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Editorial Note

Dear Reader,

We proudly present Vol. 34 of POLITIKON, the flagship academic journal of the International Association for Political Science Students.

This volume features four selected papers. You will be able to read about ‘constitutional patriotism’, a fascinating concept in political theory which claims that societies can create ties defining their collective identity through common allegiance to shared norms rather than on the basis of culture. For those of you interested in political theory applied to the EU, the second paper investigates which requirements would be needed for the adoption of ‘demoicracy’ as a possible form of governance for the EU. While reflecting on the plausibility of such adoption, ‘demoicracy’ is presented as a better candidate than cosmopolitanism for the implementation of party-less governance. Should you be interested in recent developments in international law, the third paper explores the controversies behind the doctrine of ‘Responsibility to Protect’ (R2P). The case studies of the conflicts in the Balkans, Iraq and Afghanistan investigate the extent to which R2P can be considered as a viable legal instrument for intervening in international conflicts. Finally, the fourth paper addresses the legal framework and the shortcomings of the use of petitions as a tool of inquiry on Non-Self-Governing Territories by the Fourth Committee of the General Assembly of the UN. Most importantly, this instrument is criticized for introducing a double standard on human rights within the UN as well as legal imbalances among member states of the Committee under study.

Our authors range from senior undergraduate students to PhD researchers, whose papers successfully passed our peer-review procedure. This shows that Politikon is open to talented junior scholars regardless of their formal academic status.

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Your Editors
On Constitutional Patriotism and Its Critics

Lukas Schmid

Lukas Schmid, 23, from Munich (Germany) has recently started a MSc in Political Theory at the London School of Economics and Political Science after concluding a Bachelor of Arts in Political Science and Law at the University of Munich. He wrote his Bachelor’s thesis on the normative ethics grounding different approaches in just war theory and has published in POLITIKON before. He is also interested in Ethics, Cosmopolitanism, Liberalism, Republicanism and Global Justice.

Abstract

The world today is ruptured by regressing notions of collective identity, seemingly abandoning the hard-fought progress made during the last seven decades. This development hinges on people’s current inclination to relapse into pre-political identities of culture and nation. However, constitutional patriotism suggests that societies are capable of creating identificatory ties between their members without regard to culture, but through common allegiance to shared norms. In this paper, I introduce the reader to this abstractly-sounding concept, and subsequently juxtapose it with the communitarian objection that constitutional patriotism is ipso facto unable to create the ‘glue’ that holds citizens together. I highlight one example of this criticism and treat it as a stand-in for the general communitarian objection. Finally, I present some arguments countering this criticism, concluding that constitutional patriotism may be the only form of patriotism inclusive enough to cater to the fundamental needs of modern societies.

Keywords

Collective Identity, Constitutional Patriotism, Communitarianism, Habermas, Immigration, Multiculturalism, Norms
Introduction

“Democracy needs some form of citizen-identity for purposes of integration. Individual citizens can be motivated to look beyond what they understand to be in their self-interest and what they understand to be in the interest of their familiars, and to do so for the good of their fellow citizens, who remain to them strangers, only if they feel some sense of identification with those strangers: some sense of solidarity with them, some sense of sharing with them in a collective purpose or a collective project.” (Hayward 2007: 182)

As articulated in this formulation of Hayward, one of liberal democracy's greatest tasks is to foster its citizens’ goodwill towards its institutions and its internal and procedural mechanisms, which presupposes the widespread acceptance of some sort of solidarity towards co-citizens. Much has been written about how the very existence – or, in some cases, absence – of that solidarity ought to be scientifically and philosophically framed.

In political philosophy, there are, *ceteris paribus*, mainly two counterparts pertaining to this question: liberalism and communitarianism. While these are generic terms that enclose myriad different strains of thought, they can generally be contrasted with each other, since their paradigms are diametrically opposed. Authors like David Miller or Alasdair MacIntyre take the communitarian approach, as they regard common political identity in contemporary liberal democracies as the result of shared culture and common national history (Miller 1998: 47-51, MacIntyre 2003: 287-298).

Contrariwise, recent neo-kantian thinkers, first and foremost Jürgen Habermas, have developed a theory more sceptic towards communitarian emphasis on culture and tradition, the theory of *Verfassungspatriotismus* or constitutional patriotism. Built largely upon the historic background of German re-unification and the at the time almost uncontroversial notion of an ever deeper European Integration, constitutional patriotism articulates the idea that shared culture, understood in an historically ethnic sense, can be insignificant for fabricating a sense of identification with a polity. Much rather, common allegiance to shared ideals, manifested in the context of particular democratic institutions, especially the constitution, can prove to be a significantly more inclusive and potent catalyst for creating a common political identity (Habermas 1992: 1-19).

As one might expect, being a theory that negates the essential point of (post-)modern communitarian political theory, and permits, if not favours, the entangling of nation and state, constitutional patriotism has been exposed to its fair share of criticism. This criticism has been rather diverse, some even criticizing the framework of constitutional patriotism for being prone to abuse by manipulating elites (Hayward 2007: 191).
However, the main criticism is a communitarian one: namely, the accusation that constitutional patriotism fails to provide the 'glue' that binds citizens of a polity to one another. This bond can, according to theorists like Miller, only be supplied by cultural nations. As he puts it, “Nations are the only possible form in which overall community can be realized in modern societies. Without a common national identity, there is nothing to hold citizens together.” (Abizadeh 2002: 498)

In this paper, I want to examine the idea of constitutional patriotism in detail and then proceed to take a close look at the criticism mentioned above. In order to make this task feasible, I will at first present this line of criticism generally, and then move on to use the example of one particular paper formulating it, Cecile Laborde’s “From Constitutional to Civic Patriotism”. In conclusion, I will present some arguments opposing her view and argue that this line of reasoning does not defeat the notion of constitutional patriotism. However, constitutional patriotism might still be susceptible to other conceptual objections.

