinary troops and contractors who do not know what they are doing. The techniques devised in the system and taught to British and military intelligence soldiers match the crude exploitation and abuse of prisoners at the Abu Ghraib jail in Baghdad. According to a former British special forces officer "It was clear from discussions with US private contractors in Iraq that the prison guards were using R2I techniques, but they didn't know what they were doing."²¹⁵

Private Contractors

The U.S. military can't be everywhere. Contracting out to private militaries is a good solution for meeting all of its obligations . . . and it is cost effective too.

—Doug Brooks, president, International Peace Operations Association²¹⁶

They have catchy names, such as Executive Outcomes, DynCorp, Logicon, Blackwater, and MPRI (Military Professional Resources Incorporated), yet despite the sleek image they project, these private military companies and international securities firms are simply a new version of the mercenaries who have existed for centuries.²¹⁷ Like kings using mercenaries for the most brutal and dangerous wars, the United States today relies on its contracts with private military companies and civilian specialists to carry out some of its most challenging missions. The use of private companies comes at great cost, not only to the fiscal bottom-line, but also to the reputation of the U.S. military. Use of civilian hired hands provides a chance for the U.S. armed forces to be relieved of duties that would otherwise run contrary to the new humanism.

According to private industry projections, revenues from the global international security market are expected to more than triple, increasing from a 1990 total of \$55.6 billion up to \$202 billion in 2010.²¹⁸ At least thirty-five private military companies are based in the United States and hired domestically and abroad to assist in military training, logistical support, security, and observational functions.²¹⁹

Proponents of privatization argue that the subcontracting to private militaries may *enhance* the human rights record of the United States. The argument is that if you take the support functions—cooks, janitors, groundskeepers, truck drivers—away from soldiers, they can concentrate on war-fighting skills and therefore become more professional as warriors. The main drawback is that international law, in the main, regulates the private military industry. This has serious human rights implications.²²⁰ While the United Nations has taken a stand against the use of mercenaries, notably in the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries (1989), the private military companies that the U.S. military engages mainly supply maintenance and construction workers, not soldiers, and thus fall outside the scope of the convention. The main check on the behavior of private military companies is contractual: termination for cause. Yet these companies are “often out of the spectrum of supervision that might be expected for such significant responsibilities.”²²¹

The selection of private companies for certain field assignments depends less on their record of past performance and more on the lobbying prowess of their backers. A partial explanation for the poor human rights records of some foreign militaries may be explained by the reliance on these private firms in training their soldiers in techniques of warfare and interrogation. Quality standards in privately run military trainings are harder to monitor and enforce.²²² One case that provoked concern about quality control involved

American private contractors who were piloting a Central Intelligence Agency plane over Peru during a drug interdiction mission in 2001. The contractors mistakenly identified a missionary plane as belonging to drug smugglers, and when the Peruvian military shot down the plane, an American missionary and her infant were killed.²²³

Reliance on private civilian contractors for tasks formerly assigned to enlisted members of the armed forces has increased post 9/11. The use of private contractors in Afghanistan and Iraq has come under particular criticism where those hired have had poor work histories, including records of having committed human rights abuses. For example, Lane McCotter, a controversial prison administrator and former military police officer, was hired as a civilian contractor and put in charge of the Abu Ghraib prison in Iraq, despite the fact that the U.S. Justice Department had launched a civil rights investigation against him for abuses at a private New Mexico prison he headed.²²⁴ Not only has the United States contracted with individuals and private companies with dubious records, but also their contractees have subcontracted with individuals and organizations with horrendous records. South Africans wanted for murder and torture of anti-apartheid activists and Serbian war criminals have been hired by international security firms to work in Iraq.²²⁵ The English security firm Erinys International hired several South African militants for its Iraq operations, despite their admissions of massive atrocities during their country's Truth and Reconciliation hearings.²²⁶

By 2007, the number of employees of private military contractors at work in Iraq had hit an unprecedented high of 100,000 employees (approximately a one-to-one ratio with active-duty American soldiers). Yet the tremendous reliance on private companies continued to escape public attention. In fact, as journalist Jeremy Scahill observes, the deployment of private contractors was used to obfuscate information that is to "provide[] the Bush Administration with political cover, allowing the government to deploy private forces in a war zone free of public scrutiny, with the deaths, injuries and crimes of those forces shrouded in secrecy."²²⁷ It took a tragedy to draw public attention to the problem: in the fall of 2007, twenty Iraqi civilians were shot and killed by Blackwater contractors guarding a U.S. diplomatic convoy. Almost immediately, the House Committee on Oversight and Government Reform began holding public hearings on Blackwater and on private contractors generally.²²⁸ Nonetheless, the large deployment of private military contractors in Iraq continued.

Advanced Weaponry

The [U.S.] military has taken steps to reduce casualties when they do fight and to decrease the chance that they will have to fight. They want to be the best military in the world that does not fight.

The contractors just want more money, the engineers just want to put together more cool toys, and the Air Force officers just want to get promoted.

—**John Pike, Association for Concerned Scientists**²³⁰

An advertisement two clicks after the U.S. Army's homepage shows photos of the new Stryker weaponry, promoting the army's latest "Transformation: Stealth, Speed, and Mobility" campaign. Along with music and gunshot-like sounds, the internet site text reads:

As Transformation unfolds, soldiers increasingly utilize satellite intelligence, robotic weapons, and aerial drones. Today's tech-savvy soldier remains the most important factor in making Army Transformation work. Having the best take up this challenge is more important now more than ever.²³¹

The U.S. military has trumpeted its new weapons programs and targeting practices as ushering in an era of high-tech, humane warfare. There is nothing "natural" about the new weaponry chosen as part of this project. The designs chosen are not necessarily the strongest, most efficient, or most humane. Rather, they are the ones that win out through a contested social process. "Social networks develop around rival designs," Theo Farrell and Terry Terriff observe, "each functioning to mobilize resources and build consensus for its own preference. It is this social process, whereby debate closes around a dominant design, and not design efficiency, that shapes technological development."²³² In this manner, both claims to accuracy and assertions of non-lethality are socially constructed and informed by human rights ideas. Simply put, there is a connection between developments in more humane methods and means of warfare and humanitarian interventions.

The most accurate: precision-guided munitions (PGMs)

Supporters of PGMs claim the new weapons have made war "significantly more humane."²³³ The development of "smart" weapons and other new technologies coupled with their supporters' portrayal of these weapons as incorporating humanitarian concerns further demonstrates the influence of human rights norms in the military.

Usage of PGMs is on the rise. Between 1991 and 1998, the Air Force tripled the number of PGM platforms, increased inventory by 25 percent, and developed several new generations of weapons.²³⁴ The inventory now includes laser-guided and GPS-aided bombs and missiles that can be used in any weather conditions, day or night. In the Gulf War, about 9 percent of the tonnage dropped were PGMs; while in Bosnia, PGMs comprised about 98 percent of the munitions used.²³⁵ PGMs have also been used in the Iraq War.²³⁶

Despite the accuracy and benefits of using precise weapons, evidence from the Federal Republic of Yugoslavia undermines the claim that there were significantly fewer civilian casualties in cities that were bombed exclusively with PGMs than cities that were bombed with cluster bombs or other

weapons.²³⁷ Kosovo provides one good illustration that the danger to civilians from airstrikes applies to precision bombing, despite rhetoric to the contrary. Airforce, Navy, and Marine aircraft flew more than 36,000 sorties in the eleven-week campaign.²³⁸ Defense Secretary Cohen described the airstrikes in Kosovo as “the most precise application of air power in history.” In the early days of the war, 90 percent of the munitions used were PGMs. Cohen continued:

As a result, NATO forces were able to hold civilian casualties to a very low level while concentrating on the military targets. Of more than 23,000 bombs and missiles used, we have confirmed just twenty incidents of weapons going astray from their targets to cause collateral damage.²³⁹

He later added,

Let me say that we have always taken into account the potential loss of innocent human life. In fact, we have been criticized for the way in which the campaign was executed, that we didn’t give enough flexibility to the military, in the judgment of some. . . . The fact of the matter is that we reviewed with great care every recommended target for an examination in terms of what the potential was for harming innocent civilians. I can tell you that I reviewed it with the chairman [of the JCS], even at the White House. We went over in great detail what type of activity was contemplated, what time of day or night, what angle of attack, what was the likely explosive impact, in order to reduce the loss of innocent lives. We don’t want to see any innocent people harmed, and we took extraordinary care to achieve those results.²⁴⁰

The use of PGMs, to be sure, does not eliminate collateral damage and civilian casualties. As one airman worried, “If you operate too easily in the air, you hit some targets because you can hit them, not because you should.”²⁴¹ Targets still may be selected carelessly or civilian areas are targeted. One could point to the example of a bunker that was bombed with precision in Kosovo killing hundreds of civilians taking shelter there, or the Chinese Embassy that was mistakenly targeted in Belgrade in 1999 on the basis of an old map. In one Iraqi incident, the air campaign was suspended for ten days to deal with the political ramifications of the civilian deaths;²⁴² and in Serbia, after precision bombing proved subject to human error, U.S. officials were compelled to make a public apology for their error.

PGMs are often the weapon of choice in places like Iraq, where war is being brought into urban areas and where cities are not emptied of their civilian residents before fighting begins.²⁴³ While PGMs cannot eliminate all risks to civilians, the use of high-tech weapons is part and parcel of the new humanism. Even if the benefits of high-tech weaponry are minimal or even nonexistent, public perception of the enhanced advantage these weapons bring may be sufficient to explain their continued use. Paradoxically, while it is the public perception of high-tech weaponry that drives their development, the usage of these weapons creates a “David and Goliath” scenario (i.e., the U.S. military

using flashy new weapons against a less equipped foe) that further tarnishes the reputation of American soldiers.

The least deadly: non-lethal weapons (NLWs)

In addition to developing weapons that kill with greater precision, the Pentagon is also developing weapons that don't kill at all, that is *non-lethal weapons* (NLWs) for nontraditional missions, including peacekeeping. NLWs have a long and spotted history. It was President Eisenhower who, in a 1960 secret meeting between the National Security Council and Pentagon officials, was presented with a "humane" germ weapon that would temporarily paralyze and cause lethargy to its victims. The president rejected the idea with skepticism, citing in a recently declassified memo the "great difficulty" with the weapons was that adversaries might retaliate with full force, thereby creating a cataclysm of global proportions.²⁴⁴ Research and development on NLWs continued with a National Science Foundation study in 1971, but NLWs really gained ground in 1995 during the U.S. mission to help withdraw UN peacekeepers from Somalia.²⁴⁵

Some weapons have been developed for specific peacekeeping operations. For the Somalia mission, for example, the Pentagon consulted with U.S. police to develop NLWs for military use, and Lieutenant General Anthony Zinni deployed several types of NLW technologies for the purpose of controlling hostile crowds without the loss of U.S. or Somali lives.²⁴⁶ These included firing sticky foam and tiny beanbags in order to immobilize rioters. After some initial success with NLWs, Zinni advocated strongly for their continued development, and by 1996 the Department of Defense had established a Joint Non-Lethal Weapons Directorate (JNLWD) within the Marine Corps.²⁴⁷

The JNLWD budget was only \$34 million in 1998, but it has received wide support from other government agencies and private contractors.²⁴⁸ A 1999 report of the Council on Foreign Relations praised the weapons as politically important because they are a less violent means of engaging the military, which in political terms makes them more acceptable.²⁴⁹ NLW technologies are being developed and include a variety of inventions that can disorient or immobilize people or affect technologies. Some of these were used in Bosnia and Kosovo, and the list includes loud noises, bright lights, horrendous odors, radio jamming devices, graphite threads that can be dropped to take out power grids, and electromagnetic devices and nets that serve as roadblocks for vehicles.²⁵⁰

Weapons with a more direct personal effect, including chemical agents, are also being investigated by the Pentagon. These include non-lethal variants of Claymore mines that temporarily injure rather than kill, and Stinger grenades that can be thrown by hand or shot from another device. In March 2001, a weapon was unveiled by the Pentagon that fires microwaves more than a third of a mile, causing a burning sensation. The weapon is said to be useful for dispersing crowds. A group of researchers issued a report on "calmatives" in October 2000 that highlighted Fentanyl, a chemical agent which killed one

in seven people when it was used by the Russian government in the fall of 2001 during a hostage incident sparked when Chechnyan rebels took over a theater.²⁵¹

Public health advocates have campaigned against many of the new weapons on the grounds of environmental human rights. While the Gulf War is widely considered the foundation of modern technological warfare, most of the destruction was primarily to the infrastructure of the countries. Although the Gulf War generally followed guidelines of law of war practice and humanitarian law, Martin Ahtisaari of the UN visited in 1991 and reported “near-apocalyptic results upon the economic infrastructure,” and that:

most means of modern life support have been destroyed or rendered tenuous. Iraq has, for some time to come, been relegated to a pre-industrial age, but with all the disabilities of a post-industrial dependency on an intensive use of energy and technology.²⁵²

Environmental damage wrought by the war included toxic chemical spills in agricultural soil and aquifers, drainage water and sewage accumulating for three to five months following the war, and food production decreased by 40 percent from levels before the war.²⁵³

The new weapons and strategic bombing practices are part of the military’s “kinder, softer”²⁵⁴ identity, but whether they ultimately lead to greater attention to human rights concerns is open to question. As a 1999 Council on Foreign Relations report made clear:

It is not the primary purpose of nonlethal weapons to prevent death or major injury to opposing troops. Instead, they are intended to increase the lethality of force used against combatants, while reducing death and injury among non-combatant civilians. For example, NLW can prevent a crowd from approaching closely enough to be a serious threat to U.S. forces. They can also unmask snipers or other combatants in a crowd of civilians, opening a field for U.S. lethal fire.²⁵⁵

Afghanistan and Iraq are a testing ground for some of the most advanced weapon systems ever created. Some of the new weaponry being deployed in Iraq include:

- nets that pop up remotely from the road and ensnare the wheels and suspensions of oncoming vehicles;
- instant oil slicks that cause vehicles to skid and crash and pedestrians to fall down;
- military paint-ball guns that coat windshields to blind drivers of oncoming cars; some troops are trying small lasers to temporarily blind opponents in cars or on foot;
- venom, a system of small mortar-like tubes that fire rounds that explode like fireworks at a range of up to 200 yards away (the pyrotechnics keep suspect vehicles or people away); although the rounds are still in testing, the Marines have committed \$14 million to buy 250 units.²⁵⁶

Among weaponry in stages of development are: handheld ray guns; guns that fire energy pulses that destroy ignitions or other critical components to cause a car or truck to stop; and handheld machines that accurately sniff out explosives.²⁵⁷

These new NLWs are important, not because of what they actually *do*, but because of what they appear to do. NLWs are desirable because they give the appearance of a lower level of violence, and less violence is consistent with the changing perception of military roles. Even if the weapons have an opposite impact—enabling rather than deterring more instances of violence—it is the public perception that matters. As a Council of Foreign Relations study of new weapons astutely noted, “in political terms, [the perception of] less violence equals more acceptability.”²⁵⁸

Fighting wars with any kind of weapons—including the new “civilian-friendly” ones—harms humanity. Some commentators have said that non-lethal weapons should be better labeled “less than lethal” weapons, because NLWs can often kill their targets too, especially if used incorrectly. Further, there is concern that NLWs are difficult to control, and that in international treaties and regulation of arms, NLWs fall into a grey area of international regulation, thus potentially damaging the greater good of international law.²⁵⁹ Plans to use some nonlethal chemicals against Iraqi soldiers who may be holed up in caves or buildings or mixed in with innocent civilians, for example, have been aborted because their usage violates international law—specifically, the 1993 Chemical Weapons Convention.²⁶⁰

The availability of NLWs could also encourage more military interventions abroad and increased targeting of civilians and, in so doing, threaten international humanitarian law.²⁶¹ As war correspondent and political analyst Max Boot observes, the military must always “struggle with the deadly calculus of how many casualties it is willing to incur among its own forces to save civilian lives.”²⁶² Boot is concerned that the pendulum has swung too far on the application of human rights ideas in wartime. “Nowadays, the military tries to save not only the civilians, but enemy combatants as well.”²⁶³ Boot suggests that it’s immoral to use less force than necessary, because that only prolongs the struggle. Other critics of the new military humanism caution that “the law of armed conflict is not like using a calculator to solve a mathematical equation”²⁶⁴ and warn that setting unrealistic standards for combat would prevent the United States from ever deploying troops.²⁶⁵ In the final analysis, the net result of new technology does not provide adequate protection for civilians; nor does it necessarily generate consistency with international law.

A LITTLE FINGER POINTING?

The problem is not the military, it is the civilians. The military does not act [in response to human rights abuses,] because the civilians have not decided what they want.

What matters in all these interventions is what will it cost me in terms of time, resources and risk. These are all civilian decisions. But I am the one who has to make it work.

—U.S. military officer²⁶⁷

This overview of recent U.S. military actions shows the prevalence of human rights rhetoric as justification for deployment. It also reveals the many influences on the military. Civilians determine when and where, and to some extent how, the military should act. Ultimately, of course, the decision of when to go to war is not in the hands of the Pentagon, but rather is the responsibility of the president of the United States, in his capacity as commander in chief. Struggles between the White House and the Pentagon on intervention decisions are common. In recent years, this has most often involved a cautious military trying to hold back a more interventionist-minded president.

Congress also plays a tremendous role in constraining military decision making through its war powers²⁶⁸ as well as its “power of the purse.” The military must gain budgetary approval from the Congress for all of their programs, which often leads to extensive argumentation to prove the need and legitimacy for humanitarian programs. In recent years, one scholar of congressional/executive interactions finds, “[t]he executive branch has largely become the voice in favor of international engagement, at some expense to national sovereignty and free, domestic, democratic decision-making.”²⁶⁹ Congress has alternated between being the “voice against such engagement” and the “voice of ambivalence.”²⁷⁰

Kosovo illustrates recent patterns of congressional votes that partially, but incompletely, address the issue of authorizing war.²⁷¹ Before the bombings began, the House approved a proposal to send U.S. troops to Kosovo as part of a peace accord.²⁷² After negotiations broke down and the bombing began, the Senate adopted a resolution in support of the action.²⁷³ Then when U.S. public opinion continued to be ambivalent about the bombing, House Republicans invoked the War Powers Resolution to compel votes on whether to remove U.S. armed forces from the NATO operations.²⁷⁴ Eventually, the House would approve appropriations for the U.S. role in the bombing.²⁷⁵ Then, after the bombing concluded, the Department of Defense would submit a report to Congress justifying its actions.²⁷⁶

Once funding has been allocated for a particular purpose, the funding itself becomes a constraint. Budgets are difficult to refuse once they have become established. Examples of such programs include the Non-Lethal Weapons program, the army’s Peacekeeping Institute, and the African Crisis Response Initiative. Congress only gives up begrudgingly after accumulating large debts—but this funding is difficult to remove entirely.²⁷⁷ Similarly, once set in motion, civilian and military leadership have found it difficult to abandon new weapons programs, funding mechanisms, and training courses created for humanitarian purposes. The Pentagon’s budget is equal to 40–45 percent of the defense spending of all nations on earth, totaling more than \$300 billion per

year.²⁷⁸ To their credit, the military's requests for and use of congressionally approved funding has maintained significant budgetary support of programs that promote human rights through their outcomes.

Institutional reversals are difficult, but not impossible, as evidenced by the fate of the Pentagon's Office for Democracy and Human Rights. The office was created by Defense Secretary Les Aspin in 1993 to address issues of military assistance, training of foreign soldiers, U.S. peacekeeping policy, humanitarian aid, and human rights criteria for military cooperation with other countries.²⁷⁹ However, Aspin's proposed director, Mort Halperin, was never confirmed by Congress, and when William Perry succeeded Aspin as defense secretary, he quickly dismantled the "little State Department" that Aspin had created.²⁸⁰ While some tension in gathering intelligence data may encourage national security, critics suggest that the analyses are based on seeking particular information to support political objectives, and that the announcements of particular information by political leaders (such as Defense Secretary Rumsfeld, in this case) undermines and neutralizes other information and throws off the public discourse.²⁸¹

One source of institutional competition that both influences and competes with the military is the Central Intelligence Agency. Senator Bob Graham, the chairman of the Senate Intelligence Committee, pointed out that while the Pentagon and the CIA often push different agendas, it is the duty of the CIA director, rather than a Pentagon official, to present a unified assessment of all views to the committee. In a recent example, the Pentagon competed with the CIA in information-gathering in order to influence military actions—through the encouragement of Secretary of Defense Rumsfeld, the military established the Defense Intelligence Agency in the fall of 2002 in order to establish connections between al Qaeda and the Iraqi government.²⁸² Questions arose from the general public as to the legitimacy of this information, though the public stir caused by Rumsfeld's announcement that al Qaeda officials had recently held a meeting in Iraq was enough to swing the issue away from deep skepticism.²⁸³ Still, critics of the maneuver questioned the integrity of the CIA for its potential secreting of the information when Rumsfeld had originally requested it, and further, they questioned the method as an information-gathering process that selects information based on desired outcomes.²⁸⁴

While often competition between the Pentagon and the executive branch and Congress can be a detriment to the overall functioning and achievement of the military, the trend in recent years has been more on the side of interagency cooperation. Interagency and multilateral governmental cooperation is particularly significant on missions of humanitarian assistance and peacekeeping, where the trend in the past decade has been increasingly a group effort at problem solving.²⁸⁵ Today the military often plays a role in the direct, on-the-ground work of upholding human rights, and their training programs and weapons have become increasingly appropriate for military personnel to undertake nontraditional operations in line with international standards. Yet the same high-tech weapons that purportedly limit civilian casualties still do cause civilian deaths. "We do this peacekeeping stuff," one soldier on a

peacekeeping mission in Bosnia confided, “but when it comes right down to it our mission is to protect ourselves and hurt the enemy.”²⁸⁶

CONCLUSION

As the second administration of George W. Bush rounded its final corner, the “report card” on U.S. approaches to counterterrorism was poor²⁸⁷ and political analysts on all sides of the political spectrum were declaring Bush’s strategy for the “war on terror,” and in particular its efforts in Iraq, a dismal failure.²⁸⁸ The United States had utterly lost in its efforts to bring security and freedom to Iraq. Instead of promoting security and safeguarding human rights, the U.S. military invasions in Afghanistan and Iraq led to widening insecurity and new reports of abuse. Violence had in fact increased in 2006, with ethnic and sectarian violence raging,²⁸⁹ human rights abuses were endemic: women and religious minorities faced new threats and press freedoms were encumbered by new restrictions. Estimates of Iraqis killed ranged from 40,000 to several hundred thousand.²⁹⁰ At least two million Iraqis had become refugees or internally displaced and, despite the infusion of donor support (by 2007, \$30 billion from the United States alone), Iraq’s basic services and key economic indicators still lagged below pre-war levels. The Bush administration’s “war on terror” thus was a decided two thumbs down: the war came at an exceedingly high cost for the human rights image and credibility of the U.S. military with little or no gain in security.

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RAISING EXPECTATIONS?: CIVIL SOCIETY'S INFLUENCE ON HUMAN RIGHTS AND U.S. FOREIGN POLICY

A civil society demands from each of us good will and respect, fair dealing and forgiveness . . . I ask you to be citizens. Citizens, not spectators. Citizens, not subjects. Responsible citizens, building communities of service and a nation of character . . .

See George W. Bush's first inaugural address, January 20, 2000¹

Because we are a democracy, foreign policy decision-makers solicit the views and ideas of NGO representatives to help ensure that U.S. foreign policy represents a broad spectrum in the interests of the American people.²

**—Julia Taft, assistant administrator and director in the Bureau for
Crisis Prevention and Recovery (BCPR) in the United Nations
Development Program (UNDP)³**

The young school teacher from rural Serbia was a bit afraid to venture into the university auditorium where the conference on the war in Bosnia was being held. She passed a small group of women wearing all black, standing on the side of the road, holding daisies and antiwar signs. Three “witches for peace” and a muddle of college boys in dreadlocks playing hacky sack were standing nearby. A former State Department employee in a dark suit, a Quaker in Birkenstocks, and a Gulf War veteran in sweat pants chatted near the coffee machine. A professor was running about trying to persuade everyone to go into the auditorium where a human rights worker was giving her report on Bosnia. “Who are these people?” the school teacher whispered to her companion. “This,” the companion gestured with a wave of her arm, “is civil society.”