**Constitutional Patriotism**

The concept of constitutional patriotism has emerged mainly as Jürgen Habermas' response to the problem of how people in ever more multicultural and diverse societies aspire to live together, and which political framework exists for all of them to embrace and adhere to. Juxtaposed against German reunification, it is reasonably clear that constitutional patriotism stems from Habermas' contextualized experiences as a citizen in his particular polity, the Federal Republic of Germany (Habermas 1992: 1f.). However, it is intended as a theory that may apply to various polities, even to all liberal democracies. The basic idea is the belief that constitutions of liberal democracies which embody universal norms such as justice, freedom and the recognition of the legitimacy of human rights are substantive in assuring support from citizens for the polity they are part of, and can function for these citizens as a means to generate a common political identity (Ingram 1996: 2). However, theorists proposing the idea of constitutional patriotism do recognize the need for particular (as in particular for a certain polity) institutions to reflect in political praxis the norms introduced in the constitution in order to make them palpable for citizens; thus, constitutional patriotism does not reject all notions of particularism (Müller 2007: 65f.). What is more, constitutional patriotism should not be understood as a static model of allegiance to a constitution, but much rather as a mindset encouraging an ever-ongoing process of deliberation about the specific norms and practices adhered to and practised in a certain society, held together by, as Jan-Werner Mueller puts it, the shared
"[...] idea of citizens conceiving each other as free and equal [which enables them to, note] find fair terms of political cooperation that they can justify to each other." (Ibid: 55)

This necessity of ongoing discourse constitutes what Mueller calls “a constitutional culture” (Ibid: 56). Thus, that leads us to spot the element of process as the essential subtle drive of the idea of constitutional patriotism. Its postulated ability to gain more and more momentum through the process of deliberation and the praxis of discourse in society is not only what brings the abstract expression of a constitutional culture to life, but also suggests, for constitutional patriots, a decisive merit of their theory: the ability to cross state-boundaries and generate, to quote Mueller again, “normative spillover” and “transnational norm-building” (Ibid: 49). As Habermas, his colleagues and academic followers are known for their consideration of the continuing integration of the European Union, the idea of the momentum of constitutional patriotism should be considered with the background knowledge that its agents most likely constructed this argument with the idea of a European Union with less (even no) boundaries in the back of their heads (Habermas 1992: 10ff.). Nevertheless, it is definitely possible to apply this idea to any polity that is a liberal democracy.

Now, the defining factor and, if actually coherent and applicable, greatest virtue of constitutional patriotism has so far only been implied. It consists in the possibility of creating a post-national identity. To quote Attracta Ingram (1996: 2),

“Citizens are thought of as bound to each other by subscription to these shared values rather than by the more traditional pre-political ties that nation-states have drawn on as sources of unity.” (stress added)

Thus, while theorists in favour of constitutional patriotism acknowledge that modern states have largely been founded and developed as nation-states, they also conclude that the modern state can be conceived, i.e. is viable, without one particular nation as its foothold (Ibid: 11). This, again, means, that the functioning of a liberal democracy is explicitly not dependent on certain pre-political conditions, such as the existence of a relative homogeneous cultural nation that is shared by the overwhelming majority of citizens, who are tied together by matters of kinship, shared religion or some sense of common cultural history. However, that is not to deny that such cultural nations exist in liberal democracies and can, in fact, spark a sense of common identity among their constituents, but much rather to propose a way of generating common identity that works just as well and, most importantly, represents an ethically justifiable alternative to do so in times of a multiculturalism that demands inclusive efforts of political integration (Müller 2007 87ff., Canovan 2000: 416, 418). Thus, what holds citizens together is no longer necessarily a matter of given pre-political facts unable to be influenced by the individual, but rather the result of a man-made process of deliberation open to all citizens, unaffected by their particular cultural belonging.
Thereby, a modern society uninhibited by pre-political divisions becomes not only conceivable, but, rather, emerges as the most workable option of community-building. As Gregory Hoskins (2012: 65) quite accurately observes,

“Jürgen Habermas’ account of 'civic identity' is grounded in the claim that 'consent' constitutes a political people […]”

As merely implied at the beginning of this section, the great worth of constitutional patriotism as a contribution to the discourse of particularism versus universalism lies in its implication that those notions are not actually as mutually excluding as it may seem, but are in fact reconcilable, or, at least, in some form able to co-exist. It is universal in the aspect that it alludes to norms whose intrinsic worth is the same anywhere on this planet, and particular in insisting that those norms have to be reflected by a particular institutional and deliberative culture engendered over time in some sort of polity (Müller 2007: 59ff.).

This Habermasian proposition of a notion of patriotism built upon universal values may resonate perfectly well with an observer fairly alien to the discourse in contemporary political theory. However, constitutional patriotism has been exposed to plenty of criticisms, the most fundamental and well-argued of which is proposed by communitarians, agents of a line of thought revitalized as a response to the individualistic political philosophy that is John Rawls' magnus opum, *A Theory of Justice* (1971) (Primoratz 2015). Scholars and theorists in favour of communitarian political philosophy disagree with the central argument developed by constitutional patriots: the claim that allegiance to abstract notions of fairness and freedom can be enough to unite citizens in a common political identity. For communitarians, this argument ignores basic conditions of human life. In the second part of this paper I will illustrate their line of reasoning and judge its validity.

**Is Constitutional Patriotism 'too thin'? A Common Critique**

“It’s fair to say that within constitutional patriotism as a form of attachment cognitive elements will predominate.” (Müller 2007: 62)

This statement by Jan-Werner Mueller, a persistent advocate of constitutional patriotism, demonstrates in its vagueness the most obvious and perhaps characteristic problem this theory is confronted with. It has been pointed out by many scholars that constitutional patriotism may rely too heavily on abstract principles that lack the emotional tangibility of pre-political ties, and therefore fails to create a common identity among citizens (c.f. Miller 1988). It is an argument most frequently proposed by communitarians and liberal nationalists, as its fundamental objection to constitutional patriotism draws on notions of political societies as decidedly particular communities relying on a largely homogeneous understanding of culture (Ibid: 651, 654f.). In proposing in their
political theories that universalists falsely ignore the respectively particular circumstances one's self-understanding, moral beliefs, and partial affiliations are necessarily embedded in, those theorists emphasize the seemingly forgotten quality of cultural heritage. Furthermore, it is often argued that this cultural heritage is necessarily contextualized in the existence of a nation, which in turn is constituting for its political framework, the state (c.f. MacIntyre 2003: 290f.). Subsequently, the argument goes, a community-building sense of common identity cannot be thought feasible without recognizing those prerequisites of cultural belonging. Therefore, the cultural nation becomes a necessary condition for the existence of a polity built upon liberal and democratic constitutions, as these presuppose contractual willingness to some sort of solidarity. As Margaret Canovan (2000: 423), in her critique of constitutional patriotism, puts it quite metaphorically:

“The claim that an impartial state can form a benign umbrella soaring above rival national or ethnic identities and attracting patriotic loyalty ignores the most crucial political question. Where is the state to draw its power from? What holds up the umbrella?”

This means, of course, that, contradictory to Attracta Ingram's conclusion, the nation-state cannot be disentangled (Ingram 1996: 3, 14f.). It is suggested that no abstract principle, however honorary, can replace the pre-political ties kinship and trans-generational cultural heritage fabricate, and that constitutional patriotism even unknowingly presupposes these ties as given (Canovan 200: 426f.). This criticism does not merely question some aspects of constitutional patriotism's feasibility, but negates its very basic notions of how a modern political society functions. The question remains, however, if one of those two lines of thought is superior to the other, and can therefore claim victory in this clash of societal paradigms, or if the division between these sorts of universalism and particularism can be overcome in some sort of compromise. In the next section, I will show one particular scholar's expression of the criticism explained above and then present arguments constitutional patriots might propose as an answer.

The Common Critique as employed by Laborde and some Replies

“[…] is a commitment to liberal procedures and principles sufficient to actualize the sense of trust and solidarity essential to maintain the thick web of mutual obligations upon which the liberal-democratic state rests?” (Laborde 2002: 593)

Cécile Laborde goes on to argue that it is not, and proposes her own theory that is similar to constitutional patriotism, but includes major concessions to the value of particular cultural heritage (Ibid: 597-601, 607-611). As defending constitutional patriotism against every author and his or her particular argument would go far beyond the scope of this paper, I will in the following section treat those parts of Laborde's argument that employ this particular criticism (she uses different reasoning as well, but examining that is a different task for a different paper) as a pars pro toto for
the common critique described above, since I believe her paper embodies its objections and their flaws adequately well.

As she builds her case for “Civic Patriotism”, Laborde criticizes that constitutional values are currently in no polity the original entity of allegiance. Building a post-national identity would, if at all, most likely be attempted within the context of a supra-national polity, and would come at the cost of polarizing universalist institutions at the polity-level with quasi-autonomous communitarian cultures at the nation-level (Ibid: 599f.). What is more, she fears that supranational institutions of the constitutional patriot's vision would be devoid of support among many citizens and therefore illegitimate and useless. This happens as citizens are not inclined to see these institutions as belonging to them, since they would not pose a legitimate object of identification, for, it is implied, there is nothing meaningful enough about a shared loyalty to certain norms (Ibid: 601f.). She concludes this argument by emphasizing that universalist principles are only possibly effective if their message can “resonate with the political self-understanding of the society in question” (Ibid: 602).