The third group of actors influencing the treatment of human rights in U.S. foreign policy fits into a realm known as “civil society.” When considering civil society, one often thinks of nongovernmental

organizations (NGOs), defined as “non-profit voluntary citizens’ group[s] which [ar]e organized on a local, national or international level, task-oriented and driven by people with a common interest.”⁴ NGOs are one part of civil society working on human rights issues, but they are not alone. Other parts of civil society trying to shape the U.S. human rights agenda may be organized as for-profit consultancy groups, think tanks,⁵ lobbyists, foundations, education programs, and academic institutions.⁶ During the post-Cold War era, the agendas and strategies of organizations working on human rights issues became increasingly sophisticated and diverse. In the post-9/11 era, the need for specialized knowledge on security issues has grown and, along with it, the tendency for human rights organizations to work on multiple levels—from the local/domestic to the regional and international—has also expanded.

Civil society organizations influence U.S. foreign policy in ways that are often subtle, significant for the shaping and implementation of human rights. By framing issues in human rights terms, NGOs and other civil society actors seek to shape public opinion and influence policy options, ensuring that the human rights dimension of policy options are addressed. As the previous chapters in this book demonstrate, while civil society actors may have indeed generated greater attention to human rights issues, their efforts have not led to consistent human rights behaviors. This chapter considers why their efforts have fallen short of their goals. It begins by surveying trends in the way U.S. civil society advances human rights and then turns to more specific illustrations.

WHO ARE THESE PEOPLE?

A new and unprecedented force has been created in world politics—the nongovernmental organization. NGOs have joined nation-states, central banks and international agencies as institutions authorized to define the world’s problems and propose policy fixes.

—James Sheehan, *Competitive Enterprise Institute*⁷

The members of civil society working on human rights issues are not so very different from the individuals working for government and the military discussed earlier in this book. In many cases, they are in fact the same people, as individuals move frequently between posts in government and civil society, and retired military leaders increasingly find themselves joining think tanks and advocacy groups. Civilian and military leaders read the same books, debate the same issues, and increasingly meet in the same classrooms where they obtain the same advanced degrees. Table 2 (p. 206) outlines one of the key findings of a survey of over 140 members of government, the military, and civil society, conducted as background preparation for this book. These survey results, combined with the like number of interviews conducted for this book, serve to support the findings of other researchers⁸ that, although the culture of the branches of the armed services differs from that of government and civil society, the individuals taking these jobs share common motivations. The top

three reasons military officers seek a post within the military are a desire to serve their country, to gain professional training and expertise, and to help people. Individuals in government and civil society list other motivating factors, but also among their top three motivators is a desire to help people.

Survey respondents were asked, “What is the main factor that influenced you to take this position?” Respondents were asked to circle one of the following: (a) a desire to serve my country; (b) a sense of volunteerism; (c) my religious convictions; (d) a desire to help people; (e) a sense of adventure; (f) the salary and benefits; (g) the intellectual challenge; (h) the high degree of professionalism; (i) an ability to apply my education and training; (j) other. Figure 1 indicates the top four responses for military and nonmilitary personnel who responded to the survey (data based on 120 surveys).

This study thus indicates that the main factors that distinguish individuals in civil society from their peers in the military and government is not motivations or expectations—they all hope to “do good”—but rather, perceptions and techniques. While each presidential administration has its own cast of NGO foes and friends, for the most part NGOs remain outsiders to policy-making and implementation. The outsider positions permit them to see the problem differently and encourage them to adopt different strategic politics.

NGO strategies

The strategic politics of nongovernmental actors, as Margaret Keck and Kathryn Sikkink have observed, is “rooted in values and aimed at changing values.”⁹ In the language of social movement literature, advocacy groups in civil society frame our ways of understanding and presenting the world that “underscore and embellish the seriousness and injustice of a social condition or redefine as unjust and immoral what was previously seen as unfortunate but perhaps tolerable.”¹⁰ While some organizations seek to frame issues to fit into existing policy agendas, others seek to prompt the creation of new agendas.¹¹ Some organizations thus create issues while others interpret issues. The same organizations may also be involved in domestic or international human rights litigation as well as the direct drafting of legal instruments related to human rights, including international human rights treaties, peace agreements, and domestic legislation.

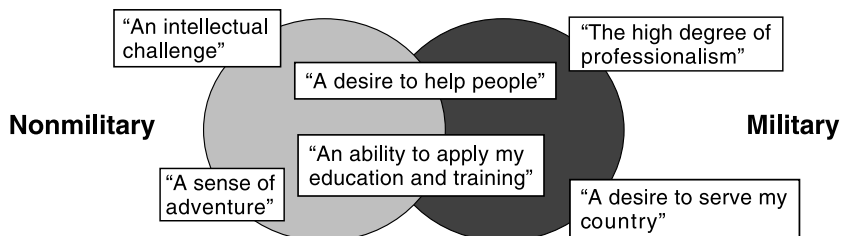


FIGURE 1 Motivations for choosing positions of employment: nonmilitary versus military personnel.

Strategies and tactics vary considerably among and between organizations. Gareth Evans, the president of the International Crisis Group, has suggested three types of activity: thinking, acting, and doing.¹² The “thinking” organizations are those who help focus the debate by engaging in “data gathering, idea generating, network building, paper publishing and conference organizing.”¹³ The “talking” or advocacy organizations also “engage in research and analysis, but their primary emphasis is on spotlighting governmental abuses and engaging in tom-tom beating advocacy accordingly.”¹⁴ The “doing” organizations address the problem even more directly, through such activities as training and general capacity-building programs, mediation and conflict resolution projects, and other peace-building endeavors. While some organizations today are a hybrid of these three activities (the International Crisis Group being the most prominent case in point), these categories are generally maintained.

The most well-known tactic of human rights civil society has been that of “naming, blaming and shaming,” that is, naming human rights violations, publicly identifying the violator (traditionally a state, but increasingly a corporation or other actor), and shaming them into compliance by employing a public campaign (involving letter writing and other public acts of condemnation).¹⁵ The “bedrock” of all human rights activity thus has involved the collection of credible information and its timely dissemination.¹⁶ By investigating and publicizing human rights norms and, where possible,¹⁷ advocating before treaty-monitoring bodies, human rights NGOs have been extremely influential in shaping domestic and international agendas on such matters as the environment,¹⁸ landmines,¹⁹ women’s human rights,²⁰ and human rights in general.²¹

This “watch” role of civil society, popularized by Amnesty International’s letter writing campaigns and Human Rights Watch’s various “watch groups” for regions and topics remains significant today. The efficacy of this tactic has improved as the technical expertise of the “watchers” has been strengthened and as communication technology has advanced.²² Illustrating the enduring popularity of the “watch” template, the most recent entrant to the human rights civil society scene is a new watchdog group, NGO Watch, a conservative group watching the progressive NGOs for their own transgressions.²³ As explained further in this chapter, NGO Watch caused a stir when, in June 2003, it unveiled a new webpage publicizing the tax records and policy platforms of over two hundred NGOs.

While the “watch” campaigns have remained popular, civil society actors have also engaged in policy analysis, advocacy activities, and atrocity reporting. This trend began in the early 1990s and accelerated post 9/11.²⁴ Early on, human rights organizations focused on “standard-setting,” that is, the establishment of the human rights standards by which the conduct of states could be judged.²⁵ They also began serving as ombudsmen intervening on behalf of “prisoners of conscience” and providing legal services and other support for victims and families of victims of gross human rights abuses.²⁶ They have advocated for the creation of systems and mechanisms to enforce human rights at the international, national, and regional levels, and have pressed for greater NGO access to the working of those systems.²⁷ All of these efforts have

had an impact on U.S. foreign policy, but it is the new strategies of more recent years that have targeted U.S. foreign policy specifically. These efforts have moved beyond public shaming techniques focused singularly on human rights to advocacy approaches that integrate human rights into broader public policy agendas and suggest long-term solutions to the roots of human rights violations as well as addressing the impact of their ongoing manifestation.

Greater Expertise/Greater Influence

Since the events of 9/11, U.S.-based NGOs have become increasingly interested in exerting greater influence over U.S. foreign policy.²⁸ The ability of civil society to influence U.S. foreign policy has been advanced by the professionalization of the field and the increased mobility of individuals from the government sector to civil society. Today individuals working on human rights issues are likely to be former members of the Clinton administration and other previous administrations, former State Department employees who quit in protest over U.S. policies, and former ambassadors and military officers, as well as individuals who cut their teeth working on humanitarian projects in Afghanistan, election monitoring in Bosnia, or the founding of the Truth Commission in South Africa. And the organizations they join are more likely to be highly sophisticated and staffed with lawyers, area experts, lobbyists, advocacy teams, and recent graduates of new programs offering specific training in human rights. "Before, human rights NGOs were a conglomerate of the elite, but with grassroots and idealism as their guide," says Martina Vandenberg, a former Human Rights Watch researcher. "Now they are a community of elite voyeurs with a few wild haired exceptions."²⁹ The age of e-mail and web pages makes it even more possible for individuals or a small cadre of folks hunched over computers to have an impact on a human rights issue. But even these individuals are likely to have elite training, and over time even they are likely to either join larger organizations or collapse.

One could think of three chronologically distinct generations of individuals in America working on human rights, as one human rights practitioner observes:

The first generation is comprised of people from the peace movement, who opposed what the U.S. was doing in Latin America, as well as some people working on political prisoners in the Soviet Union, general Cold War stuff. The second generation is comprised of people who began doing civil rights work and other social justice work in the U.S. and then they crossed over to the international sphere and began working on their issues there. The third generation are people who don't know what human rights are, but they want to study it.³⁰

The resources of NGOs have ebbed and flowed along with the financial fortunes of the individuals and foundations that support their operations, leading to new projects and new personnel in good times, and belt tightening layoffs and program cutbacks when the domestic and global financial picture

soured. Yet throughout these three generations of human rights work, the training and expertise of individuals has steadily improved.

Tapping this expertise, human rights organizations reach deeper into the U.S. foreign policy establishment and make new demands on the behavior of the U.S. government and military. In contrast to the technique of public shaming, these new efforts often involve private meetings and cooperative information sharing, the provision of concrete policy proposals, and the offer of technical assistance. Each member of the new generation of human rights advocates brings specialized skills to the table, such as the ability to perform legal analysis, significant area expertise, foreign language abilities, and writing and editing skills. On the whole, they are more amenable to working with other groups on common causes.

Through their interaction, they human rights expert of today target their advocacy more precisely and work deeper within government structures, turning to particularly sympathetic ears wherever they may be—as long as they have influence over policy makers.³¹ During the Clinton administration, for example, the ability of certain highly credible NGOs to obtain the ear of the Department of Defense, for example, increased. “They [DOD] needed our information and we wanted to influence them,” said one human rights advocate working on a sensitive military maneuver.³² Another NGO employee who also spoke on the condition of anonymity added, “Our [the NGO’s] ability to have access [to DOD and other parts of government] collapsed with the [George W.] Bush administration, but we had already left an impression on them.”³³

New Challenges

Even as greater acceptance within the foreign policy presents new opportunities for human rights advocates, it also offers new challenges. The expectations for human rights advocates is excessively high. Beyond their wildest dreams, many advocates find themselves with access to people (literally the big guns) and places (more dangerous than ever). “The question now for the human rights movement is how to deal with being part of the dominant discourse,” observes Martina Vandenberg. “We see ourselves being spun [by the White House for their own advantage].”³⁴ As an illustration, she points to Human Rights Watch’s report on civilian casualties caused by the NATO bombing in Kosovo. “We said there were 548 deaths, and the Pentagon seized on this figure and said it was in line with human rights.”³⁵ In the post-9/11 climate, some NGOs have found a need to step gingerly when criticizing U.S. counterterrorism activities, lest their activities be misinterpreted as being “unnecessarily divisive” or “soft on terrorists.”³⁶ These fears of being misunderstood were most apparent immediately after 9/11, but still, “they always remain in the background, and we just know sometimes to be careful,” explained one director of a major U.S. human rights NGO.³⁷

Apart from the danger of being “spun” or otherwise used by an administration for its own ends, today’s professional human rights organizations may be

so far removed from human rights abuses that they can no longer identify with them. Catholic Relief Services' Jonathan Evans worries that "human rights has become so businesslike that it is losing its passion . . . we are emphasizing hiring young people who are well trained and interested in making a career out of this work."³⁸ To force everything into the narrow frame of one's profession blunts other understandings of the problem and often eclipses the original motivations for signing on to human rights and humanitarian work. This is particularly true with respect to the legal framing of human rights, Harvard Law School professor David Kennedy urges. "To come into experience of oneself as a benevolent and pragmatic actor through the professional vocabulary of legal representation has costs for the human rights advocate, compared with other vocabularies of political engagement and social solidarity." Kennedy explains:

Coming into awareness of oneself as representative of something else—heroic agent for an authentic suffering somewhere else—mutes one's capacity for solidarity with those cast as victims, violators, bystanders, and stills the habit of understanding the world one seeks to affect.³⁹

Professionalism within the human rights field privileges lawyers "at the expense of priests, engineers, politicians, soothsayers and others who might play a more central role . . ." ⁴⁰ The greater expertise of the new generation of human rights staff tilts many organizations even further toward working only with other highly trained elites, ignoring parallel grassroots efforts to advance human rights. As a result, they deprioritize human rights education and other activities aimed at building a human rights culture.⁴¹ Patrick Coy, a Kent State Political Science professor who specializes in social movements, has found that new information technologies have made little difference in this regard. "Although technological changes have expanded human rights information campaigns to a general audience [primarily through e-mail]," Coy writes, "most information that human rights [organizations] gather is still aimed at policy elites, including governmental and intergovernmental officials, and the diplomatic community."⁴² While human rights education projects like Human Rights Education Associates⁴³ and the People's Movement for Human Rights Education⁴⁴ have grown over the past decade, they remain disconnected from mainstream human rights organizations and have little influence on U.S. foreign policy. The U.S. government may indirectly support human rights education as part of a postconflict peace building and democratization effort, but "human rights education *per se* is never a top priority—and always among the first things to be cut [from government projects]."⁴⁵

While human rights NGOs continue to target states for criticism, they now often seek to work in partnership with states instead of against them. "In the past, U.S. [human rights] activists were concerned about preventing the U.S. from doing harm," Tom Malinowski, Human Rights Watch's Washington, D.C., advocacy director, observes. "Now, they are concerned about keeping the U.S. engaged and trying to construct nationally based international arguments

to justify humanitarian activities.”⁴⁶ The human rights implications of the “war on terror” (see chapter 3) have “brought many human rights people back to criticizing government more,” but still, human rights advocates seek to locate allies within government wherever and whenever possible.⁴⁷

While “partnership” may be a buzz word in many human rights circles, whether and how the U.S. military should be viewed as a partner in advancing human rights concerns remains hotly debated.⁴⁸ Amnesty International has taken the position that human rights NGOs need not or should not involve themselves in the debates about military interventions, because these are primarily political questions that are properly in the domain of governments and the UN.⁴⁹ The Geneva-based International Council on Human Rights Policy observes that:

Amnesty’s own position has been criticized from within the organization . . . In cases of genocide—such as Rwanda, where influential governments refused to act—critics say that Amnesty’s silence affects its credibility with activists and victims and may be used by governments to justify inaction.⁵⁰

In contrast to Amnesty’s approach, Human Rights Watch determines on a case-by-case basis its position on whether to support military intervention on human rights grounds, considering the scale of abuses, whether nonmilitary means have been exhausted, and whether the intervention is likely to do more good than harm.⁵¹ Based on these criteria, Human Rights Watch spoke out in favor of military intervention in Bosnia, Rwanda, and Somalia, but criticized NATO’s intervention in Kosovo on the grounds that nonarmed options had not been exhausted. Physicians for Human Rights, however, advocated for military intervention in Kosovo, leading the call for ground troops and a larger civilian monitoring contingent.⁵²

Another challenge facing human rights NGOs in recent years is one of coordination with other nongovernmental actors. Increasingly, the mission and mandate of human rights NGOs overlaps with other nongovernmental and governmental organizations with humanitarian, development, and reconstruction mandates. In places such as Afghanistan in 2002–3, where the end of war was declared even as fighting continued, a host of human rights, humanitarian, development, conflict resolution, and civil society building organizations crowded the field, at times with complementary, but often with contradictory, mandates. This has led to duplication of efforts—for example, with most organizations working in the same urban areas to the neglect of rural areas—as well as heated disputes as to the sequencing and prioritization of efforts—for example, with some organizations claiming that human rights issues should be put on hold until other matters are accomplished, such as the true cessation of conflict, provision of emergency humanitarian assistance, or basic democratic institution building.⁵³

As one illustration of this challenge, humanitarian organizations such as Mercy Corps⁵⁴ and Catholic Relief Services⁵⁵ address the provision of social and economic rights, and to the extent that they are committed to the

protection of human life, they address civil and political rights as well.⁵⁶ Many humanitarian organizations work increasingly closely with governments—sometimes too closely, opening themselves up to criticism by human rights NGOs and other critics that they have become “cheap service providers” for the U.S. government.⁵⁷ “The more money they take from government, the more they lose their voice,” worries veteran humanitarian aid analyst Ian Smillie.⁵⁸ At the same time, humanitarian aid workers, along with the democratizers, conflict resolvers and peace builders crowding postconflict areas, are taken to task for prolonging the conflicts they seek to ameliorate.⁵⁹ The division of aid commodities to warring parties may fuel conflict and, although this result is not inevitable, it is fostered by the prevalence of “technical approaches” to humanitarian action. Fiona Terry, director of research for Médecins Sans Frontières, Paris, explains that where the focus of many humanitarians is on delivery of a certain amount of foodstuffs, “issues of a political or ethical nature are suppressed.”⁶⁰ The provision of assistance in the postwar stage may also prolong conflict when the intervening organizations undertake functions typically reserved to the state, thus undermining the ability of local people to build their own government institutions to address their own priorities.⁶¹

Humanitarian organizations present another challenge to human rights NGOs wholly apart from funding. Because many of the organizations involved in humanitarian and postconflict activities are funded by the U.S. government and/or are perceived to be closely associated with the U.S. government, their activities shape the image of U.S. foreign policy and circumscribe its effectiveness in many conflict areas. When they ignore human rights issues, by themselves operating in a manner contrary to human rights standards (i.e. by discriminating in employment) or by overlooking local abuses, they undercut U.S. rhetorical demands for respect for international human rights standards.

U.S.-based humanitarian NGOs are increasingly dependent on U.S. government support. Thus, they face the challenge of fitting their plans into the agenda of the U.S. government, compromising just enough to get the money, but not too much so as to lose sight of their mission. Critics of this process, included many NGO staff members engaged in it, feel that they often fail to strike the right balance. “It’s not the NGOs driving the government’s agenda; it’s the U.S. government driving the NGO agenda,” attests one NGO staff member who preferred to remain anonymous.⁶² The point that donor dollars shape NGO programs is well taken, but the influence does run in the other direction as well. NGOs are the idea people, as Ken Anderson notes, “in today’s world, in matters from human rights to the environment to population policy to adventures in humanitarian intervention, the leadership and driving force behind policy often comes from international NGOs.”⁶³ Once a government agency agrees to fund the project, it may be influenced in the long run by the type of project it begins to fund and the personal relationships those projects engender.⁶⁴

Individuals may move in and out of jobs, frequently transiting from civil society to government and back again, but the relationships remain. It is all about relationships, explains Search for Common Ground’s Andy Loomis.

“The real thing that needs to happen . . . is to build relationships between the various communities that often tend to be very skeptical of one another (e.g., policymakers, NGOs, academics, etc.).” It is through the work in the field, Loomis says, that such relationships are built. Because in recent years the leadership and staff of human rights organizations is comprised of people with prior experience in another field and/or sector,⁶⁵ they have the kind of extensive networks and relationships that can make them effective in influencing U.S. human rights foreign policy.

The remainder of this chapter turns to nine short case studies to explain how civil society organizations impact U.S. foreign policy with respect to human rights. Examples were chosen based on three criteria: (1) while the exact impact of civil society organizations is hard to gauge,⁶⁶ the issue profiled involves specific organizations that have some discernable impact on the application or formation of U.S. foreign policy (in Kathryn Sikkink and Martha Finnemore’s terminology, they are “norm entrepreneurs”);⁶⁷ (2) the example occurred during the time period under study in this book, with greater preference for more contemporary examples and unfinished campaigns; (3) less information has been available about their activities (and thus, the traditional “naming, shaming, blaming” campaigns and well-publicized NGO activities, such as those involving the International Criminal Court⁶⁸ and the Landmines Treaty,⁶⁹ are excluded).⁷⁰ While this account omits several important developments in civil society, including participation in UN conferences, advocacy for truth commissions and tribunals, and developments within the humanitarian and conflict resolution fields, it does provide a range of illustrations of influence over human rights foreign policy. The first three case studies relate to the role of civil society in the creation, ratification, and implementation of international treaties; the second three examine activities related to the development of domestic human rights legislation; and, finally, the last three suggest ways in which civil society influences the larger foreign policy agenda.

A TALE OF THREE TREATIES

Civil society organizations play vital roles in influencing the stance of the United States toward international human rights treaties. As a recent white paper on “The Role of an International Convention on the Human Rights of People with Disabilities” notes, the advantages of pursuing an international treaty include: (1) providing an immediate statement of international legal accountability; (2) providing an authoritative and global reference point for domestic law and policy initiatives; (3) providing mechanisms for more effective monitoring, including reporting on the enforcement of the convention by governments and nongovernmental organizations, supervision by a body of experts mandated by the convention, and possibly the consideration of individual or group complaints under a mechanism to be created by the convention; (4) establishing a useful framework for international cooperation; and, (5) providing transformative educative benefits for all participants engaged in the preparatory and formal negotiation phases.⁷¹

The benefits of pursuing a treaty must be weighed against the historical refusal of the United States to engage in virtually any multilateral treaty effort, especially human rights treaties. As the same white paper notes, treaty strategies are often blocked by

well-worn and oddly unquestioned justifications for U.S. non-participation in human rights treaties based on the complexities of our federal system, the notion that human rights are an exclusive concern of domestic jurisdiction and the U.S. Constitution does not permit the use of the treaty power for regulation of such matters, the potential for conflict between treaty obligations and the Constitution, and the like.⁷²

Nonetheless, despite the odds against them—or perhaps because of these odds—civil society continues to press for the adoption of new treaties. The following examples illustrate how in some cases key individuals act as norm entrepreneurs by playing a persistent role in bringing certain concerns to the negotiating table and in shaping how they are discussed and ultimately reflected in the resulting treaty.⁷³ Throughout treaty negotiations, human rights advocates may be partners with or opponents of the U.S. government and, as these examples suggest, the nature of the relationship between government and NGO is likely to change over time. The cases also demonstrate that the creation of a treaty sets in motion a new set of tasks for civil society, as the treaty must be ratified by a sufficient number of governments before it comes into force, which entails not only persuading the president to sign on, but enlisting the support of two-thirds of the Senate as well. Ratification of a treaty sets in motion a host of tasks concerned with the monitoring and implementation of the treaty. But also, when the United States refuses to ratify a treaty, civil society organizations may play a role in persuading the United States to refrain from obstructing other states' adherence to the treaty. No matter what happens, civil society has a role to play.

Shaping Treaty Language: Pea Soup and Children's Rights

Tired from another day's work on proposed treaty language for a new convention on the rights of children, governmental and nongovernmental delegates slipped into blue jeans and sweaters and headed out for some pea soup. For five years, Simone Ek, of Sweden's Save the Children, had been opening the doors of her Geneva flat each Thursday evening of the treaty negotiations for pea soup parties. Governmental officials and NGO representatives would ladle their own soup into Chinese porcelain bowls, spread a little orange Swedish caviar on crackers, and help themselves to some Swedish wine. Then they would informally drift off into little groups of two or three, sitting on the floor together with their shoes off. David Balton, the U.S. representative in 1988, might show off some of his juggling tricks,⁷⁴ or Adam Lopatka, the Polish delegate, might tell some jokes, but most of the time the room was filled with parallel conversations about the latest controversy on the treaty.⁷⁵

Debate over the children's rights convention had been ongoing since 1978, when a working group of the UN Commission on Human Rights began to meet each year for one week to discuss and draft the convention.⁷⁶ No records were kept for the first two years of the working group's existence, and it was not until 1981 that even a list of attendees was kept. In that year, there were representatives from only twenty-seven governments, four NGOs, and one UN body in attendance. Momentum for the treaty did not really build until participation picked up in 1983 and NGOs created a more formal working group, the ad hoc group on drafting of the Convention on the Rights of the Child (the "Ad Hoc NGO Committee").⁷⁷ The Convention process got another boost in 1996 when, under Anwarul Chowdhury's leadership, the UNICEF board accepted a series of decisions that made them more actively engaged in the drafting process.⁷⁸ By 1988, NGO and government representatives had developed a strong rapport over the years of pea soup gatherings, and they were ready to settle the final controversies on international standards for children's rights.

Most of the outstanding issues reflected the underlying East-West tensions at the time. Cynthia Price-Cohen, an American child rights advocate who participated in the negotiations, remembers:

The Western countries tended to look at the Convention on the Rights of the Child as an Eastern Bloc initiative with an Eastern Bloc concept of rights. The original emphasis of the Convention was heavily weighted toward that group in the form of economic, social and cultural rights, instead of emphasizing the Western view of human rights, which puts a high value on civil and political rights that protect the individual from the power of the State. As a consequence, many proposals reflected these political differences and gave rise to the possibility of ideological conflicts.⁷⁹

In 1988, much of the conversation at the pea soup parties reflected these ideological conflicts. At the forefront of discussion were the U.S. proposals to the treaty which centered on civil and political rights. The original proposal for civil and political rights, a suggestion from the Polish delegate, consisted of one excessively long sentence that included the "enjoy[ment of] civil and political rights and freedoms in public life to the fullest extent commensurate with his age" followed by "the right to privacy and to petition for redress of grievances."⁸⁰ This was not detailed enough for countries with civil and political rights traditions like the United States.

The U.S. State Department countered with a proposal to divide the single article into more specific separate articles.⁸¹ This proposal, which had been written based largely on NGO suggestions, contained five paragraphs that covered the panoply of civil and political rights recognized (at least to some degree) in American law, including freedom of expression, freedom of association and assembly, the right to privacy, and a prohibition against imprisoning children for exercising their rights. Not surprisingly, China and the USSR led the opposition to the American plan.

The Polish chairman of the working group, Adam Lopatka, relied heavily on NGOs to draft proposals on key issues and to break deadlocks between the government representatives.⁸² Specifically, when a dispute did arise among government representatives, if a parallel proposal from the Ad Hoc NGO Committee existed he would turn to NGOs as a source of compromise. If this did not work, he would charge a small drafting party composed of the disagreeing delegations to come up with an alternative text. If the drafting party returned to the working group with no consensus, Lopatka would suggest that the controversial provision be muted through the addition of a limitation clause, which permitted the government to place restrictions on the protected right by the claiming of national security or similar purposes.⁸³

In 1988, Lopatka faced the task of somehow prompting consensus on several of the American suggestions pertaining to civil and political rights. Perhaps it was a particularly good year for pea soup, the keen negotiating skills of Adam Lopatka, or sheer impatience to get on with the treaty process, but whatever the reason 1988 proved to be a breakthrough year. The delegates reached consensus on controversial American proposals on freedom of religion and freedom of association and assembly. The final version of the free association article, Cynthia Price Cohen points out, “basically duplicated a two paragraph proposal from the NGO Group.”⁸⁴ In addition the delegates reached consensus on a very broad freedom of expression provision that went beyond the typical American version of free speech as a “negative right” against which the government could not intrude. The provision not only protected children from interference with their free expression, but also included the “right to receive and impart information,” an inclusion for which NGOs had pushed based on its presence in other international human rights treaties (such as the International Covenant on Civil and Political Rights).

Finally, the delegates also approved a privacy provision: “The States Parties to the present Convention recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her right to privacy, family, home or correspondence, nor to unlawful attacks on his or her honor or reputation.”⁸⁵ In the final crafting of the privacy article, at the suggestion of the Federal Republic of Germany, the first eleven words would be deleted and rephrased with the stronger phrasing of “No child shall be subjected to . . .” As Price Cohen observes:

this produced a very strange result. The United States, which has a somewhat fragile constitutional right to privacy, was responsible for an article that uses the strongest obligatory language in the human rights lexicon to protect the child's privacy rights.

Ironically, the attempts of the United States to thwart the Soviet Union with American-style political rights ended up setting international standards for children that in some cases went far beyond those guaranteed by American law.⁸⁶

After a decade of drafting the standards, the NGOs and governments

involved prepared for a long battle for treaty adoption and ratification. However, when the Convention on the Rights of the Child (CRC)⁸⁷ came before the UN General Assembly in 1989, it was adopted without a vote—a gesture similar to a unanimous decision. The CRC soon became the treaty ratified by a great number of countries in the shortest period of time.⁸⁸ By 1995, only two countries were outstanding in not making the treaty legally binding: the United States and Somalia. In February 1995, President Clinton did sign the treaty based on the deathbed request of James Grant, the former head of UNICEF, but he did not send the treaty to Congress for consideration.⁸⁹ In signing the treaty,⁹⁰ Clinton emphasized that the United States would likely not agree to ratify the treaty without a detailed statement of reservations, which would effectively exempt the United States from compliance with provisions that were not compatible with U.S. law.⁹¹

The United States today is thus in the strange position of being outside a Convention that it actively helped to create. The United States was by far the most active of all the participating countries, making proposals and textual recommendations for thirty-eight of the forty substantive articles.⁹² The U.S.-based NGOs were at odds with their government on some aspects of the negotiations (most notably, on the U.S. intransigence on raising the minimum age for soldiers from fifteen to eighteen, and on elimination of the death penalty for children).⁹³ Nonetheless, both NGO and U.S. government representatives remember their relationship throughout the negotiations as congenial and cooperative.⁹⁴ In the end, the U.S. delegates were responsible for proposing five new articles: Article 10 (family reunification), Article 13 (freedom of expression), Article 14 (freedom of religion), Article 15 (freedom of association and assembly), Article 16 (right to privacy), Article 19 (protection from abuse), and Article 25 (periodic review of treatment). All of these articles reflected significant NGO input.⁹⁵

Both the U.S. negotiators and NGO activists were dissatisfied with the outcome of having influenced a treaty that the United States would never ratify. As Balton put it, “my hope was to negotiate a treaty the U.S. could sign.”⁹⁶ While Balton and the other American negotiators moved on to new assignments far removed from children’s rights, many NGO activists did the same. Others turned their attention to different human rights agreements that protect children, for example pushing the United States to become one of the first states to adopt the ILO Convention on the Worst Forms of Child Labor.⁹⁷ In 2003, however, the child rights movement began gearing up for a new round of the struggle to push U.S. ratification.⁹⁸ Spearheaded by the Child Welfare League of America (CWLA), this new movement has vowed to “raise the issue, everywhere.”⁹⁹ In doing so, they face a new array of allies and opponents.

Opposition to the CRC is well organized and active. According to Senate staff in the United States, the advocacy against the CRC far outweighs the support for the treaty in terms of the sheer numbers of advocacy letters: they receive a hundred letters against the CRC for every one letter in support of it.¹⁰⁰ Those of the far right describe the Convention as “the most insidious document ever signed by an American president,”¹⁰¹ warning that parents will lose all

authority over their children.¹⁰² They worry that granting children “rights” is fundamentally incompatible with “protection” of children.¹⁰³ Others claim that participation in the convention would undermine U.S. sovereignty and states’ rights,¹⁰⁴ or that the Convention is simply unworkable in the American system—due to what David Stewart terms “the compatibility gap.”¹⁰⁵ Parental rights advocates warn that the Convention

will limit the ability of United States parents to act in the best interests of their children, as only they are qualified to do, by granting children freedoms which clash with the duty of parents to direct the lives of their children.¹⁰⁶

Remembering the pea soup parties, Price Cohen urges coalition building on the treaty side. She points to the growing number of advocacy groups reaching out to parents whose children have been incarcerated, parents with children on death row, parents denied health services for their children, and parents with children injured or killed by gun violence. “These issues cross race and class,” says Price Cohen. “If there is any hope for international human rights for kids in the U.S., organizing must start here.”¹⁰⁷ Advocates agree that ratifying the CRC would not solve the issues facing American children, but they do assert that it could be a tool for influencing the domestic agenda to improve conditions for youth. Furthermore, they assert that ratification would allow the United States to participate in the work of the committee, establishing international standards for such concerns and providing the country with a means of measurement of these issues.¹⁰⁸

Despite the intransigence of the United States on the CRC, activists have not abandoned their demands. On the contrary, they regrouped in the spring of 2006 with a new coalition campaign, the Campaign for U.S. Ratification of the Convention on the Rights of the Child.¹⁰⁹ The campaign describes itself as a “volunteer-driven network of over 450 members, including non-governmental organizations, child and human rights advocates, religious and faith-based communities, academics, attorneys, physicians, educators, youth, students and other concerned citizens” and claims “membership representation from 175 organizations as well as 30 universities.”¹¹⁰ Its sole mission is “to bring about ratification and implementation of the CRC in the United States.”¹¹¹

Mitigating Damage on Treaty Negotiations: Tobacco Control

The World Health Organization (WHO) had never negotiated an international treaty before, but the new WHO director-general, Dr. Gro Harlem Brundtland, thought it was worth a try. The idea for an international treaty on tobacco control had been circulating ever since Professor Ruth Roemer at UCLA and her then-student Allyn Taylor (who, by 1998, was a well established WHO legal consultant) wrote about the idea in the early 1980s and 1990s.¹¹² But it was not until Brundtland took the helm that WHO started the “Tobacco Free Initiative” and made international tobacco control a top priority for that organization.¹¹³

In a move that surprised those who expected the WHO to maintain its non-activist tradition, the 191 member countries of WHO, meeting at the 1999 World Health Assembly, voted to support opening negotiations for the Framework Convention on Tobacco Control (FCTC).¹¹⁴ The goal of the convention was to place legally binding obligations on countries to protect the public from tobacco-related deaths and disease by addressing such issues as the method of taxation for tobacco-related products, smoking prevention, illicit trade, smoking advertising, and product regulation.¹¹⁵ Formal talks on the convention commenced in 2000 with the first session of the FCTC Intergovernmental Negotiating Body (INB).¹¹⁶

From the outset, WHO turned to nongovernmental organizations for expertise and assistance. The London-based organization ASH (Action on Smoking and Health) was one of the NGOs working closely with WHO from the beginning, and a host of public health and human rights organizations soon joined in the effort. But they needed a strong U.S. partner. ASH turned to the American-based Campaign for Tobacco-Free Kids, a privately funded anti-smoking organization, to fill the void. While Tobacco-Free Kids had no experience with international standard-setting, it had a reputation for impeccable research, creative advocacy, and unflagging energy. To spearhead the American side of the campaign, Tobacco-Free Kids hired attorney Judy Wilkenfeld as director of international programs. Having served as special adviser for tobacco policy in the U.S. Food and Drug Administration (1994–99) and assistant director of the Division of Advertising Practices in the U.S. Federal Trade Commission (1980–94), Wilkenfeld not only knew the issues, but also enjoyed congenial relations with many in the Clinton administration who would work on the proposed treaty.

Support for the treaty among NGOs grew rapidly. In March 2000, eight groups set out to “inquire and induce and cajole more groups to join.”¹¹⁷ The coalition-building effort included groups from all over the spectrum of activism and issues pertaining to tobacco, including not only public health and human rights groups but also labor rights groups, women’s organizations, and environmental groups. Within the course of three years, the coalition grew from the original eight to more than 120 partners.

Over this course of time, the sophistication of the advocacy, which began at a high level, improved even more as participation widened and deepened and advocacy campaigns became more targeted. For example, in places where social problems and health issues were viewed as human rights issues (for example, in South Africa), tobacco usage was viewed as raising human rights concerns. Just as AIDS was framed as a human rights issue in Africa so were the negative health consequences from cigarette smoking. In contrast, in tobacco-growing regions, anything associated with tobacco tended to be framed as a labor issue, local labor organizations were involved, and the subject was argued with local examples. And in places where tobacco was treated as a public health issue, as in the United States and much of Europe, the advocates drew from larger public health debates. Despite (or, perhaps, because of) the variety of localized approaches to the same problem, the NGOs were able to present a united front.

For those from the United States, the negotiation process involved a different cast of characters than that present in the usual treaty negotiation. Because the treaty was developed under the auspices of the World Health Organization, the State Department took a back seat to the Department of Health and Human Services, that is they did not head the delegation. The NGOs enjoyed a cooperative partnership with the delegation under the Clinton administration headed by Thomas Novotny. "The [Clinton] administration was in general supportive of the treaty and working against companies like Phillip Morris." Wilkenfeld states, "We didn't always agree with them, but we were able to deal with them and to tell them our disappointments. But then prior to the second session, there was a radical change in how the delegation behaved."

The early work that the Campaign for Tobacco-Free Kids conducted was mostly as a collaborative partner of the U.S. government. Initially there were "major questions [of] whether the U.S. and other tobacco-exporting nations will support a strong treaty."¹¹⁸ Once the first round of negotiations was completed, however, there was a feeling of "cautious optimism about the progress of the discussions" on the part of NGOs.¹¹⁹ On the fifth day of the first meeting, the U.S. delegate gave a statement calling for "a robust statement restricting advertising, sponsorship and promotion of tobacco, to the extent permitted under domestic law, with a special emphasis on eliminating those messages that have special appeal to children and adolescents."¹²⁰ With such strong support from the Clinton administration, the American NGOs focused less on the passage of a treaty, which appeared to be within grasp, and more on working with the government representatives to make the treaty a strong one.

The new presidential administration of George W. Bush brought an abrupt change in the relationship between NGOs and the U.S. government. To ease the transition before the second international meeting on the convention, active NGO groups and the outgoing U.S. delegates convened a meeting with the incoming U.S. delegates. According to Judith Wilkenfeld, who attended the meeting,

prior to the second session, there was a radical change in how the delegation behaved . . . it became quite painful . . . they were backing away on second hand smoke—all of the provisions they had taken a decent stance on they were backing away from. Not to mention they were becoming more unilateral.¹²¹

Other people in the United States who were closely involved with the issue, such as Congressman Henry Waxman from California, accused the United States of taking cues from Phillip Morris in their international negotiations.¹²² Even at this early stage of the new administration's involvement on the tobacco treaty issue, the lines were being drawn.

Throughout the rest of the negotiations, NGOs perceived the U.S. government as "no longer an ally, but an obstacle."¹²³ The lead official of the U.S. delegation, Thomas Novotny, resigned after the second round of negotiations "rather than argue the case of the new [Bush] administration on tobacco

issues,” including U.S. proposals that would make certain mandatory steps voluntary and soften restrictions on advertising aimed at children and smoking in public places.¹²⁴ Tensions mounted, and by the fifth session of negotiations of the tobacco treaty American NGOs attempting to influence foreign policy were at a point of collision with the delegation. “As their behavior became worse and worse, more intransigent, more unilateral—so did our rhetoric,”¹²⁵ remembered Wilkenfeld. The first press release on the U.S. behavior came during the fifth meeting. Headlined “U.S. Continues Obstructionist Behavior as Negotiations Resume on Proposed Tobacco Treaty,” the statement accused the delegation of taking positions protecting industry interests rather than public health.¹²⁶

The leading American NGOs working on public health issues, many of whom have Republican reputations, were among those galvanized into taking the strongest stand yet on the negotiations. In a joint statement in February 2003, the American Cancer Society, American Heart Association, American Lung Association, and Campaign for Tobacco-Free Kids called on the United States to withdraw from the negotiations on the proposed international tobacco treaty. Dr. Alfred Munzer, past president and spokesman for the American Lung Association at the negotiations, explained in a joint press release:

[T]he U.S. government has squandered an opportunity to lead the efforts to develop a strong Framework Convention on Tobacco Control. It has instead chosen to be the handmaiden of the tobacco industry and to use its power to sabotage and to weaken the treaty. The most honorable thing the U.S. can do now to ensure a strong Framework Convention is to be forthright and honest in its opposition to an effective convention and to tell its delegation to go home.¹²⁷

This statement “sent a message to the world community that U.S. NGOs did not stand by the actions of their government.”¹²⁸ The relationship of the NGOs toward the U.S. delegation thus evolved from a cooperative partnership in the Clinton era, to being combative in the beginning of the Bush administration, to one of outright dismissal later in the Bush administration.

The openly confrontational tactics of the U.S. representatives eventually gave way to a quieter “poison pill” policy. On March 1, 2003, 171 nations reached agreement on a strong treaty. The United States agreed to sign on to the treaty, but only if the convention were substantially changed. The United States issued a new statement of position on the FCTC which was generally supportive, but which still complained that “our ability to sign and ratify the Convention is undermined by the current prohibition on reservations.” The U.S. proposal was essentially to allow any nation to opt out of any of the treaty’s substantive provisions.¹²⁹ When the nongovernmental community received information regarding this development, it signaled a virtual call to arms in their activism and rhetoric. They launched a media blitz which yielded stories in all of the major U.S. newspapers.

In another abrupt about-face, on May 18, 2003, Health and Human

Services secretary Tommy Thompson declared that the United States would join the other members of the WHO in supporting the Framework Convention on Tobacco Control. "This is an outstanding day when you can stand up and make a step forward for public health," Thompson said, adding, "It is no exaggeration to state that the United States is a world leader in anti-smoking efforts." It appeared as if the Bush administration's fight against the treaty was forgotten:

Let me say that again: there can be no questioning the profound dedication of the United States to controlling the public health threat from smoking. I am very proud of that, and we look forward to working with partners from around the world to prevent future death and disease through effective and sustainable global prevention and control efforts.¹³⁰

Thompson did not specify whether the United States would sign the treaty, but said the United States is "carefully reviewing the text."

Adoption of the treaty by the WHO assembly cleared the way for the FCTC to be opened for signature on June 16, 2003. The treaty committed nations to banning all tobacco advertising, promotion, and sponsorship (with an exception for nations with constitutional constraints). Under the treaty, cigarette packs were required to include warning labels covering at least 30 percent of the principal display areas of the pack. The treaty provided nations with a road map for enacting strong, science-based policies in other areas such as secondhand smoke protections, tobacco taxation, tobacco product regulation, combating cigarette smuggling, public education, and tobacco cessation treatment.

States signed and became parties to the treaty at a rapid pace. On February 27, 2005, ninety days after the fortieth state became party to the treaty, the treaty "entered into force," thus making it part of international law. Due to its failure to ratify the treaty, the United States was not allowed to participate when the nations that had ratified the treaty met to set policy on its implementation in February 2006. As of July 2007, the treaty boasted the signatures of 168 countries; an incredibly high 148 countries had ratified the treaty. While the United States signed the treaty in May 2004, the administration has, in the words of Tobacco-Free Kids president Matthew L. Myers, "dragged its heels for nearly three years without sending the treaty to the Senate for ratification."¹³¹ As Meyers explained, "The Administration has said the 35-page treaty is ongoing legal review, but the fact that the review has taken so long is an indication that at best ratification is a low priority." White House lawyers have claimed that the treaty's requirement that nations ban all tobacco advertising raises First Amendment concerns. However, the treaty included an explicit exemption for nations with constitutional constraints, requiring these countries to implement restrictions to the extent constitutionally allowed.

Even as the United States remained outside the treaty, the work of Tobacco-Free Kids was widely viewed as a success. In August 2006, Michael Bloomberg, the philanthropist/mayor of New York City, announced that he was creating a

\$125 million initiative to promote freedom from smoking around the world.¹³² Tobacco-Free Kids was named as one of five coordinating organizations for the fund. Almost immediately, the organization set up a global research center, using their lobbying skills to address new challenges worldwide.

Initiating a Treaty: Disability Rights

“Nothing about us without us,”¹³³ so goes the familiar refrain of the disability rights movement. When in the last month of 2001 the U.S. State Department began sizing up its position on a prospective international convention on disability rights, leaders in the disabled community wanted to make sure they had input from the outset. While the presidency of George W. Bush was unlikely to recommend that the United States sign an international treaty on disability rights, the State Department had a variety of options, none of which the disability community considered constructive: it could use its powerful voice to obstruct the progress of a treaty desired by other countries; it could ignore the process; or it could indirectly support the process while still asserting its irrelevance to the United States. No matter how it acted, the State Department would leave its mark on the way disability issues are understood. Knowing this, the disability movement in the United States geared up to try to work with government actors on framing the issues and initiating the treaty process.

The first step the disability movement took was to eliminate the chance that the United States could ignore the growing momentum for an international treaty on disability rights and thus signal its irrelevance to the rest of the world. Once dead, a treaty process is hard to revive. The advocates needed to send a clear message to the U.S. government that an international convention on disability rights was of great importance to disabled people in America and throughout the world. But disability rights advocates are an extremely diverse lot, and very few at that time were thinking in terms of international human rights. They had been a bit taken by surprise when Mexico raised the issue of an international disability rights convention as part of the Platform of Action adopted at the World Conference against Racism in Durban, South Africa.¹³⁴ The speed with which the United Nations took up the issue was indeed breathtaking. On November 28, 2001, the UN General Assembly adopted by consensus a resolution calling for the establishment of an ad hoc committee to elaborate “a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the field of social development, human rights and non-discrimination.”¹³⁵

The establishment of the ad hoc committee created a new focus and source of energy for disability activists. The small pockets of the disability community that were versed in human rights and international treaties suddenly found themselves in demand. Until that time, the mainstream human rights movement had demonstrated little interest in disability issues,¹³⁶ and the people in the disability movement viewed international human rights organizations with distrust.¹³⁷

Historically, the human rights community had dismissed disability as a medical issue to be “handled” by the medical establishment or as a personal tragedy best “dealt with” by charitable groups.¹³⁸ It was up to those activists serving as a bridge between the disability and human rights communities to introduce human rights advocates to a new way of thinking. The disability community urged an understanding of disability in terms of a social construction. Under this socially constructed model of disability, emphasis is placed on how *society* requires adaptation, and *not* the person with a disability.¹³⁹ For those working on the new treaty process this meant the understanding that “full participation in society for people with disabilities will be achieved not by ‘fixing’ people, but by breaking down the barriers that prevent realization of equal opportunity, full participation and respect for difference.” It was with this view of disability, drawn from the experience of people with disabilities and disability activists, that advocates began approaching a host of Washington, D.C., actors: members of Congress, State Department attorneys, the National Council on Disability, domestic policy advisers on disability in the White House and National Security Council, as well as other relevant agencies with some link to disability policy.

In planning their advocacy strategy, disability leaders tried to ensure that it was inclusive of the disability community as a whole and not dominated by European or North American members of the network or by any particular sector of the disability community. The framing of the issue in legal and human rights terms posed great challenges to inclusiveness. As Janet Lord, legal counsel and advocacy director for Landmine Survivors Network (LSN), has observed:

human rights framing will necessarily, in the short term at least, privilege a certain elite group of disability advocates and organizations unless and until the [disability community] succeeds in equipping and supporting its members to engage in human rights advocacy at many levels.¹⁴⁰

To avoid privileging elites, the National Council on Disability embarked on an extensive capacity-building campaign. Significant publications included the National Council on Disability’s *A Reference Tool: Understanding the Potential Content and Structure of an International Convention on the Human Rights of People with Disabilities*.¹⁴¹ Most significant was the white paper publication entitled *Understanding the Role of an International Convention on the Rights of People with Disabilities*¹⁴² which was published by the National Council of Disability and around which two historical events took place. One event brought together leaders of the American disability community and leaders of the international human rights movement for the first time. Another brought together leaders of the American grassroots disability community for a day-long conference on international disability rights and the workings of the convention process in particular. To further enhance participation of people with disabilities in the decision-making process, a coalition of nine American-based disability organizations wrote a Rough Guide to participation in the ad

hoc committee to help on-site participants influence the negotiations.¹⁴³ Landmine Survivors Network followed up the first edition with revisions and five regional editions of the Rough Guide (Inter-American, African, European, Asia-Pacific, and Middle Eastern) in anticipation of the meeting of the second Ad Hoc Committee at the UN in 2003.

In the months leading up to the first Ad Hoc Committee meeting, disability organizations lobbied hard to achieve access to the meeting at the United Nations. The participation of NGOs was far from decided. Only seven international disability groups worldwide enjoy ECOSOC consultative status, and many of the organizations taking leadership roles in the new treaty process were excluded from this group.¹⁴⁴ The UN kept disability organizations in limbo, refusing to commit on procedures for NGO participation. Just one week before the meeting was to commence, the UN General Assembly adopted a resolution that allowed all organizations enjoying consultative status with the Economic and Social Council to participate in ad hoc sessions and to speak in the general debate provided that other, nonaccredited organizations could apply for accreditation for the meeting.¹⁴⁵ For people with disabilities, however, real “access” was still denied. As Janet Lord observes:

The woefully inadequate facilities of the United Nations posed major barriers to access for people with disabilities, however, and were never fully resolved. For example, the gallery space was inaccessible for people using wheelchairs and a move to an alternative conference room with equally inaccessible space for observers forced disability activists onto the floor of the committee itself (the unintended advantage being that NGOs found themselves sitting alongside delegates and IGO representatives). Participants with hearing impairments discovered conference facilities designed with technology dating back to the 1960s that was not compatible with modern hearing aid devices. No sign language interpretation or real-time transcription services were provided by the United Nations, and no documents were available in alternative formats appropriate for people with visual impairments.¹⁴⁶

Although many of the problems would be addressed by the second meeting, they did pose significant obstacles at the outset.