There are a number of answers and counter-arguments to this line of reasoning. To begin with, her indication that polities of the constitutional patriot's conception are likely to only (if at all) emerge as a supranational framework ignores the most obvious counterexample: The United States of America. Later on, we will see that it has elsewhere been argued that even the US is not a polity solely gaining its support through common allegiance to constitutional principles, but that is not to deny that it is a multicultural society founded and largely developed on common values that at least resemble the constitutional patriot's normative vision for the headstone of a commonwealth (Canovan 2000: 424f.). Furthermore, the US has in its history arguably applied a rather liberal approach to immigration, and to a certain extent still does so, thereby adhering to what is proposed by Habermas and Jan-Werner Mueller as perhaps the most revealing feature of a constitutional patriotic polity (Habermas 1992: 10-19, Müller 2007: 85-92). To continue, her fear of a polity whose institutions enjoy no civic support because citizens show no interest in them and would rather live among themselves in secluded cultural national communities presupposes, of course, that common values simply cannot forge a band between citizens powerful enough to constitute a political community if they do not reflect cultural traditions and idiosyncrasies. But it seems that this is a mere claim, which is nowhere in communitarian argument profoundly illuminated or explained; a mere social intuition, if you will. For if theorists advocating this communitarian claim are confronted with conflicting examples, like Canada or Switzerland, they substitute in their argument shared nationality for shared affective identity, which cannot be argued to inevitably stem from shared cultural habitus (Abizadeh 2002: 498f.).
In fact, uniting the empirical reality of some states with its basic societal axioms may be the challenge this line of communitarian thought seems to be unable to overcome. Multicultural countries like the USA or Canada simply do not rely on cultural-national particularities to justify the political legitimacy of their governmental structures. In fact, their political systems are deliberately designed to maximize inclusion of every particular community of interest, especially regarding minorities (Kymlicka 1995: 132-138). Of course, even these seemingly legitimate examples are liable to objection and have been criticised. Canovan (whose reasoning comes from a completely different perspective than Laborde's), for example, ascribes the American common political identity not to a mere shared allegiance to institutionalized universal values, but rather to the important band the common inheritance of these values forges (Canovan 2000: 425f.). But that is not an argument that legitimately attacks the validity of the notion of constitutional patriotism in any way, for inheritance is merely a feature of human life in general. Most notions and ideas are naturally inherited, but this doesn't mean they are immune to abandonment. It is precisely because of the inherent worth of the principles and ideas embodied in the American constitution that they have been able to survive and are still an object of allegiance to this day; if the ideas embodied in the American institutional context were not valuable enough to provoke allegiance on their own, they would by now have been abandoned in favour of some other source of common identity.

All of this is decidedly not to say that constitutional patriotism is immune to criticism. There are a number of criticisms, in Canovans paper alone, that seem on first look legitimate and should be subject of close evaluation. Especially the question of how membership in a state or a supranational polity should be prescribed to citizens, if national inheritance is to be disregarded, represents an important objection and has yet to be answered accordingly (Ibid: 426f.). Fortunately, this is a task for a different paper.

Conclusion

As I have illustrated, constitutional patriotism is more than mere allegiance to constitutional principles. In emphasizing its procedural character and the importance of the element of deliberation, I hope to have adequately explained its mechanisms and underlying principles. What is more, constitutional patriotism succeeds in unifying universalism and particularism. In stressing the need for particular institutions to reflect the universal ideas of human rights and democratic principles, it recognizes the merits of embedding those ideas in the particular historic project taken on by respective polities. However, this particular historic project need not be cultural or ethnic in nature. This is why the communitarian objection against constitutional patriotism fails: it goes one step to far in promoting particular cultural nations. Always relying on some sort of cultural unity
for the establishment of a common political identity, it embodies notions that not only seem normatively objectionable, but also do not accurately adhere to the empirical reality of some of the most significant liberal democracies in the world. Furthermore, as the evidence for Mary Kaldor’s claim that the political conflicts of the 21st century are fought along the identity politics cleavage of cosmopolitanism versus particularism seems to ever grow, constitutional patriotism might increasingly appear as the only justifiable form of patriotism left; a formulation of identity politics that stresses the need for multicultural comprehension but does not forget the institutional framework within which a post-national society must take place (Kaldor 1999: 7).

References


Demoicracy as a viable outcome of a party-less European Union

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Abstract

The European Union today is a cosmopolitan entity that functions in conjunction with political parties. This reliance on parties is one example of cosmopolitanism’s need to replicate the nation-state at supranational and intergovernmental levels. Maintaining the European Union as its case study, this paper explores the plausibility and requirements for demoicracy adoption as the form of governance for the European Union. This paper reveals that demoicracy can permit partyless governance to a greater extent than cosmopolitanism. This not only exposes the concomitant relationship between parties and cosmopolitanism, but also the benefits of partyless governance. The paper informs that parties need to be avoided due to a hindrance of citizen representation. To deepen our understanding of this notion, parties and cosmopolitanism are examined in the paper as extensions of the project of modernity.

Keywords

Cogito, Cosmopolitanism, Demoicracy, European Union, Modernity, Phenomenology
Introduction

The levels of political and civil freedom, on a world scale, are continually growing (Gunther and Diamond 2001: 10); however, is there a direct link between these freedoms and democracy? Today, democracy appears to be the only form of government with legitimacy nationally and globally, in that its ideal is to claim that individual rights have a rule in government actions (West 1996: 155). It is safe to state, however, that there are growing disaffections with many of the institutions of democracy. If democracy can be termed by Andreas Follesdal as: “a set of institutionally established procedures that regulate competition for control over political authority...the government is accountable to, and thereby responsive to, all those subject to it (Follesdal 2012: 100)” then the legitimacy of a transnational institution like the European Union (henceforth, the EU) should depend on perceiving the party as a threat rather than as a contributor to this concept of democracy. This project aims to show, through qualitative comparative research, that the cosmopolitan political party should be removed from its role as the key player in democracies and that such a removal would lead to demoicracy being considered as a more inclusive model for citizen and EU member state participation. The EU was used as our case study to test this claim and to portray the party as undermining citizen and member state inclusion in the decision making process. In order to show the contributions cosmopolitanism and the party provide to the democratic deficit in the EU, this paper first looks at the threefold relationship between the origins of the party, its relationship with the modern individual, and cosmopolitanism. Second, it compares the role deliberation plays in the current cosmopolitan EU, which is juxtaposed to deliberation’s role under demoicracy. Finally, it looks at how phenomenology, in rejecting the natural attitude of modernity, can coincide with demoicratic ideals.