While the building conditions started to improve, the State Department became more and more of an obstacle. By the time of the first ad hoc meeting in July 2002, the State Department had come around from being apathetic to the treaty process to being obstructionist. The State Department’s original stance was classic American exceptionalism: the United States did not need the treaty because it had the much stronger Americans with Disabilities Act (ADA). In so doing they implied that human rights treaties are for other people. At the 2002 ad hoc meeting, however, the U.S. representatives stalled the process, poking technical holes in the document, asserting that the time was not ripe for a disability treaty.

Avraham Rabby, U.S. adviser for economic and social affairs, told the UN delegates that the American experience (through the ADA) “proves that, when crafted correctly, legislation can have real and lasting effects on the promotion

of the rights of persons with disabilities and have a positive effect on the population as a whole.” However, he warned:

A new treaty, hurriedly conceived and formulated, will not necessarily change the practice of states. Indeed, experience has shown that the human rights instruments that have resulted in the most profound change in state practice have been those instruments which were carefully considered over a substantial period of time and which were adopted by consensus among states, after significant discussions and debate.¹⁴⁷

In issuing his remarks, the U.S. representative indicated the Americans' displeasure at the amount and intensity of NGO participation at the meeting. While Rabby did state, “We are pleased with the participation of NGOs in the meetings of this Working Group,” he went on to say:

We would note, however, that it is normally the practice in the UN General Assembly to allow all Member States to speak in the General Debate prior to the commencement of NGO speeches. Although we adopted a different format yesterday to allow for maximum NGO participation in the General Debate, we would stress that this format should not be viewed as a precedent for purposes of other negotiations in the UN General Assembly or its subsidiary bodies. Rather, it should be viewed as an exception to the general rule, because of the unique expertise that the NGOs can bring to our discussions.¹⁴⁸

Disability advocates and human rights activists fought back by publicizing America's recalcitrant stance and by framing America's opposition in terms of hostility toward the disabled. Throughout the two weeks during which the Ad Hoc Committee met in New York, meetings of a spontaneously created Disability Caucus were held adjacent to the Ad Hoc Committee conference room. This tactic was successful in terms of presenting, at various points, a unified voice of NGOs before the Ad Hoc Committee.¹⁴⁹ The NGOs agreed to use the Internet and other mechanisms to expose the United States' obstructionist behavior.¹⁵⁰

A variety of tools adopted by the NGOs helped spread information on meetings, draft resolutions, and statements by delegations as the news unfolded. At the first Ad Hoc Committee meeting, the Landmines Survivors Network provided daily editions of the *Disability Negotiations Daily Summary*, which provided detailed overviews of statements made on the floor of the Ad Hoc Committee and were electronically transmitted to local partners around the world for further dispersion among local and national partners.¹⁵¹ The content and process for daily preparation of these summaries models that of *Earth Negotiations Bulletin*, the long-established international environmental reporting service for intergovernmental meetings.¹⁵²

Still another helpful tool adopted at the Ad Hoc Committee by the disability community was the preparation of a daily *Disability Negotiations Bulletin*, providing a political and informational platform for members of

the community to convey their message to delegates. To prod states into re-examining their behavior, the bulletin awarded states with a “Disability Awareness Badge of Honor” or “Disability Awareness Badge of Dishonor.” The *Disability Negotiations Bulletin* was credited on the floor of the Ad Hoc Committee when Denmark, speaking on behalf of the European Union, noted that it “appreciated one of the more creative means of communication of the Ad Hoc Committee, namely, the *Disability Negotiations Bulletin*,” and stated further that “none of us have at any point been in doubt of the engagement of the entire group of NGOs in this meeting and in the future process.”¹⁵³

Before the close of the first Ad Hoc Committee, an urgent action alert was sent out to mobilize American disability activists to demand that the United States withdraw its objection to the treaty.¹⁵⁴ Under intense pressure, the U.S. delegation stepped aside and allowed the process to continue. While the end result of the meeting was only a decision to continue deliberations,¹⁵⁵ NGOs could claim victory.¹⁵⁶

The conclusion of the first Ad Hoc Committee meeting stepped up the domestic momentum for the disability community and its supporters. Four developments are particularly noteworthy.¹⁵⁷ First, Senator Tom Harkin (Iowa) established a working group after the first Ad Hoc Committee which, on a monthly basis, brought together disability activists and members of the National Council on Disability to discuss developments in relation to the convention. Activists worked with staffers from the offices of Senator Harkin, and Representatives James Langevin (Rhode Island) and Tom Lantos (California) to develop a draft congressional resolution that would call on the United States to support the new convention effort. Activists also used the “New Freedom Initiative” of President Bush to build an argument for support of the convention effort.¹⁵⁸ Finally, the National Council on Disability’s International Watch, a federal advisory group established to follow international disability issues, began to focus extensively on the new convention effort and discussed ways in which to build awareness of the effort in its monthly teleconferences.

At the next major United Nations meeting on the proposed convention, in June 2003, the United States agreed to neither support nor obstruct the treaty process. The American representatives still insisted that American law was far superior and that, although some countries might need a treaty, the United States did not.¹⁵⁹ In marked contrast to the Tobacco Control Treaty negotiations, however, the United States would take a stance that was very close to what NGOs were calling for from them, namely a nonobstructionist position.

What explained the U.S. adoption of a more congenial position? According to some human rights activists in Europe, the American UN Mission in Geneva was telling Washington to support this treaty effort, given the backlash about U.S. action in Iraq and positions on other treaties.¹⁶⁰ Some activists in Washington, D.C., assert that individual personalities in government were genuinely in support of the treaty, and others speculate that the United States made a simple instrumental calculation that it had more to gain than to lose by a “non-position position.”¹⁶¹ In any event, the American position paved the way for a remarkable outcome: the Ad Hoc Committee’s decision to put the drafting of

the initial treaty text in the hands of a working group consisting of twenty-five governments, twelve NGO representatives, and one representative of national human rights institutions. While this group was reminiscent of earlier treaty-drafting processes (such as the children's rights treaty), it was unprecedented in that it included the "constituency" of the treaty.

In 2003, after two Ad Hoc Committee sessions, the UN General Assembly endorsed the establishment of a working group with the aim of preparing and presenting a draft text of a convention to form the basis for future negotiations by member states.¹⁶² The working group was tasked with considering all previous contributions submitted to the Ad Hoc Committee by states, observers, regional meetings, relevant United Nations bodies, entities and agencies, regional commissions and intergovernmental organizations, NGOs, national disability and human rights institutions, and independent experts. The final composition of the working group included twenty-seven governments, twelve NGOs, and one representative of a national human rights institution.¹⁶³ The working group held a ten-day meeting from January 15 to January 16, 2004, and, during that time, drafted a twenty-four article convention text.¹⁶⁴ This working group text became the focus of the next sessions of the Ad Hoc Committee, where the language was debated and refined.¹⁶⁵

Throughout these negotiations, the United States sent representatives to every consequential drafting meeting, although it continued to advance its self-described "neutral" stance on the treaty. One of the few Ad Hoc debates that the U.S. delegation weighed in on concerned the right to life article (Draft Article 8), advancing a strong right to life stance.¹⁶⁶ In a surprise break of near silence throughout the negotiations, the U.S. delegation pushed for a strong right to life stance that, in many circumstances, would contradict the wishes of the disabled community. As Janet Lord, one of the few NGO advocates to make nearly every major negotiation session of the Ad Hoc Committee, said "the position was explained to angry members of the American disability community as a directive from the White House in response to requests for support by members of the right to life community."

At the conclusion of its eight sessions in August 2006, the Ad Hoc Committee finally emerged with the draft text of the convention (including an optional protocol), which they adopted without a vote. An open-ended drafting group was tasked with completing technical formalities such as ensuring uniformity of terminology throughout the text of the draft convention and between the versions in each of the official languages of the United Nations. In December 2006, the chair of the drafting group presented an oral report on the results of its work, and the committee forwarded the draft final report with the text of the Convention on the Rights of Persons with Disabilities to the General Assembly, which adopted it by consensus.¹⁶⁷ The convention and the optional protocol were open for signature by all states as of March 30, 2007, and as of July 2007, one hundred states were signatories to the main treaty, and fifty-five were signatories to both the treaty and protocol.¹⁶⁸

THE TURN TOWARD U.S. LEGISLATION AND COURTS

Civil society has also had a tremendous impact on the shaping and implementation of domestic human rights legislation. The oldest legislative strategies have involved linking foreign assistance to improvements in human rights.¹⁶⁹ As noted in chapter 2, beginning in the 1970s, U.S. military and economic aid was given to all countries with specific built-in carrots and sticks for countries with a history of abusing human rights. More recently, NGOs have pushed for such measures as the Lautenberg and Leahy-McConnell bills on aid conditionality to the former Yugoslavia. The Coalition for International Justice, for example, helped shape the Lautenberg Amendment to the Foreign Assistance Act of 1997,¹⁷⁰ which links bilateral aid and multilateral loans to evidence of cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Among its provisions, the law also stipulates that Congress consult with human rights organizations prior to awarding aid.¹⁷¹

At the level of local government, human rights advocates have pushed laws and regulations on human rights, thus testing the ability of local governments to shape foreign affairs. The Free Burma Campaign, for example, succeeded in persuading the state of Massachusetts to pass a law forbidding purchases from any corporation doing business in Burma. The U.S. Supreme Court struck down the law in June 2000 on the grounds that it was preempted by a federal law imposing sanctions on Burma. However, because the decision did not comment directly on the foreign affairs question, some commentators argue, it left open the possibility of locally imposed sanctions.¹⁷² The campaign of human rights activists in Massachusetts served to spur a new effort for legislation addressing Burma at the federal level.¹⁷³

This section provides illustrations of three contemporary examples of the role NGOs play in shaping the content and implementation of federal legislation related to human rights. As these cases demonstrate, foreign aid conditionality can be used in creative ways to further a variety of human rights goals. The decision to push for new domestic legislation, like the decision to pursue a treaty strategy, may be the product of a small set of “norm entrepreneurs” who design and execute a concerted strategy to draw congressional support for the adoption of new legislation. The content of these strategies may be ideologically conservative or liberal, but they all share a faith in the power of domestic human rights legislation to effect change. These cases also demonstrate that the creation of new legislation marks only the beginning of monitoring efforts as civil society remains vigilant to the legislation’s implementation. Finally, the last case in this series raises the question of the role of human rights attorneys in raising claims in U.S. courts.

Shaping Legislation: The International Religious Freedom Act

Sometimes ideas for social change initiatives come in a flash of inspiration, and at other times they are carried around in a briefcase for years until the right opportunity presents itself. For Rev. Richard Cizik, vice president for

governmental affairs of the National Association of Evangelicals (NAE), the umbrella association for Evangelical churches in the U.S. and around the world, accomplishing this dream was a matter of long-term persistence. In 1992, Cizik read an article by Darryl Hart in the *Christian Century* discussing the evangelical “midlife crisis.” The article argued that the movement suffered from an identity problem, and in order to be politically relevant, it had to change its strategy away from “eliminating individual sins” to focusing on the “broader structural problems that often breed the evils they oppose.”¹⁷⁴ Cizik couldn’t have agreed more with the idea that NAE was following what he considered to be “a flawed methodology” by concentrating on individual salvation instead of a broader “political change strategy.”¹⁷⁵ While he mulled over these ideas, the article went into his briefcase, where it stayed for a few more years.

The right moment to act on the ideas in the article came a few years later when, in 1995, Cizik and four others similarly concerned with broadening the evangelical agenda met and, in his words, “decided to change the status quo.”¹⁷⁶ By then, Cizik was thinking about ways to engage U.S. policy makers on issues of religious freedom internationally. So he sat down with Nina Shea of Freedom House’s Center on Religious Freedom, Diane Knippers of the Institute of Religion and Democracy, Mike Horowitz of the Hudson Institute, and Dwight Gibson of the World Evangelical Alliance and began discussing a plan of action.¹⁷⁷

This initial meeting produced the text for the NAE Statement of Conscience Concerning Worldwide Religious Persecution.¹⁷⁸ In a section entitled “Facts,” persecution of religious believers, and in particular Christians, is characterized as “an increasingly tragic fact in today’s world.”¹⁷⁹ Citing such countries as China, Cuba, Laos, North Korea, and Vietnam, specifically, as well as “Islamic countries,” generally, the statement outlines threats, persecution, and intimidation against evangelical Protestants, Catholics, and Muslims seeking freedom from repressive regimes. It calls on the U.S. government to take a leadership role on these issues and outlines four action areas for government: (1) public acknowledgement of anti-Christian persecution through international and national agencies; (2) State Department reporting of incidents of religious persecution; (3) reform of INS policies for refugee and asylum petitions of those fleeing anti-Christian persecution; and its most controversial provision, (4) the “termination of non-humanitarian foreign assistance to governments of countries that fail to take vigorous action to end anti-Christian or other religious persecution.”¹⁸⁰

To advance this agenda, NAE embarked upon a highly coordinated campaign that included a strong media component, a large, well-publicized public gathering in Washington, D.C., and smaller private meetings bringing together leaders in the evangelical community with White House officials, members of Congress, and other political leaders. Their strategy was to present the statement as a *fait accompli* at the meeting and to request that conservative religious organizations sign on and support the initiative. To raise the stakes, NAE succeeded in getting an article about the statement and the event in the

New York Times to coincide with the start of the public meeting.¹⁸¹ The timing of the event and the targeted publicity around it was intended to maintain momentum on this issue.¹⁸²

While the publicity was welcome and indeed desired, it brought the movement to the public eye and in so doing it invited criticism as well as praise. Some detractors worried about the lack of democratic process in the drafting of the NAE agenda and expressed concern that it “disproportionately represents the interests of the so-called ‘missionary religions’ that have evangelicalism, particularly international evangelicalism, at the heart of their mission.”¹⁸³ Supporters of the NAE insisted, however, that the bill, while prompted by the concerns of Christians, was not privileging any particular faith. Pragmatic reasons, Cizik contends, explain the drafting process, rather than any desire to exclude any group. Cizik explains that it would have been impossible to craft a document with a larger group. In his opinion, having the smaller group undertake the initial drafting and then heavily promoting the final language was more effective.¹⁸⁴ Cizik argues that they “had to start with the most aggressive, highest and best, most assertive language knowing full well that with everyone opposing us, it was going to be watered down.”¹⁸⁵

In May 1997, the text of the NAE Statement served as the basis for a bill introduced by Republican congressman Frank Wolf. It immediately set off intense debate.¹⁸⁶ While strongly endorsed by the Christian Coalition and other conservative religious groups in the United States, the proposed law was viewed with skepticism by moderate and liberal religious groups.¹⁸⁷

Mainstream and liberal religious nongovernmental organizations expressed concern with the language of the proposed law and pressed for a final product that would reflect a more ecumenical approach. Prominent among the opposition was the National Council of Churches (NCC), a group that, according to its self-description, is “the leading force for ecumenical cooperation among Christians in the United States.”¹⁸⁸ As the representative coalition of thirty-six Protestant, Anglican, and Orthodox member denominations in the United States, the NCC advocated for a multilateral approach to human rights violations abroad, drawing on established human rights instruments and mechanisms instead of creating new unilateral measures. The NCC also suggested training for government officials in investigating human rights violations, reserving sanctions as a “thoughtful last resort, not automatic first resort,” language that respected cultures and traditions of other nations, and measures to ensure that the issue of religious freedom would not be further politicized.¹⁸⁹

Particularly controversial provisions of the proposed law required the government to impose sanctions automatically on countries that violated religious freedom. John Shattuck, assistant secretary for Democracy, Human Rights and Labor, expressed the Clinton administration’s concerns about these provisions in a statement before the Senate Committee on Foreign Relations. He pointed to four problems that echoed the NCC’s concerns:

We are concerned that the bill's sanctions-oriented approach fails to recognize the value of incentives and dialogue in promoting religious freedom and encouraging further improvements in some countries . . .

We also believe that the sanctions provisions will be counterproductive. In particular, while the imposition of sanctions is likely to have little direct impact on most governments engaged in abuses, it runs the risk of strengthening the hand of those governments and extremists who seek to incite religious intolerance.

We fear that the sanctions could result in greater pressures—and even reprisals—against minority religious communities . . .

We also believe that sanctions could have an adverse impact on our diplomacy in places like the Middle East and South Asia, undercutting Administration efforts to promote the very regional peace and reconciliation that can foster religious tolerance and respect for human rights.¹⁹⁰

While “public condemnation—and even sanctions—may be appropriate in many instances,” Shattuck urged that United States maintain the flexibility to determine when and how to condemn violators.¹⁹¹

Some of the administration's concerns about the need for flexibility were addressed in the revised version that was passed by both houses of Congress. Senator Orrin Hatch noted that the congressional consensus on the bill came “at a time that was in other respects highly polarized politically—the House of Representatives was determining whether to go forward with impeachment proceedings against President Bill Clinton.”¹⁹²

On October 27, 1988, President Clinton signed the International Religious Freedom Act into law.¹⁹³ In doing so, he tried to downplay its significance, suggesting that it did not represent a great change of policy:

Section 401 of this Act calls for the President to take diplomatic and other appropriate action with respect to any country that engages in or tolerates violations of religious freedom. This is consistent with my Administration's policy of protecting and promoting religious freedom vigorously throughout the world. We frequently raise religious freedom issues with other governments at the highest levels.¹⁹⁴

The president also emphasized the flexible nature of the new law, commenting:

I commend the Congress for incorporating flexibility in the several provisions concerning the imposition of economic measures. Although I am concerned that such measures could result in even greater pressures—and possibly reprisals—against minority religious communities that the bill is intended to help, I note that section 402 mandates these measures only in the most extreme and egregious cases of religious persecution. The imposition of economic measures or commensurate actions is required only when a country has engaged in systematic, ongoing, egregious violations of religious freedom accompanied by flagrant denials of the right to life, liberty, or the security of persons—such as torture, enforced and arbitrary disappearances, or arbitrary prolonged detention. I also note that section 405 allows me to choose from a range of measures, including some actions of limited duration.”

The act provides additional flexibility by allowing the president to waive the imposition of economic measures if violations cease, if a waiver would further the purpose of the act, or if required by important national interests.¹⁹⁵

The provisions of the act that lack flexibility, the president contended, infringe on the authority vested by the Constitution solely with the president. For example, section 403(b) continued to contain mandatory language ordering the president to undertake negotiations with foreign governments for specified foreign policy purposes. In signing the treaty, Clinton also vowed: "I shall treat the language of this provision as precatory and construe the provision in light of my constitutional responsibilities to conduct foreign affairs, including, where appropriate, the protection of diplomatic communications."¹⁹⁶

The White House's attempts to downplay the impact of the International Religious Freedom Act (IFRA) were soon eclipsed by the many real and substantial changes the new law required. The president was required to consider taking action against countries named by the State Department to be violators of religious freedom.¹⁹⁷ The IFRA created three government bodies to monitor and respond to issues of religious freedom: the State Department Office on International Religious Freedom, directed by an ambassador-at-large;¹⁹⁸ the Commission on Religious Freedom, an independent body with nine members with the ambassador-at-large serving as an *ex officio* member; and a special adviser on international religious freedom in the National Security Council. The Office on International Religious Freedom was assigned the responsibility of issuing annual reports on the status of religious freedom for all foreign countries, advising the president and the secretary of state on the issues, and representing the United States with foreign governments on issues of religious freedom.¹⁹⁹

The Office on Religious Freedom country reports, issued yearly since IFRA's enactment, provide human rights organizations with information about violations of freedom of belief and conscience in countries around the world.²⁰⁰ By providing a certain amount of leverage for human rights organizations to request that the U.S. government take specific actions in religious freedom cases, the Office of Religious Freedom has changed the way many human rights organizations approach the issue. Human Rights Watch, for example, created the Religious Freedom Program of Human Rights Watch in order to "press the U.S. government to identify nations engaged in serious violations of religious freedom as countries of particular concern and enforce the restrictions called for in the International Religious Freedom Act." In August 2002, for example, the Europe and Central Asia Division of Human Rights Watch wrote a letter to Secretary of State Colin Powell asking him to designate Uzbekistan and Turkmenistan as countries of particular concern for religious freedom under provisions of the IRFA. As the letter states, designating these countries would not trigger sanctions, but would "strengthen the U.S. government's hand in that dialogue and give the administration a broad range of policy tools that it could use to prod both governments toward better practices in the area of religious freedom."²⁰¹

There is little doubt that the small group of NGOs meeting at Cizik's request had an enormous impact in shaping legislation dealing with human rights concerns and U.S. foreign policy. While the IFRA's strategy for confronting serious concerns of religious persecution remains controversial in the human rights and religious community, the NAE did succeed, to use President Clinton's words, in making religious freedom a "central element of U.S. foreign policy."²⁰² Some critics argue that the IFRA seeks to impose Western notions of separation of church and state and is particularly imperialistic in Muslim countries,²⁰³ and that the law promotes "a hierarchy of human rights in which religion is placed at the top, above secular concerns such as due process of law or freedom of speech."²⁰⁴ Another criticism is that "the United States acts unilaterally and ignores international mechanisms for addressing human rights issues, and that the International Religious Freedom Act is just the latest example of American indifference to international institutions and norms."²⁰⁵

The IFRA's strategy for furthering religious freedom is also controversial. On the one hand, some suggest that the private, diplomatic pressure by U.S. leaders is more effective than public shaming and threats of sanctions. On the other hand, other critics suggest that IFRA is arguably too weak and that the U.S. should always adopt a zero tolerance policy toward offender nations with the full application of sanctions.²⁰⁶ While the various sides argue, the work of the bodies established by the IFRA continues. Its annual review of the status of religious freedom worldwide has drawn considerable attention from journalists and politicians everywhere, as has the designation of countries that have "engaged in or tolerated particularly severe violations of religious freedom" as "Countries of Particular Concern" (CPCs). In 2006, this list included the following countries (with year in which it was designated a CPC in parentheses): Burma (1998), China (1999), Eritrea (2004), Iran (1999), North Korea (2001), Saudi Arabia (2004), Sudan (1999), Uzbekistan (2006).²⁰⁷

Monitoring Legislation: Human Trafficking

"Well, it could be a lot worse," said Martina Vandenberg, a human rights attorney with years of experience working on human trafficking, as she ruffled through the U.S. State Department's third annual Trafficking in Persons Report. She looked up with a shrug and smiled, "You know, they still have a lot to learn." Through the efforts of human rights, women's rights, and anti-slavery organizations, the U.S. government had already come a long way on the issue of human trafficking. By enlisting the help of some sympathetic members of Congress, most notably Senator Paul Wellstone of Minnesota, NGOs pressured Congress in July of 2000 to require the Department of State to increase and improve its reporting on trafficking in its annual *Country Reports on Human Rights Practices*.²⁰⁸ In 1998, President Clinton identified trafficking in women and girls as a "fundamental human rights violation," and tasked the President's Interagency Council on Women with coordinating government policy on this issue.²⁰⁹ This led to several important initiatives including the

holding of congressional hearings and implementation of foreign aid policies related to trafficking.

For some observers it appeared as if the anti-trafficking advocates reached the pinnacle of success when, in October 2000, Congress enacted comprehensive federal legislation with the stated purpose of “combat[ing] trafficking, ensur[ing] the just and effective punishment of traffickers and protect[ing] victims.”²¹⁰ Among other measures, the Trafficking Victims Protection Act (TVPA) mandated that the State Department monitor the status of trafficking and government responses in other countries and, with this ranking at hand, adjust foreign aid allotments, in some cases eventually denying aid entirely.²¹¹

Far from settling the issue, the TVPA created new controversies and challenges for anti-trafficking advocates. The TVPA’s three-tier system for ranking countries is particularly open to scrutiny. The TVPA requires reporting on only those countries worldwide with a “significant number” of trafficking victims, thus excluding countries with low numbers of gross human rights abuses. Each country that is included is judged based on how well its domestic efforts meet the legislation’s minimum standards for the elimination of trafficking and are classified as to whether they: (1) fully comply with such standards; (2) do not yet fully comply but are making significant efforts to comply; and (3) do not fully comply and are not making significant efforts to do so. Countries that fail to improve their ranking may face the withholding of nonhumanitarian, non-trade-related assistance. Section 111 of the act authorizes the president to impose sanctions under the International Emergency Economic Powers Act, including the freezing of assets located in the United States.²¹²

This process is only as good as the accuracy and completeness of information on which it relies. NGOs have tried to supplement the information through their own field work, but ultimately the end result depends on the willingness and ability of the reviewer to analyze it in a fair and methodologically sound manner.

The first report, for example, was criticized for glossing over the problems of state complicity and corruption, and for concentrating too much on trafficking for “sexual exploitation,” to the exclusion of trafficking into other forms of forced labor, among them sweatshop labor, domestic servitude, and forced agricultural and construction work.²¹³ The second report was criticized for not adequately evaluating anti-trafficking measures. In 2002, LaShawn Jefferson, the director of the Women’s Rights Project of Human Rights Watch, wrote Secretary of State Colin Powell a letter asserting, among other complaints, that the “Trafficking Report cites ‘actions’ taken by governments to combat trafficking, such as setting up victim service programs, establishing inter-ministerial working groups, and proposing draft legislation, but does not evaluate the content or effectiveness of such measures.”²¹⁴ Human Rights Watch continued to voice similar complaints in 2003, asserting that “[T]he report gives undue credit for minimal effort and ignores government practices, such as summary deportation and incarceration, that effectively punish trafficking victims.”²¹⁵ Moreover, the report in 2003, like the previous two reports, was lacking in specifics and was almost entirely devoid of statistics.²¹⁶

The ranking component of the reports is also a subject of controversy. Tier 2 so broadly encompasses countries of disparate trafficking records that it makes the ranking system almost meaningless. Moreover, human rights advocates note with suspicion that some governments moved up a tier once they became an ally in the “war on terror.” For example, in 2002, Pakistan moved from Tier 3 to Tier 2, even though the State Department’s latest human rights report indicated that Pakistan “has done little to stem the flow of women trafficked into the country or to help victims of trafficking.”²¹⁷

NGOs working on trafficking debate the methodology and usefulness of the tier reporting system and the adoption of sanctions. They often argue about how to address and approach the issue of prostitution—or “sex work.” In general, however, they do agree that the TVPA holds great potential for improving funding for working with victims of trafficking to ensure their rehabilitation and reintegration into society. For example, the act directs the secretaries of HHS and Labor, the board of directors of the Legal Services Corporation (LSC), and the heads of other federal agencies to expand benefits and services to victims of severe forms of trafficking in persons within the United States, “without regard to the immigration status of such victims.”²¹⁸

“Sometimes, in a rush to accomplish other goals, such as prosecuting the traffickers, states focus on victims for the information they can provide or their usefulness to the criminal justice system,” Widney Brown, Human Rights Watch advocacy director explains.

The danger is that states treat the victims as merely a pawn in a struggle between the state and the trafficker, not as a human being in need of services and deserving of respect. We must reject the practice of criminalizing victims of trafficking and placing their lives at risk through summary deportations or their psychological well being at risk through detention or imprisonment. . . . Any program must first and foremost return control to the victims. It is only when we have created the space for the trafficking victim to see her or himself again as a person, not an object, whose agency we respect and whose value is inherent, that she or he becomes a survivor.²¹⁹

Several aspects of the TVPA are designed to address the potentially damaging aspects of the American criminal justice and immigration systems. Significantly, the act amends the INA to create a new nonimmigrant “T” visa for “an alien who the Attorney General determines is a victim of a severe form of trafficking in persons.”²²⁰ Under limited conditions, the “T” status can be converted into a more permanent status.²²¹ These provisions must be monitored as well, and, where social services or advocacy support for victims are lacking, some organization must fill the void.

Single-issue NGOs that focus on anti-trafficking often fill this role. The Protection Project, for example, advises policymakers, legislative bodies, governmental agencies, and international organizations on the status of domestic and international trafficking; advocates for the protection and rights of victims; increases public awareness; and provides training for law enforcement personnel. “We play a vital role, not only in providing assistance to

victims and playing a role in the prosecution of traffickers, but also in lobbying and assisting the government in the formulation of U.S. foreign policy,”²²² asserts Protection Project codirector Mohamed Mattar. Mattar is resolute in his conviction that NGO activities have contributed successfully to changes in U.S. foreign policy and the establishment of the Trafficking in Persons report. He states the evidence is found by comparing the 2001, 2002, and 2003 reports and the progressive record of improvement signified by changes in status of governments with regard to trafficking, prevention, and protection. More optimistic about the ability of the State Department reports to influence governments, Mattar credits the reports with prompting governments to adopt new anti-trafficking laws and improve practices related to trafficking.²²³

Despite the progress of the TVPA, a looming issue of concern is how to hold international peacekeepers accountable for their involvement in trafficking. In Bosnia and Herzegovina, work by Human Rights Watch revealed that International Police Task Force members were complicit in, and in some cases actively supportive of, the trafficking of women and girls. Investigation into their actions remains minimal, and the action taken against officers in the past was merely limited to repatriation.²²⁴ Information and concern continues to mount as the issue is highlighted by NGOs working on education and public information campaigns in the United States. The U.S. government estimates that 45,000–50,000 people are trafficked into the country every year, and these people become trapped in slave-like situations, such as forced prostitution.²²⁵

The victory achieved by NGOs with the successful passage of the TVPA proved to be only a beginning for anti-trafficking advocates. The legislation set in motion new requirements and, with them, higher expectations for U.S. reporting. Both NGO partnerships with U.S. government bodies and NGO critiques of government actions continued. The years 2006 and 2007 were ones in which the U.S. annual “Trafficking in Persons Reports”²²⁶ were particularly strong, reflecting growing knowledge and concern in the anti-trafficking community where advocates continued to demand better enforcement and implementation. The June 2007 appointment of Mark Lagon as the new chief of the State Department’s Office to Monitor and Combat Trafficking in Persons demonstrated continued U.S. government support of anti-trafficking efforts, as the former deputy assistant secretary of state for International Organization Affairs had a strong and loyal career in government service, both in the Department of State and as a congressional aid and policy analyst. At the same time the appointment of the intellectual conservative, who has deep connections with conservative think tanks like the New American Century, might be an indication of a new direction in U.S. anti-trafficking policy. Indeed, immediately after his appointment, Lagon announced a new effort to engage the private sector in the fight against trafficking.²²⁷ Anti-trafficking advocates advancing human rights claims will have to substantially modify their approach if they are to remain relevant in a private-sector anti-trafficking approach.

Human Rights Claims in U.S. Courts: The Alien Tort Claims Act

Amnesty International had a problem.²²⁸ A former Paraguayan police inspector suspected of torturing and killing the teenage son of a political dissident was discovered in Brooklyn and was about to be deported. The dissident, Dr. Joel Filartiga, and daughter Dolly wanted to hold Amerigo Pena-Irala accountable for Joelito Filartiga's slaying and keep him in the United States to face trial. If Pena-Irala were returned home, he would likely never face trial for the atrocities. The year was 1979 and very few lawyers had experience in international human rights, but some had carved a niche for themselves as civil rights lawyers. So Amnesty turned for help to Peter Weiss, a New York attorney with experience crafting creative civil rights litigation, for help.²²⁹ Weiss faced an enormous stumbling block. How could he convince U.S. courts they had legal authority to hear cases in which the parties were foreign nationals and the scene of the crime was beyond U.S. borders? Weiss called together lawyers from the Center for Constitutional Rights, where he served as an officer, to brainstorm a solution.

Weiss remembered an idea he had when contemplating a suit against U.S. military commanders on behalf of a survivor of the 1968 My Lai massacre in Vietnam.²³⁰ Why not use the Alien Tort Claims Act²³¹ to pry open the U.S. courts to foreign litigants? The law would take some dusting off: it had been rarely used in the 190 years since its enactment,²³² but the same kind of goals driving its enactment during George Washington's era were moving Amnesty to seek its application today.²³³ When written in 1789, the ATCA was designed to bring justice to victims and families of victims of piracy, horrendous actions nearly impossible to address because they were usually committed on the high seas by foreign citizens and, often, against foreign citizens. In the Filartiga case, the murdered teenager's family, foreign nationals, sought justice in the United States, where their son's torturer had fled, because a fair trial was highly unlikely back home.

Weiss persuaded the Second Circuit Court of Appeals to hold that the ATCA permitted victims to pursue claims in U.S. federal courts based on serious violations of international human rights law.²³⁴ The ATCA allows federal courts to hear complaints by foreign nationals for civil wrongs in violation of the "law of nations" or a treaty of the United States.²³⁵ The torture involved in the Filartiga case, Weiss argued, was clearly against the law of nations. Subsequent ATCA cases have named as violations of the law of nations: genocide, crimes against humanity, war crimes, "disappearances," extrajudicial executions, forced labor, and prolonged arbitrary detention.²³⁶

The strategy of using domestic courts as a stage for the hearing of international human rights claims makes sense in the United States, where legal culture supports the notion that individuals with claims should have an opportunity to prove their claims in court. The cases have caught on among liberal lawyers and been embraced by grassroots human rights advocates seeking to hold accountable those who have committed grave abuses against individuals. While expert attorneys are needed to bring the cases to court,

non-lawyers can work with the facts of the cases in their own human rights campaigns. “These cases have wide appeal,” said Sandra Coliver, the executive director of the Center for Justice and Accountability. “They can act as a bridge between human rights communities . . . bringing in labor and religious freedom groups.”²³⁷

ATCA courts may award damages to victims and families of victims, but collection is nearly impossible. The goal of the cases, however, is not to collect money but to raise awareness and to honor victims. The cases provide public acknowledgement that the crimes occurred and offer a warning to potential perpetrators that they cannot commit gross human rights abuses with impunity.

Alien Tort Claim cases have been brought against perpetrators of widespread torture and other human rights abuses in Latin America and the Balkans.²³⁸ Starting in 1993, as the human rights movement became more involved in monitoring corporate activity,²³⁹ human rights attorneys began using the ATCA to file suits against multinational corporations accused of direct complicity in crimes committed by foreign governments and their security forces. The first corporate case, brought by Cristobal Bonifaz, a Massachusetts attorney and native of Ecuador, accused Texaco of poisoning the Ecuador Amazon rain forest and endangering the health of its inhabitants. The company succeeded in convincing the court to send the suit to an Ecuadorian village for trial. Undeterred, human rights attorneys have continued to bring suits, filing over twenty-five cases against such companies as Chevron, Texaco, Fresh Del Monte Produce Inc., and Bank of America Corporation for acts committed on foreign soil. Although most courts flatly dismissed these cases, one issued a judgment against a company and, even when they failed to bring a favorable verdict, the cases still served to draw public attention to the gross abuses of corporations.

The Justice Department never openly opposed the use of the ATCA to raise human rights concerns. The State Department attorneys handling the *Filartiga* case during the Carter era—energized by such talent as Stefan Riesenfeld, Joan Fitzpatrick, and Drew Days—

submitted a legal brief stating that refusing to recognize a private cause of action under the law “might seriously damage the credibility of our nation’s commitment to the protection of human rights.” The department stated that when the stringent conditions of the law are satisfied, “there is little danger that judicial enforcement will impair our foreign policy efforts.”²⁴⁰

The election of George W. Bush had many of the lawyers worried that the State Department would begin obstructing ACTA cases. Yet when, after the administration was installed, the State Department indicated it would not bring new challenges to the ATCA, human rights lawyers thought they were in the clear. The struggles, they thought, would be with the courts, not with the administration. Thus, many human rights advocates were blindsided when, on May 8, 2003, Attorney General John Ashcroft launched an assault against the

law which, in the words of Professor Harold Hongju Koh, sought “to upend almost 25 years of court rulings and contradicts previous government interpretations.”²⁴¹

The Justice Department filed an *amicus curiae* (“friend of the court”) brief in support of the oil company Unocal in an ATCA case brought by Earthrights International.²⁴² The case known as *Doe v. Unocal*²⁴³ alleged that the oil company was complicit in forced labor and other abuses committed by the Burmese military during the construction of the Yadana gas pipeline. The company maintained that no forced labor was used on the pipeline and denies responsibility for any alleged abuses by troops guarding the project, saying it had no control over the military. In September 2002, a federal appeals court overturned a trial court judge and ruled that Unocal could be sued for human rights abuses committed by Burmese soldiers, provided that the company knew about and benefited from the troops’ conduct.²⁴⁴ The legal claim was straightforward. “While charging an American company with slavery is controversial, there’s nothing unusual in American courts holding a company responsible for the acts of its business partner.”²⁴⁵ In March 2005, Unocal agreed to an out-of-court settlement. Although the monetary terms of the settlement were not disclosed, human rights advocates heralded it as a tremendous success that would have “a ripple effect on cases around the world.”²⁴⁶

Wholly apart from the factual dispute, the Justice Department argued in that case for a radical reinterpretation of the 1789 Alien Tort Claims Act, asserting that the ATCA could not be used as a basis to file civil cases. The Justice Department contended that victims should sue under other laws, that the “law of nations” covered by the ATCA did not include international human rights treaties, and that abuses committed outside of the United States would not be covered under the law. Their argument essentially minimized any role for the applicability of the ATCA and thus thwarts torture victims in their search for justice.

The Justice Department brief warned that ATCA cases were taking the United States down a slippery slope to the point where federal courts were making foreign policy decisions. “Although it may be tempting to open our courts to fight every wrong all over the world,” the Justice Department brief stated, “that function has not been assigned to the federal courts.”²⁴⁷ Attorney General Ashcroft’s opinion that the Unocal suit interfered with U.S. foreign policy contradicted the State Department’s view that it did not. If the State Department had perceived a conflict with U.S. foreign policy, it would have initiated the brief or, at the very least, would have signed the Ashcroft brief. In off-the-record conversations, State Department attorneys confided to the author that the opinions of State Department attorneys on the merits of the Ashcroft objections were mixed, with many career service members fearful that he was undermining “good law for political reasons.”

Why did John Ashcroft and President Bush want to take away the ability of torture survivors to pursue human rights abusers? Sandra Coliver is “concerned that the answer has less to do with the law than with the Bush administration’s interest in protecting the unfettered discretion of companies operating

overseas to use whatever means they choose”²⁴⁸ and safeguarding “the ability of the administration to use whatever means necessary in the war on terrorism.”²⁴⁹ The countries named in many of the ACTA suits, such as Indonesia and Burma, could potentially cooperate in the war on terrorism and, thus, the Bush administration doesn’t want to do anything to antagonize them, including interfering with lucrative business contracts,²⁵⁰ by permitting the hearing of human rights allegations that implicate government officials. Tom Malinowski, director of Human Rights Watch’s Washington office, offered another explanation for Ashcroft’s obstruction of Alien Tort Claims suits: “I don’t think this has anything to do with the war on terror,” he says. He continues:

I think this is motivated by a very hard-core ideological resistance within the Justice Department to the whole concept of international law being enforced. The notion that international norms are enforceable by anyone is repugnant to some in the Justice Department.²⁵¹

The Bush administration’s hard-core ideological resistance to international law in U.S. courts was dealt a setback by the Supreme Court in its first pronouncement on the contemporary use of the ATCA. In *Sosa v. Alvarez-Machain*²⁵² Humberto Alvarez-Machain, a Mexican national, sought to bring an Alien Tort Claims suit for civil abuses that he allegedly suffered when the U.S. Drug Enforcement Agency (DEA) hired a group of Mexican nationals (including the defendant, Jose Francisco Sosato) to abduct him and bring him to U.S. soil where he was arrested. (Alvarez was eventually acquitted in U.S. court of the charges underlying his abduction from Mexico.) The Bush administration argued that ATCA provided no grounds for relief independent of congressional action. In considering the case, the court was troubled by efforts to stretch an old law beyond its original limitations and expressed concern over the absence of a congressional mandate to expand the ATCA actions. Nonetheless, the court held that the ATCA provides an avenue for victims of certain gross human rights violations to sue in U.S. courts.

Rejecting the administration’s absolutist position, the court permitted certain kinds of ATCA actions absent explicit statutory authorization. ATCA claims that were identical to those that existed when the statute was written in 1789 posed no problem—they were permissible, but so were claims that: (1) meet a threshold level of acceptance in the international community, and (2) have attributes that make it specifically comparable to the set of violations that the original statute sought to cover. The court warned that successful suits cannot be claims “for violations of any international norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when 1350 [the ATCA] was enacted.”²⁵³

According to the court’s analysis, misdeeds committed by multinational corporations present the type problem that the ATCA was originally meant to address, that is “the conduct of individuals situated outside domestic boundaries and consequently carrying an international savor.”²⁵⁴ This reasoning keeps

the door open for human rights advocates to continue using the Alien Tort Claims Act as one of its tools for advocacy. The *Sosa* case does not, however, solve advocate's dilemmas in bringing such cases. Post-*Sosa*, serious controversy still remains regarding

which claims are sufficiently definite and universally accepted to be considered violations of international norms; which actors—only states and state actors or private parties, including corporations—can be sued for violations of these norms and on which theories of liability; the extent of the justiciability of such claims; and whether *Sosa* leaves courts free to read an exhaustion requirement into the ATCA.²⁵⁵

Also unresolved is the impact of the Bush administration's Executive Order 13303 on potential ATCA suits against multinational corporations. That order is specifically designed to immunize U.S. corporations for any activity, including environmental damage and even human rights, undertaken while operating in Iraq.²⁵⁶ Executive Order 13303 prevents lawsuits from being brought by U.S. citizens against these corporations, and also precludes foreign citizens from invoking the Alien Tort Claims Act.²⁵⁷

The use of executive orders to ban or limit the bringing of human rights claims in federal court presents ongoing challenges to human rights advocates.²⁵⁸

SHAPING THE FOREIGN POLICY AGENDA

Wholly apart from activities related to international treaties and domestic legislation, civil society organizations have found creative ways to shape policy options. While these activities may be described as “lobbying,” David Forsythe observes that “in order to preserve their non-political and tax-free status . . . , the groups tend to refer to these activities as education.”²⁵⁹ In recent years, examples of civil society influencing the U.S. foreign policy agenda can be claimed by both liberals and conservatives. For example, just as Ken Roth, the executive director of Human Rights Watch, convinced President Clinton to end his term by signing on to the treaty on the International Criminal Court (ICC), the conservative think tanks that provided President George W. Bush with his anti-ICC platform persuaded the new president to begin his term by “unsigning” the treaty.

The cases discussed in this section only begin to illustrate the ways in which civil society has an impact on foreign policy. At times, in entering the political fray, a group has a specific foreign policy goal in mind—for example, lifting an embargo or imposing sanctions. Yet for other advocates, the goal is much broader. Some advocates try to change the structure of decision making, support the inclusion of a group that has been traditionally excluded, or advocate for a set of issues that has gone unaddressed. Alternatively, their emphasis may be encouraging foreign policy makers to favor certain groups or ideas that have long been part of establishment thinking, but which are in danger of being

sidelined. As these examples illustrate, the members of civil society come from all political and ideological vantage points. In seeking to influence the philosophy and operation of U.S. foreign policy, they forge unusual alliances and test new political strategies.

Mr. Smith Goes to Washington: The “Lift and Strike” Campaign

On August 23, 1993, Stephen Walker became the third person that month to quit the U.S. Foreign Service in response to American policy in the Balkans. “When I quit, I was under this delusion that no one outside the Beltway knew about or cared about Bosnia, and I would slink off and try to find a life doing something else,” Walker recalled.²⁶⁰ His work on Bosnia, however, had only just begun.

Walker, like many of his colleagues, believed that the war in Bosnia was resulting in wide-scale atrocities that would likely continue to escalate unless a third party intervened or until the United Nations arms embargo, in place on all parts of former Yugoslavia, was lifted against Bosnia “so that the [Bosnian] Muslims could defend themselves.”²⁶¹ President George H. Bush had supported the arms embargo in September 1991, when the Serb-controlled Yugoslav National Army was using its immense weapons stash against Croatia. A lot had changed “on the ground in Bosnia” since 1991. The United Nations had recognized Bosnia as a separate state, war raged, and well documented reports of mass rape and massive forced expulsions of civilians had drawn public sympathy to the plight of the most victimized group, the Bosnian Muslims. Walker had had good reason for pinning his hopes on the newly elected President Clinton turning U.S. policy on Bosnia around. After all, throughout his campaign and his early presidency, Clinton had talked as if he would support the lifting of the arms embargo and the commencement of airstrikes.²⁶² Specifically, Clinton had declared that the United Nations, supported by the United States, must do “whatever it takes to stop the slaughter of civilians and we may have to use military force. I would begin with air power against the Serbs.”²⁶³ It was the Clinton administration’s refusal to follow through with this pledge that led to Walker’s resignation.

One of Walker’s first speaking engagements as an ex-foreign service officer was with Friends of Bosnia at Amherst College. “I went out up there to find standing-room only, with all these people who knew about [Bosnia] and cared about it and felt frustrated with the policy and wanted to do something about it,” remembers Walker.²⁶⁴ The audience was united by its concern over Bosnia, not by any ideological platform. This is not to say that all views were represented. The “left” remained “fundamentally antagonistic to the idea of U.S. military intervention,” and certain members of the “right” opposed U.S. military intervention in the absence of a direct threat to American security.²⁶⁵ But between right and left was a broad middle of both political conservatives and liberals, including many who had long activist careers opposing U.S. intervention abroad, but who believed in the necessity of intervention in Bosnia.

Looking back at that time, Glen Ruga, cofounder of the pro-intervention advocacy group Friends of Bosnia, sighs: "Sometimes I feel it was a brief moment in human existence where people with a genuine commitment to human rights came together."²⁶⁶ The diversity of the movement "led to some strange bedfellows: Richard Perle, Wolfowitz, Jeane Kilpatrick, Dick Cheney, Anthony Lewis and Susan Sontag."²⁶⁷ This provoked some soul-searching, particularly among the more left-leaning adherents to the cause. "Generally, there was not much discomfort over the issue of human rights," remembered Ruga.²⁶⁸ "There was a general agreement on lifting the arms embargo. But some people had a very aggressive military agenda, talking about military hardware and strategy" and it took some of the activists a long time to "understand that this is what we were calling for."²⁶⁹

Human rights activists supporting the "lift and strike" campaign, remembering the failure of the United States to act to prevent genocide in Rwanda, focused on the precedent that American's failure to act was setting. What did it mean for America to have the power to act to stop genocide but instead to do nothing? What kind of people were we becoming? Many supporters of "lift and strike" wondered if animosity toward people of Muslim faith were preventing many Americans from sympathizing more with their plight. "Imagine if Sarajevo were a 'Christian-led' city and the forces doing the raping and shelling were Muslim," Susan Sontag said. "It would have stopped in a month."²⁷⁰

"If Americans don't care about what is happening in Bosnia, what will they ever care about?" wondered Aryeh Neier, the former head of Human Rights Watch, now president of the Soros-funded Open Society Institute.²⁷¹ The financier-philanthropist George Soros was already funneling a tremendous amount of money into humanitarian assistance, but this was not enough. Both Soros and Neier had a personal commitment to Bosnia, and they wanted to do more to put an end to the human rights abuses that were causing people to flee.

Earlier that year, Soros had taken out a large newspaper ad urging the lifting of the arms embargo and the commencement of airstrikes against Serbian targets. Soros had also begun funding a lobbyist group led by Marshall Harris, another former State Department officer who had quit over the U.S. policy on Bosnia.²⁷² The missing element in the campaign was a coordinated grassroots campaign. Thus, under the name American Committee to Save Bosnia, Walker began to organize grassroots support for a more aggressive U.S. foreign policy in the Balkans.²⁷³

The "lift and strike" campaign garnered the support of Senators Bob Dole (Republican: Kansas) and Joe Lieberman (Democrat: Connecticut), who had sponsored a Senate resolution that called on Clinton to lift the arms embargo. But at that time there were few other allies for their proposal. "We were told by one former member of Congress . . . you guys are crazy . . . they are never going to go for it."²⁷⁴ Walker had low expectations. "We thought, we'll give it our best effort and a year from now, at least we'll be able to say, we tried." So he set off to take the "lift and strike" campaign "to the people."