In order to provide more authentic autonomy to citizens and member states in the EU, there is a demand today for more horizontal channels of participation and self-creation. A partyless model of statehood is fruitful because it can demand a shift from traditional democracy towards a warranted deliberative demoicracy. Why is this warranted? Such a demoicracy, as we take demoicracy to mean a multi-demos form of governance that promotes horizontal intersubjectivity, will be shown to provide for more effective and efficient citizen and member state participation. This will be done by demoicracy being juxtaposed to a cosmopolitan or post national democratic view of EU integration and governance.

Cosmopolitanism can be considered an outgrowth of modernity, as it can be considered an ideal that is progressive and humanistic whilst being entrenched in modernity’s structural conditions (Kendall, Woodward, Skrbis 2009: 12). Cosmopolitanism will be shown to involve a uni-demos form of governance that promotes vertical power relations. This latter form will be shown to
require the political party as a necessary ingredient. Due to the unlikelihood that the traditional nation-state will completely disintegrate within the EU, and since pure horizontal decision making between citizens will never be entirely feasible (due to the notion that nation-states will most likely always require some form of vertical power relations with the EU and likewise with citizens), we will see that a compromise between the horizontal and vertical channels of political participation can be attained more thoroughly through democracy than through cosmopolitanism. We will be able to consider, therefore, that more diagonal participation as the syntheses between horizontal and vertical channels of participation for decision-making is possible in the EU and its member states through deliberative democracy. This compromise is a possible strategy to tackle the democratic deficit in the EU.

The origin of the political party and the cogito

The political party arose in Western society via numerous paths to inclusive democracy, which were based on industrialization and franchise (West 1996: 17). It is important to note however, that although the modern state (which was arguably derived from the Treaty of Westphalia in 1648 or even earlier in the sixteenth century while global interconnectedness emerged with the world economy’s expansion; Held 2006: 292) has had a reciprocal existence with the party throughout history, it did not gain direct control over populations with direct income tax until the 1800s (James 2002: 66). Although the primitive political party can be traced back to ancient Athens where different groups attempted to influence decisions in the assembly based on locality, social status, and occupation, traces of today’s modern party are found in the 1700s (Daalder 2001: 40). There are many arguments on the historical origin of the party, but the party should be considered overall as an organization that links rulers and ruled, and seeks to perpetuate representation by attaining power via nominating candidates in elections.

The party and Descartes’ (1596-1650) *cogito* (the human being whose consciousness exists because it thinks) came into existence during the same era, which is no coincidence. The latter became the common conception of the individual as self, just as the party became the common institution to govern. The problem that derives from the Cartesian self (*cogito*) is that in knowing that it thinks and doubts that it exists, knowledge’s value becomes instrumental. Therefore, knowledge makes life more certain and more comfortable in its ability to improve, predict, and control nature (West 1996: 14). For our purposes, we need to see the party as an extension of this conception of self within society, as the party is also a product of the Enlightenment. The party, however, has the role of improving the organization of society, allowing for the predictions of how government will be governed, and controlling society by reducing individuals to objects for power through votes that
are taken at the expense of their authenticity. Instrumental knowledge is thus the product of the modern identity and the party, and such knowledge travels vertically, which is the movement of power of cosmopolitanism.

The Enlightenment was a new mode of thinking that was a philosophical, intellectual, and cultural movement in the 18th century. It is regarded as the arrival in the intellectual sphere of developments and events that would transform European society forever. This new thinking commenced the idea of the Modern period, which started approximately around the 16th century. This was before the maturation of the state and party, but during which the West involved a mindset based on an objectifiable cogito (West 1996: 7). We can see in retrospect that around the 16th century, the party was warranted by individuals, since there was a departure from the past and a new sense of time developed the self-consciousness of the West. The West claimed its institutions maintained a privileged relationship to rationality, as Europeans saw themselves as superior to non-Western cultures (West 1996: 7). The West, therefore, considered itself superior to other cultures in virtue of its thought, values, the development of the modern state, political entities, and capitalism, concluding that it is modern because it is rational (West 1996: 8). It is no surprise that we see the party deriving from this modern era, evolving into the basic form that it does today. We accept this notion, since it is when the primitive 16th century party morphed into the advanced modern party through ideas from the Enlightenment. As a result of this ‘chemistry’, the Enlightened party was able to entrench itself into the project of modernity with the cogito as its model citizen. The party began to manipulate and rationalize society and politics to an even more Newtonian and thus mechanistic extent, bursting its way through European and North American society (Daalder 2001: 40). After its development through the Middle Ages, Hans Daalder informs the party in Britain in the 18th century as the place of origin for the modern political party, as it is: “when the organization of parliamentary support and attempts to influence the outcome of elections became questions of vital concern...when David Hume spoke of ‘factions from interest’...and Edmund Burke made a clear case for the party as being ‘a body of men united upon a particular principle to promote the common good of men’ (Daalder 2001: 40).”