As it turned out, Walker had little difficulty getting his message across. The

“lift and strike” message resonated surprisingly well with both the general public and Congress. Mark Danner explains its popularity:

... the arms embargo seemed the most blatantly and incomprehensibly unfair. Under what rationale could the international community prevent a member state of the United Nations from defending itself—which was, after all, its explicit right under Article 51 of the UN Charter? To even the least informed voter, this seemed clearly wrong, and giving Bosnians “the means to defend themselves” not only seemed clearly right, it had a reassuringly American, pull-yourself-up-by-your-bootstraps sound to it. As for the “strike,” protecting Bosnians with NATO fighters and bombers until they could absorb their new weapons and use them to fight for themselves sounded like the sort of low-cost, middle-of-the-road help Americans should be willing to supply.²⁷⁵

The debate between Congress and the administration centered on whether there should be a unilateral lifting of the arms embargo. Anthony Lake explains that President Clinton was reluctant to do anything unilaterally with respect to Bosnia:

The president’s clear position throughout had been we didn’t like the arms embargo. We thought it had been a mistake to put it in place earlier. But that to lift it unilaterally would split NATO, destroy UNPROFOR and face us with a terrible choice of having to replace UNPROFOR with American troops or see the collapse of Bosnia. And we didn’t want to do either.²⁷⁶

In testimony before the Senate, Lake would later contend that, in fact, the White House reached a compromise on the embargo which amounted to a *de facto* lifting. “The United States would continue itself to implement the arms embargo, but we would no longer enforce it,” Lake said. In other words, the U.S. policy of “no instructions” amounted to looking the other way when Bosnian Muslims did import arms. The only mistake with this approach, Lake asserted, was that Congress was “not informed of the no-instructions policy.” On the other hand,

Congress knew, as [the administration] did, that there were Iranian arms going in . . . That had been briefed to the Congress in a variety of ways from the intelligence community. It was in the press. There was no secret about it.²⁷⁷

The “no instructions” approach, however, did not satisfy the activists who pushed for an open endorsement of the lifting of the embargo. Richard Perle captures the sentiments of the “lift and strike” advocates when he asserts that “Clinton’s well-meaning attempt to end the shameful, unprecedented embargo that kept a member state of the United Nations from exercising its fundamental right of self-defense, was half-hearted and ineptly presented.”²⁷⁸ At times, the Clinton administration appeared extremely receptive to the “lift and strike” campaign. Indeed, in May 1993 Clinton had sent Warren Christopher to Europe to urge America’s NATO allies to lift the arms embargo on Bosnia and

to join in air strikes to suppress Serb forces. However, as soon as Christopher encountered resistance from the European allies, he urged Clinton to drop his demands, and from then on the support of the administration for a more assertive policy in Bosnia would waiver.

So it was over the vacillation of the Clinton administration that the “lift and strike” campaign pushed for several pieces of legislation mandating increased U.S. involvement in Bosnia. One of the greatest successes came on July 27, 1995, when in a “stinging rebuke” to President Clinton’s handling of the Bosnia crisis, the Senate voted 69–29 to lift unilaterally the arms embargo on Bosnia’s government.²⁷⁹ The bill specified, however, that the embargo be lifted only after the United Nations peacekeeping force withdrew from Bosnia, or twelve weeks after the Bosnian government asked the UN to leave.

The bill still faced a fight in the House and a likely presidential veto, but the “lift and strike” activists saw it as an enormous victory. “It was like Civics 101 and *Mr. Smith Goes to Washington*,” exclaimed Walker. “I said, ‘My God, it worked! The system worked!’ There were votes that we got because grassroots people faxed and called and lobbied and influenced their representatives to change their votes.”²⁸⁰ Indeed, James O’Brien, a senior adviser to Madeleine Albright, agrees that the activists were a major factor in the congressional debate over Bosnia.²⁸¹ But according to O’Brien, the activists’ influence went far beyond these debates. “Mostly they created issues and an agenda to which the Administration had to respond,” he explained. “They helped those of us [within the administration] arguing for U.S. engagement in Bosnia and certainly kept human rights issues front and center.”²⁸²

The Ambassador Goes to Civil Society: Women Waging Peace

Ambassador Swanee Hunt recalls walking into a room in her Vienna embassy and seeing a blurry-eyed Bosnian hunched over a computer. “Do you have any software that would be good for a constitution?” he asked. It was the spring of 1994 and the height of the American-brokered negotiations between Bosnian Croats and Muslims. Hunt’s staff quickly phoned up the Swiss embassy and obtained a copy of their constitution on disk. “That might be why the Federation of Bosnia is carved into cantons,” she sighs, remembering the somewhat quirky and extremely personal nature of diplomacy. One thing that really stood out in Hunt’s experience was the absence of women. “Out of all of the negotiators that came through Vienna while I was ambassador, zero were women,” she remembers. “With Yugoslavia having the highest percentage of women Ph.Ds in central and eastern Europe, I wondered, How is this possible?”²⁸³

In her four years (1993–97) as ambassador to Vienna, Swanee Hunt would sponsor numerous meetings and projects to strengthen forces of reconciliation in the Balkans, all the while trying to support the voices of women from the region. After the Bosnian war ended, she spearheaded the establishment of a major reconstruction fund targeting women, the Bosnian Women’s Initiative, and organized a global campaign for refugee women in northern Bosnia,

mobilizing efforts valued at millions of dollars. As Hunt continued to draw more attention to women's experiences in war, she grew more troubled by their absence in the peace process.²⁸⁴ As she remembers:

On the ground, in the middle of the war, there were over 40 women's associations, multi-ethnic, working on trying to stop the war. I would go and meet with them. Were they invited to the Dayton peace talks? No. Why were they not invited? Well, they weren't invited because they were not the war-makers. You figure that one out—why we think that the people who are best at planning the peace are the ones who have been waging the war. Second, they weren't invited because, as I was told, they should have organized. I told you there were 40 women's associations. They had actually come together in an organization called the Union of Women's Organizations. Who was not organized?²⁸⁵

The solution to the problem, Hunt says, rests with policy makers. "We didn't have any conduit to reach into those communities, to engage them in what we wanted to do. . . . That is what needed to change."²⁸⁶

After her ambassadorship ended in 1997, Hunt moved from Vienna to the Kennedy School of Government at Harvard, where she started a center for women and public policy and began teaching on related topics. The transition from the world of politics to academia was bumpy at first. A State Department official threatened to initiate criminal proceedings against Hunt for continuing to work with the women of Srebrenica—women whose husbands, sons, and fathers were killed by Serb forces in the 1995 slaughter. Hunt was trying to help the women to discover more information about their loved ones and, if possible, to return to their homes. The official accused Hunt of violating a law prohibiting former ambassadors from continuing activities that they began as ambassadors. He applied the law, which was intended to prohibit ambassadors from benefiting from business dealings, to NGO activities. The official sent a cable to every embassy in Europe telling them not to work with Hunt and not to support any NGO that did, thus forcing her to give up that particular initiative.²⁸⁷ Instead, however, Hunt threw herself into designing a program at the Kennedy School to advance the role of women in peace processes throughout the world.

When Hunt started inviting women from war regions to come to campus, and the women began exchanging their stories with each other, she was "totally unprepared" for the impact the gatherings would have on her life and work. "Listening to them was a life changing experience," she says. "They had been so isolated in their work . . . these were not just NGO activists, but also women from government and the military, all women . . . there was a tremendous outpouring of ideas."²⁸⁸ To tap and support this synergy, Hunt began holding regular networking meetings of women from war regions and designed other projects to support the inclusion of women in formal and informal peace processes under the rubric Women Waging Peace ("Waging"). Eventually Waging became too large for the Kennedy School and, although the Kennedy School still hosts many of their events, Hunt moved a large portion of Waging's work to her foundation, Hunt Alternatives Fund.

Through a series of meetings, briefings, presentations, events, roundtables, and consultations, the staff of Waging “connect traditional decision makers and policy shapers with the women who are affected by their mandates and provide essential feedback on how these decisions are received and implemented,” says Ambassador Hattie Babbitt, director of the Waging office in Washington, D.C., and former deputy administrator of the U.S. Agency for International Development.²⁸⁹ A primary example of such a connection was the Waging-hosted “G8, NEPAD, Women, Peace and Security Meeting,” held in November 2002, which brought together eleven African women leaders from Burundi, the Democratic Republic of Congo, Nigeria, Rwanda, Sierra Leone, South Africa, and Sudan; representatives from the U.S. government; and representatives from relevant Canadian and U.K. government agencies and multilateral organizations. A matrix of recommendations for donors, African governments, and African women peace builders was formulated from the consultation and was distributed widely.²⁹⁰

Yet, perhaps the most powerful example of Waging’s influence on the policy community is Colin Powell’s support for the inclusion of women in peace activities. In January 2002, the principal deputy assistant secretary of the Bureau for Democracy, Human Rights, and Labor (DRL), Michael Parmly, requested that Waging submit a proposal with suggestions on how DRL could encourage the work of women peace builders in conflict areas. This proposal memo, along with continued advocacy efforts by Waging staff, eventually led to a “best practices” cable, sent by Secretary Powell in February 2003 to all U.S. embassies abroad, highlighting ways those institutions can include women peace builders in their work. The cable clearly states the department’s support for women: “As we engage in peace processes, it is essential that those who suffer, including women, have a voice in decision making. The department urges posts to involve women in conflict prevention, peace-making, and post-conflict reconstruction.”²⁹¹ Much of Waging’s list of “best practices” made it into the cable, calling on embassies to identify and train women to be involved in the peace process and providing examples of successful programs.²⁹²

Not all of Waging’s efforts were so successful. The letter they sent to John Negroponte, the U.S. ambassador to the UN, requesting that the United States affirm its willingness to pursue implementation of the UN Resolution calling for greater inclusion of women in peacemaking (Resolution 1325)²⁹³ did not result in any immediate changes in U.S. practices.²⁹⁴ However, for the most part, Waging believes that they are making headway. “The various policy instruments that have emerged in recent years are indicative of the growing awareness of women’s roles in peace building,” stated Sanam Anderlini, director of the Waging Policy Commission.²⁹⁵ Indeed, it appears as if women’s organizations have been so successful that U.S. policy makers have begun adopting the agenda as their own. A clear example is the March 2003 speech of Ambassador Donald Steinberg, principal deputy director of Policy Planning at the U.S. Department of State. In remarks to the Council on Foreign Relations, Steinberg presented an entire address on the importance of women’s

involvement in all phases of the peace process. He closed with a recommendation for his colleagues:

We must elevate the issue of women in conflict within our foreign policy establishment. This issue still suffers from second-class citizenship . . . you still hear advancement of women's interests described as the "soft side" of foreign policy . . . There is nothing "soft" about insisting that women have a seat at the table in peace negotiations and post-conflict governments.²⁹⁶

These kinds of statements please Ambassador Hunt, but she notes "policy proclamations are but a beginning; implementation is the key to advancing women in the peace process."²⁹⁷ Women have made it into the rhetoric of the foreign policy establishment, she said, but in far too many cases not to the negotiation table.

In 2004, Ambassador Hunt launched the Initiative for Inclusive Security. To some extent, the initiative represented a strategic name change from Women Waging Peace that offered Washington lawmakers a less threatening and more inclusive image than Women Waging. But the new title was more than cosmetic. The initiative announced its mandate as advocating "for the full participation of all stakeholders, especially women, in peace processes."²⁹⁸ The initiative explained its continued focus on women under this larger, inclusive security framework: "creating sustainable peace is achieved best by a diverse, citizen-driven approach. Of the many sectors of society currently excluded from peace processes, none is larger—or more critical to success—than women." The title "Women Waging Peace" was reserved for a group that would operate under the Initiative umbrella, the Women Waging Peace Network, a network of women peacemakers from conflict areas around the world.²⁹⁹

The Federalists Take On the NGOs: NGOWatch.org

It all started with some conservative lawyers at the Federalist Society discovering the scholarly literature on the ways in which NGOs influence international law.³⁰⁰ John McGinnis's and Mark Movesian's article in the *Harvard Law Review* stood out in particular.³⁰¹ The authors warn of the dark side of NGOs in influencing the World Trade Organization.³⁰² Reading this, Leonard Leo, a lawyer with the Federalist Society, was struck by the similarities with Federalist Paper No. 10. In this passage, James Madison warns of the "mischiefs of factions," that is the danger posed where "a number of citizens . . . are united . . . by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent aggregate interests of the community."³⁰³ NGOs present similar dangers, Leo realized. "They play a similar role to nation states, and, of course, they are not nation states . . . they do not have the same mechanisms for control or transparency."³⁰⁴

Having decided that the debate on NGOs was a significant one with "great impact on U.S. policies on international law" and on "whether the U.S. gives

up sovereignty to international institutions,”³⁰⁵ the Federalists decided to enter the fray. They teamed up with the influential Washington, D.C., think tank American Enterprise Institute (AEI), best known as President Bush’s shadow “Central Command in Iraq.”³⁰⁶ Leo stresses that in formulating their plans, they had “no conversations with the Bush administration” and, in fact, sought to weigh in on the debate “wholly independently.”³⁰⁷

Blending eighteenth-century Madisonian inspiration with twenty-first century computer technology, the Federalist Society and AEI project launched “NGOWatch.org.” Announced on June 11, 2003, the Internet-based project was intended to fill a void in information on NGOs.³⁰⁸ The purpose of the project was stated on its web page:

While it is true that many NGOs remain true to grassroots authenticity conjured up in images of protest and sacrifice, it is also true that non-governmental organizations are now serious business. NGO officials and their activities are widely cited in the media and relied upon in congressional testimony; corporations regularly consult with NGOs prior to major investments. Many groups have strayed beyond their original mandates and assumed quasi-governmental roles. Increasingly, non-governmental organizations are not just accredited observers at international organizations, they are full-fledged decision-makers.³⁰⁹

NGOWatch conceded that tax forms provide transparency about NGO resources, and it provided links to these forms on its page. However, NGOWatch asked “But where is the rest of the story? Do NGOs influence international organizations like the World Trade Organization? What is their agenda? Who runs these groups? Who funds them? And to whom are they accountable?”³¹⁰ NGOWatch intends to expose NGO connections to controversial issues and influence over international organizations that are, as NGOWatch asserts, themselves not accountable and transparent. Supporters of NGOWatch, like Jarol Manheim, a George Washington University political science professor, worried about NGOs pursuing “a new and pervasive form of conflict” against multinational corporations. Thus, NGOWatch was also designed to expose—to use Manheim’s term—“Biz-War,” in other words, shareholder resolutions, consumer boycotts, and other efforts to influence corporate behavior.³¹¹

To these ends, the NGOWatch.org website promised to “without prejudice, compile factual data about non-governmental organizations” and “include analysis of relevant issues, treaties, and international organizations where NGOs are active.” The early postings on the site, however, were directed almost entirely at blasting NGOs for supporting abortion or homosexuality, or for crippling free market enterprise. The tone was combative and much of the information misleading. For example, NGOWatch.org stated: “Human Rights Watch, in a report promoting sexual confusion among students in public schools, recommends groups that promote same-sex marriage [*sic*], and have been associated with NAMBLA (North American Man Boy Love Association).” The Human Rights Watch webpage, however, said no such thing. Instead, it called on school districts to “prohibit harassment and discrimination

based on sexual orientation and gender identity.”³¹² Human Rights Watch also listed many resources for information on gender identity and sexual orientation, but did not include nor make any reference to the North American Man Boy Love Association.

Leo defended the content of the website, pointing out that the entries on homosexuality and abortion are merely links to news stories. This was just the beginning of NGOWatch, he contended, and over time a “wide spectrum of views” will be added. “I don’t think we could be all that much more objective,” he said.³¹³

NGOWatch set off a wave of criticism in the NGO community. Critics of NGOWatch contended that it was just another example of the conservatives’ war on NGOs.³¹⁴ The tense relationship between NGOs and the Bush administration had come to a head shortly before the launch of NGOWatch, when the head of the U.S. Agency for International Development (USAID), Andrew Natsios, called NGOs “an arm of the government.”³¹⁵ Interaction, a coordination network of 160 humanitarian relief and development NGOs, reported on Natsios’s chastisement of humanitarians working in Afghanistan and Iraq for failing to give sufficient credit to the U.S. government as the source of the aid.³¹⁶

The American Enterprise Institute and the Federalist Society do have an unusually close connection to the George W. Bush White House—which has recruited no less than forty-two senior administration foreign policy and justice officials from AEI and the Federalist Society.³¹⁷ Given this background, NGOWatch has frequently been linked to an emerging Bush doctrine hostile to NGOs:

Taken together with Mr. Natsios’ statements, this attack on the non-profit sector marks the emergence of a new Bush doctrine: NGOs should be nothing more than the good-hearted charity wing of the military, silently mopping up after wars and famines.³¹⁸

Critics of NGOWatch also pointed out that AEI, supported by such corporations as Motorola, American Express, and ExxonMobil,³¹⁹ did not list itself on the NGOWatch.org website.

The ability of NGOs to influence policy has generated a backlash within conservative political circles. Journalist Naomi Klein describes a “war on NGOs” being fought on two clear fronts: “One buys the silence and complicity of mainstream humanitarian and religious groups by offering lucrative reconstruction contracts. The other marginalizes and criminalizes more independent-minded NGOs by claiming that their work is a threat to democracy.” By favoring organizations that agree with it, the U.S. Agency for International Development is said to be in charge of handing out the carrots, while the American Enterprise Institute wields the sticks through use of the traditional NGO tactic of “naming, shaming, and blaming.”

A new UN study on the relationship of NGOs and government contradicts the growing anti-NGO sentiment in Washington. The study, released in June 2003 at the World Bank by the United Nations and SustainAbility, a

consultancy firm that has followed the evolution of NGOs for some fifteen years, concludes that Northern-based NGOs and corporations have become much closer in their support for globalization.³²⁰ “[M]any NGOs now argue for more globalization, not less,” the report states. “However, they stress that it needs to be focused on ‘globalizing’ human rights, justice and accountability for those that abuse those rights.”

The charge that NGOs are pursuing a “liberal” agenda at the global level that threatens both U.S. sovereignty and free-market capitalism “seem[s] almost quaint . . . as many civil society organizations (CSOs) go mainstream,” according to the SustainAbility report which, however, sees NGOs and CSOs as playing key roles in “holding big business (and big government) in check.”³²¹ John Elkington, the chair of SustainAbility, noted that “The good news for NGOs is that they are emerging as vital ingredients in the health and vitality of markets,” and that “they are also highly trusted, far more so than business or governments.” The bad news, he added, “is that unless they recognize and address growing financial, competitive and accountability pressures, their impact will be significantly reduced.”

NGOs have not solved the accountability question, “But who has?” asks Paul Wapner, a professor at American University who has studied NGOs throughout his career.³²² NGOWatch itself is proof of the accountability mechanisms that exist in civil society. “The currency of civil society has always been the provision of information and reputation for accuracy.” Wapner points out that the mere existence of NGOWatch is evidence that “the robustness and democratic sensitivities of civil society are alive and well.” That AEI has put considerable resources into NGOWatch demonstrates that it shares a belief in the power of NGOs to influence policy.

CONCLUSION

Human rights NGOs and other actors in civil society have changed considerably in the post-Cold War era. Table 2 shows some of the trends discussed in this chapter. For each identifiable trend, however, an identifiable exception exists. On the one hand, the kind of human rights organizations that influence policy makers are larger and better funded, with staff better trained and professionally specialized, and tactics broader and more sophisticated. But on the other hand, policy makers may be influenced by a single, well-networked person, with little formal training in either human rights issues or advocacy campaigns. Civil society actors have become more adept at providing influential information on human rights issues. Some have enhanced their effectiveness within the traditional documentation of abuses framework. Others are now directing their advocacy to a broader range of government bodies and including not only documentation of abuses, but also analysis of their root causes and suggestions for their redress. Along with creating and interpreting issues in human rights terms, civil society actors are increasingly directly involved in domestic or international human rights litigation or in the drafting of legal instruments. Many human rights organizations have been drawn into

TABLE 2

Characteristic Trends of “Human Rights Civil Society”

| IDENTIFIABLE TRENDS | BUT |
|---|--|
| Bigger organizations, which are better funded | A single computer can make a substantial difference |
| Professional, highly trained, specialized | Wider field, open to all despite qualifications |
| More emphasis on “doing” | “Thinking” and “talking” remain central |
| Sophisticated advocacy | Older techniques of “naming, shaming, blaming” important |
| Closer relationship with government | Still challenges government |
| Key activities include institution building | Critics of human rights institution building urge other approaches |
| Increased networking | Non-elites establish own networks |
| More accurate information is available (not only documentation of abuses, but also analysis of their root causes and suggestions for their redress) | Information limited to describing abuses |
| Policy changes on the use of military force for human rights purposes | Many remain against the use of force |

the debate on the use of military force for human rights purposes, with some organizations endorsing such actions on limited grounds. Others still steer clear of the debate or vigorously denounce the use of force in all cases.

Today, civil society is equally likely to act as a partner with the United States government as it is to take on an adversarial position with the government. While groups like NGOWatch strive for NGO transparency in order to expose their interests in participating in U.S. foreign policy, the increasingly prominent roles that civil society may take are evident to critics and participants alike. Many NGOs assume functions that were once the province of states, for example, social service delivery and humanitarian relief.³²³ These NGOs must actively promote, or at least not contravene, the agenda of their donor. Once they become a sort of “public service sub-contractor,”³²⁴ NGOs remain at risk of having their agendas and ethical principles compromised by the financial control of states.³²⁵ Civil society must remain strong enough to resist subordination by the state. At the same time, civil society organizations must maintain open accountability and transparency in order to be considered legitimate in their roles as participants in the democratic processes of shaping U.S. foreign policy.

This chapter features what some people would call “success stories.” It demonstrates that civil society organizations can and do make substantial differences in shaping human rights discourse, initiating and monitoring

treaties, and raising the domestic conscience toward human rights issues. Nonetheless, as the other chapters in this book demonstrate, these successes are often modest and are frequently offset by inconsistencies and outright failures. In the final foreign policy decision making, human rights norms often lose out to competing demands.

Something has gone wrong with the way human rights appear and are used in civil society today. Human rights are intended to serve as ethical guideposts for the relationship between states and individuals, addressing human wrongs and protecting individuals from abuse committed or condoned by states. As the doctrine and practice of human rights has evolved, however, it is states that have defined the agenda of human rights in line with their own interest, not the individuals and groups seeking protection and empowerment. Consequently, the advocacy of human rights advocates in civil society has been muted and the impact of its efforts has been narrowly contained.

We still live in a human rights era. Liberal legal conceptions of “rights” have never been more prominent in international relations. Scarcely a diplomatic meeting occurs, a new state constitution is drafted, or a peace agreement is signed without prominent and extensive reference to human rights. The demand for state interventions to right the wrongs of society is an almost constant drum beat, matched only by the willingness of states to invoke human rights justifications for their actions. Politicians of nearly every ideological and political persuasion identify themselves as being on the right side of human rights, and even the politicians who resist the application of human rights to their own society support efforts to spread human rights abroad.

In contrast to the state, civil society has had far less success in tapping into human rights as a legitimizing and enabling ethical force for its own interests. This does not mean that individuals and groups have had *no* success with human rights claims, nor that they have utterly failed to influence the course of debate on human rights standard setting and implementation. Better resourced and more professional than in the earlier years of their campaigns, human rights groups in civil society have successfully advocated for new human rights bodies, drafted the language of new human rights treaties, monitored the progress on human rights norms peace agreements, and reviewed the legality and morality of military interventions undertaken with human rights justifications. Their recent contribution to the new international human rights treaty on people with disabilities and their influence over peace negotiations and peace implementation measures in Bosnia are but two signs of their impact in the traditional state-focused political sphere. Yet the ability of human rights groups in civil society to impact the realization of human rights in other areas of political and social life is called into question by many contrary illustrations, such as the unwillingness and/or inability of international businesses to abide by basic human rights norms, and the failure of human rights culture to take root in countries with strong outsider-financed human rights projects (often publicized as “rule of law” or “democratization” programs).

Largely due to the influence of civil society, human rights policy in the United States is today a rhetorically available idea, filled with hope and

radiating culturally- and morally-loaded values. However, countervailing forces within and between these three groups of actors have also prevented human rights from becoming deeply embedded in institutions: They do not have a taken-for-granted quality so that they are adhered to in both policy and practice. In reviewing the record of human rights activism as a whole, one is reminded of Sisyphus, the figure from Greek mythology charged with rolling a great boulder up a steep cliff. Every time he made progress, the boulder would slide back down and he was forever finding himself back where he started. Thus, day in and day out, he struggled up and tumbled down the cliff. Human rights advocacy groups also face a Sisyphean struggle. For human rights organizations to claim success, human rights norms must change the cliff face of U.S. foreign policy, becoming a permanent part of U.S. identity, interests, and expectations. Until that time, human rights advocates are destined to continue experiencing intermittent successes, followed by rapid slides back to the bottom.

While they have proven influential by framing policy choices in human rights terms, human rights is only one of a range of arguments that are socially available. Human rights groups have yet to figure out a way to ensure that their approach prevails with any consistency, finding all too often that the power of competing frameworks pushes them back down to the bottom of the hill. But, as in all matters of weight and gravity, leverage can prove just as important a factor as sheer strength. For human rights organizations to truly succeed, perhaps the straightforward “shoulder to the boulder” approach should be rethought. The final chapter in this book suggests a significant departure from the current focus.

ENDNOTES

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3. Former assistant secretary of the Bureau of Population, Refugees and Migration (1977–2001).
4. Julia Taft, “An Interview,” 28.
5. Robert Hunter, “Think Tanks: Helping to Shape U.S. Foreign and Security Policy,” *U.S. Foreign Policy Agenda* 5, no. 1 (2000): 33–36.
6. Stephen J. Wayne, “The Multiple Influences on U.S. Foreign Policy-Making,” *U.S. Foreign Policy Agenda* 5, no. 1 (2000): 25–27.
7. James Sheehan, “Global Greens: Inside the International Environmental Establishment,” (Washington, D.C.: Capital Research Center, 1998), cited in Terry Anderson and J. Bishop Grewell, “It Isn't Easy Being Green: Environmental Policy Implications for Foreign Policy, International Law, and Sovereignty,” *Chicago Journal of International Law* 2 (fall 2001): 371–86.
8. See, in particular, the findings of the Research Triangle Institute, <http://www.rti.org/index.cfm>.
9. Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, 1998). See also Audie Klotz, *Norms in International*

- Relations: The Struggle Against Apartheid* (Ithaca: Cornell University Press, 1995).
10. Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (Cambridge: Cambridge University Press, 1998), 110.
 11. S. L. Weldon, "Inclusion, Solidarity and Social Movements: The Global Movement Against Gender Violence," paper presented at the Annual Meeting of the International Studies Association, Portland, Oreg., 2003.
 12. Gareth Evans, "Preventing Deadly Conflict: The Role and Responsibility of Governments and NGOs," lecture at the Centre for Study of Human Rights, London School of Economics, February 2, 2001, <http://www.lse.ac.uk/Depts/human-rights/Documents/PreventingDeadlyConflict.doc>. Also, Gareth Evans, interview with author, May 2003.
 13. *Ibid.*
 14. *Ibid.*
 15. The techniques of human NGOs include the monitoring and surveillance of human rights problems; notification of emergency situations; the dissemination of information about human rights norms and their violations to the general public; the exchange of such information with other nonstate actors in transnational civil society; the reporting of human rights problems to state and international bodies; and ongoing or ad hoc consultation with governments or international human rights bodies. See Peter J. Spiro, "New Global Communities: Nongovernmental Organizations in International Decision Making Institutions," *Washington Quarterly* 18 (1995): 45–56.
 16. David Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000), 166.
 17. Title 71 of the UN Charter grants NGOs consultative status with the Economic and Social Council. In recent years, this provision has been read broadly, and an increasing number of NGOs now are involved in the work of UN bodies. See Peter Willetts, "Consultative Status for NGOs at the United Nations," in *The Conscience of the World: The Influence of Nongovernmental Organizations in the UN System*, ed. Peter Willetts (Washington, D.C.: Brookings Institution, 1996), 31.
 18. Kal Raustiala, "States NGOs and International Environmental Institutions," *International Studies Quarterly* 41 (1997): 710; see also Thomas Princen and Matthias Finger, *Environmental NGOs in World Politics* (London: Routledge, 1994).
 19. Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization*, 42, no. 3 (1998): 613–44; and Kenneth Anderson, "The Ottawa Convention Banning Landmines: The Role of International Non-Governmental Organizations and the Idea of International Civil Society," *European Journal of International Law* 11 (2000): 91–120.
 20. Martha Alter Chen, "Engendering World Conferences: The International Women's Movement and the UN," in *NGOs, the UN & Global Governance*, ed. Thomas G. Weiss and Leon Gordenker (Boulder, Colo: Lynne Rienner, 1996), 139–58.
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 22. Martina Vandenberg, interview with author, June 2001.
 23. NGO Watch, "A Project of the American Enterprise Institute and the Federalist Society," <http://www.ngowatch.org/>.

24. In the author's survey of ten leading U.S.-based human rights NGOs, 100 percent noted this trend. (Survey conducted with executive directors or associates in charge of policymaking, June and July 2007.)
25. William Korey, *NGOs and the Universal Declaration of Human Rights* (New York: St. Martin's Press), 3.
26. Ibid.
27. Ibid., 139, 229.
28. In the author's survey of ten leading U.S.-based human rights NGOs, 100 percent gave this answer. (Survey conducted with executive directors or associates in charge of policymaking, June and July 2007.)
29. Vandenberg, interview with author.
30. Ibid.
31. Ibid.
32. Anonymous interview with author, spring 2001.
33. Anonymous interview with author, spring 2001.
34. Vandenberg, interview with author.
35. Ibid.
36. Author's survey of ten leading U.S.-based human rights organizations.
37. Telephone interview with author, June 2007.
38. Jonathan Evans, interview with author, May 2001.
39. David Kennedy, "The International Human Rights Movement: Part of the Problem?" *Harvard Human Rights Journal* 15(spring 2002): 101–25, esp. 112.
40. Kennedy, "The International Human Rights Movement," 120
41. The Landmine Survivors Network human rights education campaign is an important exception.
42. Patrick Coy, "Cooperative Accompaniment and Peace Brigades International in Sri Lanka," in *Transnational Social Movements and Global Politics*, ed. Jackie Smith, Charles Chatfield, and Ron Pagnucco (Syracuse: Syracuse University Press, 1997) 81–100, esp. 94.
43. For more information on Human Rights Education Associates, see <http://www.hrea.org>.
44. For more information on the Human Rights Education Associates, see <http://www.hrea.org>; see also UNHCR web page on human rights education and training, <http://www.unhcr.ch/education/main.htm>.
45. For more information on the People's Movement on Human Rights Education, see <http://www.pdhr.org>.
46. Tom Malinowski, interview with author, July 2001.
47. Glenn Ruga, interview with author, June 2003.
48. Ken Roth, "A Dangerous Security," *Worldlink* 17 (January 2002).
49. Stephanie Farrior, interview with author, March 2001.
50. International Council on Human Rights Policy, *Human Rights Crises: NGO Responses to Military Interventions* (Versoix: International Council on Human Rights Policy, 2002), 39.
51. Ibid. See also Human Rights Watch, <http://www.hrw.org/about/whoware.html>.
52. Ibid. See also Physicians for Human Rights, <http://www.phrusa.org>.
53. Julie Mertus and Jeffrey Helsing, eds., *Human Rights and Conflict* (Washington D.C.: United States Institute of Peace, 2006).
54. Interview with Nancy Lindborg, Mercy Corps, Washington, D.C., July 2001 and July 2003.

55. Jonathan Evans, Catholic Relief Services, interview with author, Baltimore, May 2001.
56. The International Human Rights Council offers this helpful explanation of the relationship between human rights and humanitarian organizations:

Most human rights NGOs are intensely loyal to international human rights law, which provides a key foundation of bare legitimacy. Though their loyalty is to the *values* that human rights law claims to represent, they rely heavily on legal principles in judging the performance of governments. Some humanitarian agencies, most obviously the ICRC [International Committee of the Red Cross], whose mandate is to implement international human rights law, share this legal approach. The great majority of relief agencies, however, are far more pragmatic both in the way they develop policy and in the way they draw upon international human rights standards and humanitarian law. They consider the latter to be useful rather than defining instruments: the purpose is to assist those in need. (The International Human Rights Council, 21; italics in source)

57. Ian Smillie, interview with author, June 2001.
58. Ibid.
59. Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action* (Ithaca: Cornell University Press, 2002).
60. Ibid., 220.
61. Julie Mertus, "Improving Post-Agreement Intervention: The Role of Human Rights Culture in Kosovo," *Global Governance* 10 (fall 2003): 333–51.
62. Anonymous interview with author, 2001.
63. Kenneth Anderson, "The Limits of Pragmatism in American Foreign Policy: Unsolicited Advice to the Bush Administration on Relations with International Nongovernmental Organizations," *Chicago Journal of International Law* 2 (fall 2001): 371–86.
64. Andrew Loomis, interview, Washington, D.C., June 2003.
65. While not a sample survey, it is significant that more than a third of the people interviewed for this study from human rights organizations or think tanks had been employed in government and/or the U.S. military. Nearly all respondents had worked in at least two other fields, including private industry, high technology start-up companies, philanthropy, education, the arts, banking, law, and advertising.
66. See Don Hubert, "Inferring Influence: Gauging the Impact of NGOs," in *Toward Understanding Global Governance: The International Law and International Relations Toolbox*, ed. Charlotte Ku and Thomas G. Weiss (Providence: ACUNS Reports and Papers, No. 2, 1998), 27–54.
67. See Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52 (1998): 909–12, 887.
68. See, for example, David H. Martin, "Haste, Gaps, and Some Possible Cures for the ICC: An Introduction to the Panel," *Virginia Journal of International Law* 41 (fall 2000): 152–60.
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70. Ivan Simonovic, "Relative Sovereignty of the 21st Century," *Hastings International and Comparative Law Review* 25 (summer 2002): 371–78.
 71. National Council on Disability. *Understanding the Role of an International Convention on the Human Rights of People with Disabilities*. A White Paper. (Washington, D.C.: National Council on Disability, June 12, 2002), http://www.ncd.gov/newsroom/publications/2002/pdf/unwhitepaper_05-23-02.html.
 72. *Ibid.*, citing among others Louis Henkin, "The Constitution, Treaties and International Human Rights," *University of Pennsylvania Law Review* 1012 (1968). See also Remarks of Professor Louis B. Sohn before the 1979 Senate Hearings on International Human Rights Treaties (Senate Committee on Foreign Relations, 96th Congress, 1st Session), where Professor Sohn stated that the

fears [of the United States regarding human rights treaties] have been exaggerated and that it is simply part of the general feeling that the United States knows better about various things and therefore should not be subject to other peoples' judgments. (Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, 1037 (New York: Oxford University Press, 2000))
 73. See, e.g., David Lumsdaine, *Moral Vision in International Politics*. (Princeton: Princeton University Press, 1993).
 74. David Balton, interview with author, June 2003.
 75. Cynthia Price Cohen, interview with author, June 2003.
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 83. Adam Lopatka, "An Introduction to the United Nations Convention on the Rights of the Child," *Transnational Law and Contemporary Problems* 5 (1996): 251–89.
 84. Price Cohen, "Role of the United States," 33, citing U.N. Doc. E/CN.4/1988/WG.1/WP. 2 (1988), 15. It did not include the paragraph on parental rights that the American representative had proposed, but instead included a broad limitation clause permitting restrictions on the right to assembly on several bases, including "public health or morals."

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89. Price Cohen, interview.
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93. Balton, interview with author. See also David A. Balton, “The Convention on the Rights of the Child: Prospects for International Enforcement,” *Human Rights Quarterly* 12 (1990): 120.
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95. *Ibid.*
96. *Ibid.*
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 145. *Accreditation and Participation of Non-governmental Organizations in the Ad Hoc Committee to Consider proposals for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities*, UN GA Res. A/RES/56/510, <http://www.un.org/esa/socdev/enable/rights/adhocngo82e.htm>.
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147. Avraham Rabby, U.S. adviser for Economic and Social Affairs, "The Rights and Dignity of Persons With Disabilities," statement at the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities (UN General Assembly, New York, July 30, 2002), <http://www.state.gov/p/io/rls/rm/2002/12365.htm>.
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151. For copies of the *Daily Disability Negotiations Summary*, vol. 1, 1–10, see <http://www.rightsforall.org.htm>.
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161. Lord, interview.
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 174. D. G. Hart, "The Mid-Life Crisis of American Evangelicalism: Identity Problems," *The Christian Century* 109, no. 33 (November 11, 1992): 1028-31.
 175. Rev. Richard Cizik, interview, June 2003.
 176. *Ibid.*
 177. The individuals represented center and conservative organizations who had expressed concern about religious persecution around the world. For example, Freedom House started a freestanding division called the Center for Religious Freedom in 1986. According to the Center's website, the Center "defends against religious persecution of all groups throughout the world" (<http://www.freedomhouse.org/religion/about/about.htm>). The World Evangelical Alliance is a membership organization of evangelical churches around the world and supports the International Day of Prayer for the Persecuted Church. The Hudson Institute, a policy think tank, lists "respect for the importance of culture and religion in human affairs" among its core values. The Institute of Religion and Democracy supports democratizing efforts under the belief that "democratic principles best embody Christian notions of human freedom, and that religious liberty is a right for all people throughout the world" (<http://www.ird-renew.org/Feedback/FeedbackList.cfm?c=1>).
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179. Ibid.
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181. Peter Steinfels, "Evangelicals Ask Government to Fight Persecution of Christians," *New York Times*, January 23, 1996, A13.
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186. T. Jeremy Gunn, "A Preliminary Response to Criticisms of the International Religious Freedom Act of 1998," *Brigham Young University Law Review* (2000): 841–43.
187. See Eric Schmitt, "Bill to Punish Nations Limiting Religious Beliefs Passes Senate," *New York Times*, October 10, 1998, A3.
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191. Ibid.
192. Orrin G. Hatch, "Religious Liberty at Home and Abroad: Reflections on Protecting this Fundamental Freedom," *Brigham Young University Law Review* 2 (2001): 413–28.
193. Public Law No. 105–292, 112 Stat. 2787 (1998).
194. William Clinton, "Statement by the President on Signing the International Religious Freedom Act of 1998," *Weekly Compilation of Presidential Documents* 34 (October 27, 1998): 2149.
195. Ibid.
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197. The final version of the IFRA had a menu of fifteen different actions from which to choose, ranging from withdrawal of foreign aid to more limited actions such as private demarche (Gunn, "A Preliminary Response," 857).
198. Robert A. Seiple, the first ambassador-at-large for International Religious Freedom, favored a quiet diplomacy approach to the issues, which has largely set the tone for the State Department's work in the area.
199. Gunn, "A Preliminary Response," 843.
200. The reports are online at <http://www.state.gov/g/drl/irf/rpt/>.
201. "Uzbekistan, Turkmenistan, and the International Religious Freedom Act: Letter to U.S. Secretary of State Colin L. Powell," <http://www.hrw.org/press/2002/08/religious-freedom-ltr.htm>.
202. Clinton, "Statement by the President on Signing," 2149.
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204. John Shattuck, "Religion, Rights, and Terrorism," *Harvard Human Rights Journal* 16 (spring 2003): 183–88, esp. 185. In reviewing this objection to IFRA, Shattuck writes:

This is not an entirely invalid concern. While the law does not explicitly give religion a special status in human rights, it does provide the U.S. government with greater powers to deal with violations of religious freedom abroad than other human rights. (185).

- See also Kristin N. Wuerffel, "Discrimination among Rights?: A Nation's Legislating a Hierarchy of Human Rights in the Context of International Human Rights Customary Law," *Valparaiso University Law Review* 33 (fall 1998): 369.
205. Shattuck, "Religion, Rights, and Terrorism," 185. In reviewing this objection to IFRA, Shattuck writes: "Since the United States has yet to ratify a number of international human rights treaties, this criticism tends to stick, and barring a major national policy shift, it is likely to endure."
 206. A fascinating exchange of these two divergent approaches are two opinion pieces in the *Christianity Today Magazine*: Michael Horowitz's "Cry Freedom: Forget 'Quiet Diplomacy'—It Doesn't Work" and the response by T. Jeremy Gunn, "Full of Sound and Fury: Polemics at Home and Abroad Does Not Prevent Religious Persecution." Both articles are available at <http://www.christianitytoday.com>.
 207. U.S. Department of State, "Countries of Particular Concern 2006 Under the International Religious Freedom Act," May 9, 2007, <http://www.state.gov/g/drl/rls/84565.htm>.
 208. U.S. Department of State, International Information Programs. Senator Paul Wellstone on Senate Passage of Anti-Sex Trafficking Bill (August 1, 2000), <http://usinfo.state.gov/topical/global/traffic/00080101.htm>; see also Regan E. Ralph, Background Briefing. International Trafficking of Women and Children Testimony before the Senate Committee on Foreign Relations Subcommittee on Near Eastern and South Asian Affairs, February 22, 2000, <http://www.hrw.org/backgrounder/wrd/trafficking.htm>.
 209. Regan E. Ralph, February 22, 2000, Background Briefing. International Trafficking of Women and Children.
 210. U.S. State Department, "Trafficking in Persons Report," Office to Monitor and Combat Trafficking in Persons (June 5, 2002).
 211. Trafficking Victims Protection Act of 2000. Public Law No. 106–386.
 212. 50 U.S.C. 1701.
 213. Human Rights Watch, "U.S. State Department Trafficking Report a 'Mixed Bag' (HRW Press Release, Washington, D.C.: July 12, 2002), www.hrw.org/press/2001/07/traffick-0712.htm.
 214. Letter to Secretary Powell regarding the U.S. State Department's Trafficking Report (June 18, 2002). Jefferson suggested:

The Trafficking Report should set forth qualitative information: Are the victim service programs appropriately designed and funded, and are they effectively assisting victims in practice? What are the inter-ministerial task forces mandated to do, and have they succeeded? Does draft legislation cover trafficking into all forms of forced labor and provide adequate victim services and witness protections?

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216. Human Rights Watch has urged that disaggregated statistics (victims' gender, age, and nationality, and the type of forced labor they endure), to the extent available, should be provided on the victims, as well as on prosecutions for trafficking-related offenses (arrests, conviction rates, and sentencing). Where such information is not available, the Trafficking Report should note governments' failure to compile and publish disaggregated statistics and urge them to do so.
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We do not agree that the WTO should allow NGOs a direct role in the dispute settlement process. Such a role would give NGOs—groups that are sometimes unaccountable even to their own memberships—too great a measure of influence. Moreover, conferring standing on NGOs would inevitably aggrandize the WTO's bureaucracy, which would acquire power to designate which of the many NGOs with an interest in a dispute could appear.

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CONCLUSION: BAIT AND SWITCH?

Human rights has become the “bait and switch” tool of choice of U.S. foreign policy. Just like the car dealer who publicizes an amazing but often nonexistent deal in order to get people into the showroom and to boost their reputation as preferred dealers, politicians promise human rights in order to induce desired behaviors in others and to support their positive self-image. Then, as soon as the desired behavior happens, a poor substitute is made in place of the original offer.

This book has shown that human rights advocates have had considerable success in framing policy choices in human rights terms and in influencing the discourse of U.S. foreign policy. Human rights is indeed the lingua franca of diplomacy, and to some extent human rights have become institutionalized. For the White House, however, human rights talk is not supported by consistent human rights behavior. On the contrary, the United States applies a double standard for human rights norms: one that applies to the United States and one that applies to the rest of the world. Where human rights framings of policy choices can so easily lose out to competing interests, one cannot say that human rights have the kind of taken-for-granted quality that comes along with norm embeddedness. Nor can human rights be said to be embedded in the U.S. military, where, despite efforts to teach human rights standards through the ranks of the armed forces and to project an image of controlled, considered professionalism, U.S. soldiers have been implicated in several well publicized acts of torture and abuse.

What’s going wrong with human rights?

TOWARD A NEW THEORY OF NORM DIFFUSION

There is nothing wrong with human rights. Human rights has become the best available choice for framing arguments and making policy choices. Other options, which may not be intrinsically bad, become less favorable when compared to the better option of human rights.

What is wrong is that human rights remains only an option and has not achieved the status of an imperative. Furthermore, in interplay with other options, human rights are vulnerable to misuse by powerful states to their own benefit.¹ To extend the car dealer analogy: the car is a desired commodity promised by the dealer in an attractive package. When the customer arrives, he or she finds that the option actually offered is not the same as the advertised special. The car dealer misleads people through his power of influence, created by both the fact that he has something someone else wants and that his wealth gives him a magnified voice (i.e., his ability to advertise). Like the car dealer, the United States can use its wealth and influence to mislead other states about its commitment to the human rights framework, appearing as universalist when actually it is applying double standards.

Recognizing the ethical problems with “bait and switch” car dealers, consumer protection laws seek to set advertising requirements that diminish the possibility for such behavior. Perhaps even more influential is the limit to the amount of nonsense and trickery that the American consumer is willing to tolerate. What is needed with respect to human rights is some kind of similar safety—the consumer protection of human rights and limits to what is socially acceptable—to eliminate or at least highly restrict the possibility that they will be trumped by lesser competing norms.

This gets to the heart of academic theories about how norms become diffused—that is, how they spread and gain influence. This book began with the insight of Martha Finnemore and Kathryn Sikkink that dialogue, communication, and argumentation are essential mechanisms for the socialization of norms.² Arguing the rightness of human rights may not only shame states into action in individual instances but also, as human rights norms are internalized, provoke a shift in identity, interest, and expectations.³ Adopting the socialization and persuasion theory of norm diffusion entails focusing on the relative persuasive force of a convincing or skillful argument advanced in favor of one norm over another.⁴ The study of civil society actors in this book demonstrates that human rights arguments are indeed powerful tools for framing policy issues and can influence behavior. But in the cases in which human rights advocates are successful, have they really persuaded anyone in a broad or transformative sense, or have they only managed to convince someone to apply their approach to a specific, isolated case? Are we witnessing case-specific persuasion, or will the particular human rights victory carry over to other decisions faced by whomever was successfully persuaded? Given all the double standards and bait and switch behavior manifest in U.S. human rights policy, can we really point to a shift in the identity, interests, and expectations of U.S. government and, in particular, of the individuals who occupy influential seats in the White House? Even when the administration appears to take one step toward human rights, the potential remains for arguments based on American exceptionalism to require two steps back.

To put this problem in perspective, we need to consider a new theoretical model. One interesting theory of norm diffusion does not require an explicit showing of a philosophical shift, rather, just enough “rhetorical coercion” to

compel the endorsement of a normative stance. Under the model proposed by Patrick Jackson and Ronald Krebs, “[c]laimants deploy arguments less in the hope of naïve persuasion than in the realistic expectation that they can, through skillful framing, leave their opponents without access to the rhetorical materials needed to craft a sustained rebuttal.”⁵ The public nature of the rhetoric plays a key role in rhetorical coercion. Jackson and Krebs explain that “the relevant audiences impose limits on the arguments that can be possibly advanced” and this makes it possible to back an opponent into a “rhetorical corner.”⁶

According to this new theory of norm diffusion, human rights advocates who focus on persuasion and primarily target decision makers have it all wrong. Richard Rorty suggests that human rights provide a “sentimental education” that generates openness and awareness to the oppression of others.⁷ This may work in some cases, but to divert all resources in this direction is misplaced. Instead of trying to change minds in government, advocates should focus on creating the conditions that compel human rights policy choices. To the extent that advocates concentrate on changing perspectives, the perspectives that matter most are those of the general public, not those of policy-making elites. Back to the car salesman analogy: they should create consumer protection conditions and raise the expectations of consumers in order to limit the range of ways in which the deal can be closed. For human rights advocates, the creation of a human rights culture would serve such a function by providing an environment in which human rights double standards are not tolerated.⁸

TOWARD A HUMAN RIGHTS CULTURE

“We live now in a human rights culture,” law professor Helen Stacy triumphantly declares in a 2003 *Stanford Law Review* article.⁹ She observes:

Increasingly in the second half of the twentieth century, human rights have become the language with which people, groups, and even nation states, frame their requests for better treatment from others—whether those others are citizens, governments, international capital, or neighbors. Human rights have, in short, become the lingua franca of request; the language of human rights has become the language of demand by citizens pressing their government for better treatment at the hands of the police, for cleaner air and fairer distribution of environmental harms, or for universal health care or the special educational needs of a minority group.¹⁰

This is all true, but to claim that Americans live in a human rights culture is a gross overstatement. The level of awareness of human rights is extremely low. According to one study by Amnesty International, 94 percent of American adults and 96 percent of American youth have no awareness of the Universal Declaration of Human Rights (UDHR).¹¹ Even if they are aware of it, however, they are far too willing to tolerate their government’s abridgement of international human rights standards.