We now see that the political party is modern because it is rational, and rationalization in the Weberian sense involves abandoning traditional romantic practices and customs in favour of procedures that are designed to achieve goals more efficiently; hence, the party allows the state to organize means that are efficient in order to realize ends, or in other words, rationalize (West 1996: 63). From this, we can maintain that the political party is a key player in society’s instrumental rationalization (West 1996: 8). Since society is composed of manipulable individuals, society itself is manipulable. Changing our conceptions on self can therefore change our conceptions on society.
To undermine the *cogito*, we need to understand Descartes as having naturalized the self as a *cogito* made of two distinct substances. The mental found inside the physical is an important facet of this natural attitude that views everything in reality, including other individuals, as physical and thus manipulable. This provoked Husserl’s dissatisfaction with such an attitude since it was incapable of truly understanding consciousness and thus the individual self (Moran 2013: 91). The party is able to manipulate society and reduce the individual to a physical object, in virtue of this natural attitude. This attitude is an achievement of modernity that extended to politics through the parties that formed the democratization process and its physical constitution. Such a claim has caused a blur between democracy, the state, the self, and the party, and so to undermine the *cogito* and its modern companion ‘the party’, is to change our perspectives on the socio-political realm by undermining the natural attitude we embrace. When we do so, we can realise that our authenticity as human beings in the political realm is being sacrificed for the sake of party dominance, cosmopolitanism, and vertical power relations.

Undermining the natural attitude can lead to undermining the legitimacy of the political party and reciprocally, cosmopolitanism. Demoicracy thus becomes a more legitimate candidate for EU governance when we view the social world as being composed of horizontal relations. The support of horizontal participation, in which the multitude of *demoi* as member states and/or citizens maintain their identities rather than sacrificed into a demos for vertical power relations, is what demoicracy provides. By challenging the verticality of cosmopolitanism, the party, and traditional democracy, demoicracy can provide for the birth of new roles for citizens but also for member states within the EU.

**The lost role of the political party**

Due to cosmopolitan attitudes in the EU, independent politicians, who we argue are the most representative of their constituencies and citizens (in virtue of being free from the political party’s hold) are scarce. The replication of national democracies at the EU level by cosmopolitan attitudes promotes democracies that are always tacitly tainted by the party. Since real democratic politics has traditionally taken place in national arenas, to replicate such politics at the EU level is not problematic for cosmopolitanism. George Ross comments that the gap: “between the thickness of national democratic deliberative practices and the thinness of these practices at the European level is clear, and the consequences profound” (Ross 2006: 126). Extending nation-state democracy to the EU level increases vertical power and thus exacerbates the *authenticity deficit* member states and citizens suffer from within the EU. This can be manifested in the intimacy between cosmopolitan styled democracy and the political party. The functions of parties monopolize the political process,
which are grouped between representative functions (policy formulation, interest articulation, and interest aggregation) and institutional/procedural functions (Bartoloni and Mair 2001: 331). Parties are so steeped in EU politics that they shape the vertical relations for EU institutions, which are created internally by elites or externally by social groups. Parties thus act as the most decisive agents for recruiting political ideas and expressing or articulating policy demands (Gunther and Diamond 2001: 17).

The problem with the party today is that it has forgotten how to represent and aggregate interests. Citizens today are dealing with parties initially designed to translate the interests of the citizenry to the state authority, yet it has become that authority itself. Due to this ‘dire switch’, the party, which was once relied on to influence authority to represent individual interests, has become institutionalized and now needs to be lobbied as much as the state authority itself. Unfortunately, in the EU, parties have managed to institutionalize themselves. Parties have already taken control of the dynamics of internal affairs through EU funding. We see this with funding to the main eight parties in European Parliament, justified in the Treaty on the European Union article 10 paragraph 4 and in the Treaty on the E.U.’s Functioning, article 224’ (Europarl.europa.eu 2017). Due to these treaties, independent ministers in the EU do not stand much of a chance of being elected, as there are only fifteen independent ministers in Parliament (a.k.a., non-inscrits) (Europarl.europa.eu 2017).

The loss of authenticity in the EU is becoming more severe for its citizens as the ever increasing global system changes and impinges on member states and thus on an individual’s autonomy and sovereignty (Held 2006: 303). In addition, the party perpetuates this loss as it can resort to coercive acts by party members that lead to unjust methods for getting a citizens’ vote, such as extortion or even vote buying (Gunther and Diamond 2001: 14). We can characterize the modern party as avoiding personal contact with voters in order to focus on the wider support that it needs in the face of competition from other parties. This support reflects the objectifying nature of the modern rationalizing project, as citizens become a means to political ends. Such objectification of citizens comes at the expense of the state having any tangible contact with the majority of voters, which undermines deliberative participation from citizens. Ideology thus takes over as being the most important aspect that a party can possess and market to the masses. This ideological based party is the most popular modern party in these times and it is the catchall party, and it flourishes within the EU.

The historical trajectory of the modern party can be understood to have gone from elite to mass party, to catch-all party, and finally to electoral-professional party (though these last two models are vaguely different with the latter in more developed and democratically advanced countries; Kitschelt 2001: 328). The catchall party sets out to maximize votes, govern, and win elections;
essentially, it attempts to aggregate the widest variety of social interests (Gunther and Diamond 2001: 26). We can understand this aggregation as involving rationalizing social integration where leaders and followers are instilled with bonds of religion, class, or ethnicity (Daalder 2001: 46). The political catch-all party is perhaps one of the most efficient vehicles that modernity provides for society to overcome issues of collective action and social choice, but which today does not provide responsive and accountable services to the citizenry (Kitschelt 2001: 300). This deficit can be thought of as a result of modern democracy being built on the principle of territorial representation via electoral districts, not on the functional representation of areas of policy and sectional interests. As a result, the political party has now benefitted from the naïve legitimacy and status the public gives it through their natural attitude. The attitude thus frames the party as a key device for political representation, governmental organization, democracy’s maintenance, and accountability, but also the vertical power relations of EU cosmopolitanism (Kitschelt 2001: 328). This role comes at the expense of the true interests of citizens, since a vote is never translated perfectly into what a citizen wishes to gain or expect from government. It is safe to say then that the party, having successfully acquired its role as the key device for political organization, is also the key device today for political manipulation, since it cannot be held truly accountable once elected into power.