As Renato Rosaldo succinctly explains, “[Culture] refers broadly to the forms through which people make sense of their lives.”¹² For each group or society, culture incorporates the shared beliefs and understandings, mediated by and constituted by symbols and language.¹³ Two components of culture are particularly relevant for our discussion here. First, cultures are not unidimensional and static; they are multidimensional and dynamic. In the accounts of human rights and U.S. foreign policy provided in this book, it is impossible to define and describe a specific American culture since culture is “interactive and process-like (rather than static and essence-like).”¹⁴ Second, culture is not *natural*, not *inevitable*, not *predetermined*. Rather, it is socially constructed according to an ideological and/or political purpose.¹⁵ A *human rights culture* is the vehicle through which a particular set of shared beliefs and understandings—human rights norms—take root in and influence a population.¹⁶

The ultimate goal of human rights advocacy is more than the sum of the individual tasks generally associated with human rights work. The ultimate goal of human rights advocacy is to promote a human rights culture. The idea is that once well-entrenched in local culture, human rights will be part of the ethical lens through which the problems in society are refracted. While scholars are at odds over the exact process through which human rights are inculcated into local culture,¹⁷ they generally agree that a human rights culture will not exist unless human rights norms are accepted on a local level as legitimate.¹⁸ To put it plainly, the general public must “buy into” the values promoted by human rights and agree to support the mechanisms designed to advance those values. Achieving public “buy-in” to human rights is a difficult task, but it need not be an insurmountable one.

The adoption of human rights language is an essential step in building a human rights culture, but this alone is insufficient.¹⁹ Human rights concepts enter culture slowly as a population develops its own shared (although often contested) understanding of the prominence and importance of the norms. Incrementally, they become part of the “‘frame’ in which people derive a sense of who they are and where they are going.”²⁰ As Tom Malinowski, the advocacy director for Human Rights Watch, has noted, human rights advocates “‘win’ not only when they get international institutions to do something, but when they get people to see issues in a certain way.”²¹ Only when people throughout society deploy a human rights lens to try to make sense of events does a human rights culture exist.

Since the adoption of the UDHR in 1948, the United States has never taken seriously its mandate that “every individual and every organ of society . . . shall strive by teaching and education to promote respect for these rights and freedoms.” To do so in 1948 would have been to acknowledge the legal discrimination of racial segregation. To do so in 2002 would be to acknowledge that as a matter of policy every U.S. administration has refused to acknowledge social and economic rights as human rights. Today, “although generally well informed about their civil and political rights under the U.S. Constitution, most people in the United States would be astounded to learn that they have a human rights to health care, housing, or a living wage,” says

Nancy Flowers, an American educator who pioneered human rights education programs for Amnesty International and other groups.²² “Rather than cultivating a culture of human rights,” Flowers explains, “the U.S. government has consistently found it advantageous to suppress human rights awareness at home while using human rights abuses abroad as a grounds for sanctions and even invasions.”²³ Only recently have U.S.-based human rights groups challenged this stance by directing their efforts to human rights culture-building activities at home.

The first national group to focus on human rights education as a tool for social change was the National Center for Human Rights Education (NCHRE) in Atlanta, Georgia.²⁴ Established in 1999, NCHRE “seeks to catalyze a human rights movement in the United States by integrating a human rights framework into existing social movements.”²⁵ Founder and former executive director Loretta Ross explained human rights as a key to empowerment:

Like teaching slaves to read in 19th-century America, teaching human rights in 21st-century America is a far-reaching act that offers a rich vision of human possibilities. Human rights education trains us in a new way of relating to each other—not through opposition, but through uniting us for the sake of our mutual destiny.²⁶

Activists trained by the NCHRE who work on a multitude of issues—combating racism, homophobia, poverty, and discrimination against people with disabilities; promoting women’s rights; protecting the environment; defending reproductive rights—identify themselves as part of the global human rights movement.

Other attempts to infuse human rights thinking into existing social movements include the International Human Rights Law Group’s efforts to promote the implementation of the Convention on the Elimination of All Forms of Race Discrimination in the United States by assisting U.S. civil rights and social justice groups in integrating the language, techniques, and procedures of international human rights law in their efforts to combat racial discrimination.²⁷ Amnesty International has focused attention on building a human rights culture in the United States since 1999 when, in cities across the country, it held hearings on the international human rights dimensions of police brutality.²⁸ This led to the creation in 2002 of Amnesty USA’s first full-scale domestic human rights program. “We’ve continued to hold public hearings because storytelling by the community is a very important,” says Cosette Thompson, Amnesty International’s Western regional coordinator, pointing to hearings on racial profiling held in 2003 as the most recent such examples.²⁹

In recent years, some advocacy groups have, in addition to specific human rights education campaigns, incorporated human rights culture building into their broader mandate and programming. The Center for Economic and Social Rights (CESR) has been a standout in this regard. Beyond human rights education, the CESR has employed four additional strategies for building a human

rights culture: (1) supporting emerging human rights movements by providing them with capacity building and linking them to UN mechanisms; (2) developing human rights-based advocacy models and policy proposals to effect social change and generate new methodologies for domestic human rights work; (3) building networks of groups working on human rights in the United States; and (4) developing U.S. human rights jurisprudence through legal submissions in courts, commissions, and tribunals, as well as broader analysis of U.S. legal accountability.³⁰

The infusion of international norms into the law and policy of state and local communities serves to foster greater participation in the development and enforcement of human rights. Cathy Powell, director of Columbia University School of Law's Human Rights Clinic, explains that by "cultivating and amplifying the voices of state and local governments in the adoption and implementation of human rights, dialogic federalism assists in widening the base of support for and increasing the legitimacy of these norms."³¹ Among the several examples of the infusion of international norms at the local level is San Francisco's decision to become the first city in the United States to pass a law instituting the principles that underlie the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³² This law, which was spearheaded by the Women's Institute for Leadership Development (WILD), requires city departments to use a gender and human rights analysis to review city policy in employment, funding allocations, and delivery of direct and indirect services.

Other local human rights laws have been directed at human rights abuses outside the United States. One of the earlier efforts occurred in 1996, when the Massachusetts General Assembly passed legislation that prohibited its state and any of its agencies from contracting with any person doing business with Myanmar.³³ Twenty-six cities, including Santa Monica, San Francisco, Berkeley, Oakland, Boulder, and Ann Arbor, have passed similar ordinances limiting business with Myanmar.³⁴ These ordinances have targeted Nigeria, China, Indonesia, and Cuba for their record of human rights abuses.³⁵ While still extremely rare, these kind of local efforts have served to enhanced local awareness of human rights norms.

Local awareness of human rights norms has become even more imperative post 9/11. Understanding some of the underlying causes of terrorist activity requires an understanding of the potential impact of the deprivation of human rights. So does informed discussion of the reports of abuses committed by the U.S. in the course of its counterterrorism activities abroad and at home. The financial resources and human capital of U.S.-based human rights organizations have been sapped by the enormous amount of work to be done. Budgeting difficulties are particularly acute for the more courageous human rights advocacy organizations that have been penalized by donors for taking strong stands on human rights issues post 9/11. The strain on resources is especially acute for organizations that have been spurred by 9/11 to work on human rights in the United States for the first time. In this climate, some human rights organizations view human rights education as a luxury that it simply

cannot afford. But many more recognize the centrality of public education projects to achieving their goals.

The Refugee and Immigration Project of the Minnesota Advocates for Human Rights provides one good illustration. Executive Director Robin Phillips explained that its immigration program had long been strong, but the post-9/11 backlash against all immigrants, especially against all who could be viewed as Middle Eastern, unveiled the deep racism and xenophobia of many Americans.³⁶ “We realized that advancing the human rights of immigrants must run hand-in-hand with improving the attitudes of Americans toward new arrivals,” Phillips explained, “so we created an educational focus on the history and nature of immigration in the United States, highlighting the contributions made by ‘new Americans’ in the Midwest.”³⁷ Among other efforts, Minnesota Advocates revised their successful text, *Energy of a Nation: The History of Immigration in America*, to add information on the social and legal challenges facing immigrants in the United States since September 11, 2001, challenging students to think more about bias and hate speech directed at immigrants and to reassess how they can better respond in their own lives.³⁸

The building of a culture cannot be expected overnight. Despite the effort expended and progress made, America still does not have a human rights culture that can effectively challenge the “bait and switch” of U.S. foreign policy. The culture of American foreign policy is not one of human rights because the American deployment of human rights double standards is perceived as a choice that Americans can make. This is incompatible with the central tenet of human rights that they should be applied to all equally. As Andrew Hurrell reminds us, the most pressing ethical dilemmas of advancing universal human rights concern practice and power.³⁹ American double standards in human rights policy weakens the United States’ claim to lead globally through moral authority and undermines the legitimacy of human rights norms.⁴⁰ As long as there is space for the interest in American exceptionalism to trump human rights, it will continue to do so. The building of a strong human rights culture within American society still is the only antidote.

ENDNOTES

1. For how power distorts speech, see Roger Payne, “Persuasion, Frames and Norm Construction,” *European Journal of International Relations* 7, no. 1 (2001): 37–61.
2. See also Thomas Risse and Kathryn Sikkink, *The Power of Principles: The Socialization of Human Rights Norms in Domestic Practice* (New York: Cambridge University Press, 1999).
3. Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 (1998): 914.
4. See Joshua Busby, “Listen! Pay Attention! Transnational Social Movements and the Diffusion of International Norms,” paper presented at the Annual Meeting of the American Political Science Association, August 2003. See also Neta Crawford, *Argument and Change in World Politics* (New York: Cambridge University Press, 2001); Jeffrey Checkel, “Why Comply? Social Learning and

- European Identity Change,” *International Organization* 55, no. 3 (2001): 553–88.
5. Patrick Thaddeus Jackson and Ronald R. Krebs, “Twisting Tongues and Twisting Arms: The Power of Political Rhetoric,” paper presented at the Annual Meeting of the American Political Science Association, August 28–31, 2003.
 6. Ibid. Claire R. Kelly proposes a different yet related theory that she terms “modified constructivism and the normative feedback loop,” defining the latter as “a mechanism by which states consult national values in their international interactions”; see Kelly, “The Value Vacuum: Self-Enforcing Regimes and the Dilution of the Normative Feedback Loop,” *Michigan Journal of International Law* 22 (2001): 673–731.
 7. Richard Rorty, “Human Rights, Rationality and Sentimentality,” in *On Human Rights: The Oxford Amnesty Lectures*, ed. Stephen Shute and Susan L. Hurley (New York: Basic, 1993), 114.
 8. Resources for creating this kind of environment already exist, in that hypocrisy is generally considered a bad thing in most realms.
 9. Helen Stacy, “Relational Sovereignty,” *Stanford Law Review* 55 (2003): 2048.
 10. Ibid.
 11. See <http://www.hrusa.org/features.shtm>. The survey was commissioned in 1997 by Human Rights USA Partners—Amnesty International USA, the National Center for Human Rights Education, Street Law, Inc., and the University of Minnesota Human Rights Center.
 12. Renato Rosaldo, *Culture and Truth: The Remaking of Social Analysis* (Boston: Beacon Press, 1993), 26.
 13. Mayer Zaid, “Culture, Ideology and Strategic Framing,” in *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, ed. Doug McAdam et al. (London: Cambridge University Press, 1996), 262.
 14. Yosef Lapid, “Culture’s Ship: Returns and Departures in International Relations Theory,” in *The Return of Culture in International Relations Theory*, ed. Yosef Lapid and Fredrich Kratochwil (Boulder, Colo.: Lynne Rienner, 1997), 8.
 15. Richard Handlet, “Is ‘Identity’ a Useful Cross-Cultural Concept?” in *Commemorations: The Politics of National Identity*, ed. John R. Gillis (Princeton, N.J.: Princeton University Press, 1994), 29.
 16. John Witte, “A Dickensian Era of Religious Rights: An Update on Religious Human Rights in Global Perspective,” *William and Mary Law Review* 42 (2001): 707, 712. Witte states that human rights norms “need a human rights culture to be effective.”
 17. See Hilda Hey, *Universal Human Rights and Cultural Diversity*, (Boulder, Colo.: Lynne Rienner, 2000); Amy Eckert, “The Global and the Local: Reconciling Universal Human Rights and Cultural Diversity”, in *Human Rights and Global Diversity*, ed. Simon Caney and Peter Jones (Portland, Oreg.: Frank Cass Publishers, 2001).
 18. See International Council on Human Rights, *Performance and Legitimacy* (2004), http://www.ichrp.org/paper_files/102_p_01.pdf.
 19. Richard A. Wilson, “Human Rights, Culture and Context: An Introduction,” in *Human Rights, Culture and Context: Anthropological Perspectives*, ed. Richard A. Wilson (New York: Pluto Press, 1997), 1, 16–17.
 20. Thomas Fitzgerald, *Metaphors of Identity* (Albany: State University of New York Press, 1993), 186.

21. Tom Malinowski, interview with author, July 2001.
22. Nancy Flowers, interview with author, September 2003.
23. Ibid.
24. For the National Center for Human Rights Education, see <http://www.nchre.org/>.
25. See <http://www.nchre.org/whatwedo.html>.
26. Loretta Ross, quoted in Nancy Flowers, "Human Rights Education In The USA," *Issues of Democracy* (electronic publication of the U.S. State Department), <http://usinfo.state.gov/journals/itdhr/0302/ijde/flowers.htm>.
27. International Human Rights Law Group, "Combating Racial Discrimination in the U.S.," http://www.hrlawgroup.org/country_programs/united_states/default.asp.
28. Cosette Thompson, Amnesty International, interview with author, September 2003.
29. Ibid.
30. For the Center for Economic and Social and Cultural Rights, see <http://www.cesr.org/PROGRAMS/usprogram.htm>.
31. Catherine Powell, "Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States," *University of Pennsylvania Law Review* 150 (2001): 245–91.
32. See WILD for Human Rights, http://www.wildforhumanrights.org/human_rights_advocacy.html.
33. The Massachusetts Burma Law is codified at Mass. Gen. Laws Ann. chapter 7 sections 22G–22M.
34. Erin E. Milliken, "*National Foreign Trade Council v. Natsios*: Massachusetts as a Participant or a Regulator in the International Market," *Journal of Law and Commerce* 19 (1999): 188.
35. Ibid.
36. For program description, see Refugee and Immigration Project, Minnesota Advocates for Human Rights, http://www.mnadvocates.org/Refugee_and_Immigrant_Program.html.
37. Interview with author, June 2007.
38. *Energy of a Nation: Immigration in America*, Minnesota Advocates for Human Rights (revised ed., 2004), http://www.mnadvocates.org/Energy_Teaching_Guide.html.
39. See Andrew Hurrell, "Power, Principles and Prudence: Protecting Human Rights in a Deeply Divided World," in *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (New York: Cambridge University Press, 1999), 277, 278.
40. Harold Hongju Koh, "On American Exceptionalism," *Stanford Law Review* 55 (2003): 1487.

SELECTED LIST OF PERSONS INTERVIEWED

Some interviewees chose not to be named, including a large number of military officers. Many other people were consulted more informally for the project. Affiliations are listed as current at the time of the interviews.

Abramowitz, Morton, senior fellow, Century Foundation. Interviewed on July 3, 2001.

Anderson, Elizabeth, executive director, Human Rights Watch. Interviewed on July 18, 2001.

Awad, Mubarak, executive director, Nonviolence International. Interviewed on July 10, 2001.

Balfe, Joelle, consultant, National Council on Disabilities. Interviewed in September 2003.

Balton, David, attorney, U.S. State Department. Interviewed in June 2003.

Bang-Jensen, Nina, executive director and general counsel, Coalition for International Justice. Interviewed on July 20, 2001.

Bassuener, Kurt, former program officer, Balkans Initiative, U.S. Institute of Peace. Interviewed in June 2001.

Bishop, Jim, director, Disaster Response Committee, Interaction. Interviewed on July 19, 2001.

Blank, Laurie, program officer, Rule of Law Program, U.S. Institute of Peace. Interviewed on May 1, 2001.

Boegli, Urs, head of media services, International Committee of the Red Cross. Interviewed on June 8, 2001.

Brooks, Doug, president, International Peace Operations Association. Interviewed on July 2, 2001.

Bugajski, Janusz, director, Eastern Europe Project, Center for Strategic and International Studies. Interviewed on July 26, 2001.

Carothers, Thomas, vice president for studies (in democracy and the rule of law), Carnegie Endowment for International Peace. Interviewed on June 18, 2001.

Cevallos, Albert, senior fellow, U.S. Institute of Peace, Office of Transition Initiatives, U.S. Agency for International Development. Interviewed on June 1, 2001, and in July 2003.

- Charny, Joel**, vice president for policy, Refugees International. Interviewed on July 10, 2001.
- Chin, Sally**, project coordinator for Burundi and Angola, Search for Common Ground. Interviewed in May 2001.
- Chopra, Jarat**, research associate, Global Security Program, Watson Institute for International Studies, Brown University. Formerly with the United Nations Transitional Administration in East Timor. Interviewed in March 2001.
- Cilliers, Jaco**, senior adviser, Catholic Relief Services. Interviewed in March 2001.
- Cohen, Cynthia Price**, president, Child Rights International. Interviewed on June 21, 2003.
- Cook, Tonja**, formerly with the Organization for Security and Cooperation in Europe in Bosnia-Herzegovina. Interviewed on June 27, 2001.
- Cooper, Ann**, executive director, Committee to Project Journalists. Interviewed on August 9, 2001.
- Countryman, Tom**, director for southeastern Europe, U.S. Department of State. Interviewed on July 25, 2001.
- Crocker, Chester**, chairman of the board of directors, U.S. Institute of Peace; James R. Schlesinger professor of strategic studies, School of Foreign Service, Georgetown University. Interviewed on August 16, 2001.
- Dalton, Captain Jane**, primary counselor, Legal Office of the Joint Chiefs of Staff. Interviewed on June 14, 2001.
- Day, Graham**, senior fellow, U.S. Institute of Peace. Former district administrator for the UN Transitional Administration in East Timor, and formerly also a political and field officer with the UN mission in Bosnia. Interviewed in March and June 2001.
- Deeks, Ashley**, attorney, U.S. Department of State. Interviewed in April 2001.
- DeGrasse, Beth**, executive director, Peace through Law Education Fund. Interviewed on June 28, 2001.
- Dempsey, Gary**, foreign policy analyst, CATO Institute. Interviewed on July 18, 2001.
- Dragnich, Alexander**, professor (retired), George Washington University. Interviewed on July 18, 2001.
- Dziedzic, Mike**, program officer for the Balkans Initiative, U.S. Institute of Peace. Former peace operations analyst, Institute for National Security Studies, National Defense University. Interviewed on June 12, 2001.
- Evans, Gareth**, executive director, International Crisis Group. Interviewed in May 2003.
- Evans, Jonathan**, director of Indonesia office, Catholic Relief Services. Interviewed in May 2001.
- Fabian, Greg**, human rights trainer, Organization for Security and Cooperation in Europe mission in Kosovo. Interviewed in November 2000.
- Falk, Richard**, professor, Princeton University; member, Kosovo Committee. Interviewed on March 23, 2001.

- Farkas, Evelyn**, staff member, Senate Armed Services Committee. Interviewed in March 2001.
- Farrior, Stephanie**, professor of law, Pennsylvania State University–Dickinson. Former legal counsel to Amnesty International. Interviewed in March 2001.
- Fishel, John**, professor of national security affairs, Center for Hemispheric Defense Studies, National Defense University. Interviewed on July 2, 2001.
- Flowers, Nancy**, human rights trainer, Amnesty International (and other groups). Interviewed in August 2003.
- Gjelten, Tom**, journalist, National Public Radio. Interviewed on June 6, 2001.
- Gorove, Katherine**, attorney, U.S. Department of State. Interviewed in April 2001.
- Greene, Marilyn**, executive director, World Press Freedom Committee. Interviewed on April 1, 2001.
- Gregorian, Hrach**, president, Institute of World Affairs. Interviewed on August 14, 2001.
- Gutman, Roy**, diplomatic correspondent, *Newsweek*. Interviewed on June 12, 2001.
- Halperin, Morton H.**, senior fellow, Council on Foreign Relations. Interviewed on June 20, 2001.
- Hawley, (Colonel) Len**, former deputy assistant secretary for peacekeeping and humanitarian assistance, U.S. Department of Defense. Interviewed on July 2 and July 26, 2001.
- Hilleboe, Amy**, emergency response team liaison, Catholic Relief Services. Interviewed in March 2001.
- Hilterman, Joost**, director, Arms Division, Human Rights Watch. Interviewed on May 31, 2001.
- Holtzapple, Rick**, foreign service officer, former program director for Montenegro and Serbia at the National Democratic Institute. Former adviser for the National Security Council, U.S. Department of State, and UN mission in Croatia. Interviewed on August 7, 2001.
- Hooper, Jim**, managing director, Public International Law and Policy Group. Former director of the Balkan Action Council. Interviewed on July 1, 2001.
- Huang, Margaret**, project director, International Advocacy/U.S. Racial Discrimination Program, International Human Rights Law Group. Interviewed in June 2003.
- Hunt, Swanee**, founder, Women Waging Peace. Former ambassador to Austria. Interviewed on June 27, 2003.
- Jendrzeczyk, Mike**, Washington, D.C., director for Southeast Asia, Human Rights Watch. Interviewed on June 28, 2001.
- Jenkins, Rob**, program manager, Office of Transition Initiatives, U.S. Agency for International Development. Interviewed on July 6, 2001.
- Kritz, Neil**, director, Rule of Law Program, U.S. Institute of Peace. Interviewed on May 1, 2001.
- Kuhar, Ivana**, officer, Croatian desk, Voice of America. Interviewed in April 2001.

- Kulick, Gilbert**, director of communications, Search for Common Ground. Interviewed in May 2001.
- Kuperman, Alan**, senior fellow, U.S. Institute of Peace; fellow, Kennedy School of Government, Harvard University. Interviewed in April 2001.
- Lacquement, Richard**, lieutenant colonel, U.S. Army; professor, U.S. Naval War College. Interviewed in August 2003.
- Lagon, Mark**, staff member, Senate Committee on Foreign Relations. Interviewed on July 27, 2001.
- Leo, Leonard**, attorney and division director, Federalist Society. Interviewed on July 1, 2003.
- Light, Carol**, professor of international law, George Washington University; attorney, U.S. Department of State. Interviewed in April 2001.
- Lindberg, Nancy**, executive vice president, Mercy Corps, Washington, D.C. Interviewed in July 2001 and July 2003.
- Locke, Mary**, director, Program on Regional Responses to Internal War, Fund for Peace. Interviewed on July 20, 2001.
- Loomis, Andrew**, Macedonia project manager, Search for Common Ground. Interviewed in May 2001 and June 2003.
- Lund, Michael**, senior associate, Management Systems International, and Center for Strategic and International Studies. Interviewed on August 16, 2001.
- Malin, Mary Catherine**, attorney and adviser, U.S. Department of State; cochair, Washington Steering Committee, Women in International Law Interest Group.
- Malinowski, Tom**, Washington, D.C., advocacy director, Human Rights Watch. Interviewed on July 17, 2001.
- Mataya, Chrissy**, program associate for Montenegro and Romania, National Democratic Institute for International Affairs. Interviewed on August 1, 2001.
- Matheson, Mike**, senior fellow, U.S. Institute of Peace; acting director of International Law Program, School of Advanced International Studies, Johns Hopkins University. Interviewed on June 27, 2001.
- Maxwell, Dayton**, senior adviser, U.S. Agency for International Development. Interviewed on July 20, 2001 and in June 2002.
- Maynard, Kim**, consultant on postconflict reintegration, UN Development Program and the U.S. Agency for International Development. Interviewed on July 27, 2001.
- McCall, Dick**, chief of staff to the administrator, U.S. Agency for International Development. Interviewed on August 14, 2001.
- McCarthy, Paul**, program officer for Central and Eastern Europe, National Endowment for Democracy. Interviewed on July 26, 2001.
- McClymont, Mary**, executive director, Interaction. Interviewed on July 3, 2001.
- McDonald, John**, executive director, Institute for Multi-Track Diplomacy. Interviewed on July 18, 2001, and in June 2003.
- Mendelson-Furman, Johanna**, consultant and adjunct professor, Association of the U.S. Army, World Bank, U.S. Agency for International Development, and American University. Interviewed on July 24, 2001.

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