Since parties have been considered by many to be necessary for government, it is hard for us to remove them from their historical role. It is the harmonizer of different political processes and institutional orders within the state. Since this role has followed the party from the middle of the 19th Century to the beginning of the 21st Century, it is difficult to ‘strip them’ of the credit for numerous democratization processes today. We can support the idea that we have become so accustomed to their contribution to democracy that we overlook their real significance, which is in part due to the natural attitude. The party was the only institution that set out its task of integrating and allowing for the institutions and processes of democracy to be compatible (Kitschelt 2001: 339). However, this can be framed as a cosmopolitan notion as it has now lost this function. Today it is merely striving for power, as it aims to control individual and group behaviour via loyalty systems and identification (Kitschelt 2001: 339).

**Cosmopolitanism to Democracy?**

The cosmopolitan view on global democracy considers citizens as actors who perceive themselves as world citizens, not just national citizens (Held 1995). In the end, it sees the globalized context as creating a legitimacy gap for international entities like the EU, in that decisions are made outside the grasp of mere national processes. To compensate for this gap, or in other words democratic
deficit, demoicracy is considered a viable option to rectify this deficiency in political decision making. Today, there is a need for the demoicracy, which Susan Besson characterizes as: “a multi-layered and multi-centered democratic society within, among and beyond states” (Besson 2006: 185). Within member states, demoicracy supports the plurality within populations and provides increasing levels of empathy and authenticity amongst and between members within society through the promotion of horizontal intersubjective relations between members. Such horizontality is also possible between member states in the EU. Such relations provide ideal conditions for deliberation, whereas cosmopolitan views promote the replication of the nation-state at international and supranational levels. Cosmopolitanism thus directly and indirectly promotes the political party to continue its role as chief democratizer at the expense of the citizen, as the party dominates EU politics and its member states. The EU’s cosmopolitanism has therefore invited the party to dominate beyond its member states in virtue of vertical replication, whereas demoicracy vouches for public deliberation to take place between citizens at the core of political decisions that are legitimate and self-governmental (Besson 2006: 185).

In any just and fair society, deliberation is needed for preference formation over what individuals think should be a political order’s objectives, but also to consider what the best means to achieve those objectives are and with what trade-offs (Follesdal 2012: 102). Demoicracy has the potential to widen such deliberative participation at levels higher than that of cosmopolitanism. Demoicracy is based on the assumption that the EU is not a state that is constituted by demoi (peoples and/or states) that are separate nor demoi that are forged into a unity. As a result, demoicracy supports a transnational political demoi that is a plurality distinct and open to each other and their respective democratic systems. And so, demoicracy does not support a cosmopolitan unification via any pan-European demos (Nicolaïdis 2012: 252). For demoicrats, such EU unity is not possible due to the lack of a shared European identity (Follesdal 2012: 102). The acclaimed no-demos thesis for the EU pertains to this lack of unity when considering it as an organization, as it cannot truly have a democracy that is European because it is not possible to have a demos that is univocally European (Besson 2006: 187). We can state that there is no such thing as a demos without an ethnos in Europe (Besson 2006: 189).

Kalypso Nicolaïdis, in highlighting the deliberative action involved in demoicracy, frames this approach as a possible candidate for the EU (which can be extended to its members) because it involves: “an open-ended process of transformation which seeks to accommodate the tensions inherent in the pursuit of radical mutual opening between separate peoples” (Nicolaïdis 2012: 254). The political arrangement best suited for authentic identity formation for member states and individual citizens is supported by demoicracy, as it allows horizontal relationships to forge
between citizens and members. This is an attribute hindered by the EU’s cosmopolitan adherence to the political party. The party seeks to maintain the vertical relationships it establishes, as it mediates between citizen and government. The dismantling of the party therefore would allow citizens and member states to express their desires to a greater extent. This is just one reason why we see the party as being at odds with the horizontal mechanisms of representation that democracy promotes. Removing the party from EU cosmopolitan democracy thus opens the possibility for more deliberative participation between citizens and member states, which exposes the demos to the demands of the demoi. Such compromising of the current vertical channels of participation between citizens, party, and state, considers the possibility of diagonal approaches to political decision making and identity formation. The difficulty today with achieving this more diagonal state/citizen relationship, however, lies in the popular notion that the party is synonymous with democracy. Such a notion is an outgrowth of the natural attitude that is the attitude we have seen the society of modernity built upon (Moran 2013: 105).

**Deliberation through democracy at the EU level**

Although parties provide the most important link between the political process and citizens, it relies on a limited view of the individual citizen and of member states in the EU. Party platforms can provide the manner for interest and passion aggregation into public policy, and party competition provides the most trustworthy mechanism for accountability (Schmitter 2001: 67). However, authenticity is still undermined because of the difficulties that parties have in aggregating passions and interests (Schmitter 2001: 81). For citizens, results from a survey asking ECOSY (European Community Organisation of Socialist Youth) found that 81 percent of respondents trusted parties, and so party membership may be considered a more important variable than sociological factors when it comes to influencing attitudes and behaviour directed to the EU. However, the Eurobarometer survey only found that 17 percent of its respondents trusted political parties and over 70 percent did not (Speht 2005: 201). This latter figure coincided with the more recent research of van Biezen and Poguntke who found that since the 1980s, there had been an overall decrease in party membership in the EU (van Biezen and Poguntke 2014: 207). These findings can be interpreted to show that the party is lessening its importance in the democratic process in Europe, which could be a positive implication; however, it also reflects the lack of interest citizens feel toward participation.

Deliberation can compensate for the lack of representation the party provides by promoting discursive consensus and by permitting outside actors from government to participate in the democratic process. This horizontal attribute of deliberation involves a style of participation that is
a constituent of the participatory process that intersubjectively recognizes the plethora of relations between the different perspectives of the *demoi* (Cornish and Gillespie 2009: 19). Instead of narrowing the horizons of those views through a European *demos* that depends on cosmopolitan verticality, this intersubjectivity can be maintained at the EU level through more deliberative approaches to participation by individual citizens and member states. For the latter, these approaches cohere with the aim of demoicracy towards changing the democratic institutions of member states in order to allow them to participate internationally and act together to achieve goals as separate *demoi*, rather than in the cosmopolitan sense of creating new supranational institutions. These institutions subsume the international powers of national member states to eventually coalesce them into a *demos*. Deliberation is thus valued differently between demoicracy and cosmopolitanism, as the latter view strives for a democracy that is post-national and thus for the case of the EU, beyond member states, yet preventing them from disappearing altogether (Besson 2006: 182). Demoicracy promotes participation for member states in the EU that expresses national interests at the EU level.

The EU today strives to be cosmopolitan and handle the *state of nature* or anarchy that exists between European member states by subscribing to principles of democracy, rule of law, and human rights. This involves deeper and extended democracy across European states, regions, and global networks. Instead of changing democratic institutions at state level to cope with the internationalization of politics, which demoicracy allows, cosmopolitanism aims to develop a layer of institutions at the global level to complement the ones at the state level (Held 2006: 316). Cosmopolitan democracy thus aims to create new institutions above and co-existing with state systems, but allows the former to override states when it comes to activities with international and transnational results (Held 2006: 316). It aims to replicate member state systems at the international level, and since member states have parties entrenched in their democracies, the cosmopolitan approach for the EU allows parties to wield excessive powers at the EU level as well. Although the building of channels for civic participation through deliberate means over decision making at the global and regional level is on the agenda for cosmopolitan democracy (Held 2006: 316), the party will always hinder such deliberation.

Today, globalization demands more international organization and co-operation. The possibility of recovering a deliberative and participatory democracy at local levels to entrench autonomy within sites of power and throughout spatial domains is challenged by the presence of the party (Held 2006: 318). Cosmopolitan democracy supports the political party; however, it is still anchored by multilateralism and international law, which makes it a political and cultural project that could be interpreted as suited and adapted to the EU’s global and regional age (Held 2006: 321). Today,
however, it should not be considered as an apt option for the EU. The EU could be more deliberative if its members changed their state governments and institutions to cope with the purpose of transnational co-operation, instead of relying on the cosmopolitan notion of creating new supranational and intergovernmental entities. One plausible action could be to demand a ‘double role’ be played by member state politicians. By representing their national state constituencies in their national member state parliaments, but additionally in the EU’s European Parliament, national member state politicians can prevent the need of having EU citizens elect separate politicians for the latter Parliament. Today, member states have their nationally elected members play a ‘double role’ through their heads of state in the European Council (Wood and Yesilada 2004: 96).

Deliberation through demoicracy at the domestic level

In its promotion of horizontal relations, we now see deliberation as opening the door for demoicracy at both EU and member state levels. Demoicracy, according to Nicolaïdis: “requires its many peoples not only to open up to one another but to recognize mutually their respective polities and all that constitutes them: their respective pasts, their social pacts, their political systems, their cultural traditions, their democratic practices” (Nicolaïdis 2012: 248). Through the expanded horizons that deliberation and demoicracy provide, but which the party narrows, we can increase the possibility for empathy in society. The self-knowledge it provides by informing us what we are not, allows us to evaluate ourselves, which means empathy can allow us to acquire new values. The comprehension of others horizontally through the channels deliberate demoicracy provides can be the basis for value comparison (Nicolaïdis 2012: 248). When a government allows such horizons and authenticity to flourish, it responds to its citizens’ preferences (Dahl 1998: 1). We have seen how the party hinders the expression of those preferences and for that; we learn how the EU can label the party as the main culprit for its democratic and authenticity deficit. This is why democracy in the EU is not practiced in a way that efficiently translates the popular will of citizens into symmetrical legislative outputs of deliberation (Norton 2000: 343). In order to value deliberative demoicracy and its horizontal participation, phenomenology is able to reveal its worth.

Phenomenology as a political scientific method

Juxtaposing between political sciences which commit to approaches to political reality that are quasi-mathematical on the one hand and phenomenological political science on the other, brings to light the meaning of the former’s commitment and such meaning’s limits (Cooper 1981: 102). Phenomenology focuses on intentional intersubjectivity and subjectivity in order to identify the
inter-relationships at play in the world’s constitution (Moran 2013: 95). It scrutinizes the natural attitude mentioned above, which is an attitude that reduces culture and society to objects and in turn ignores the human life-world which consists of intersubjective meaning (Moran 2013: 101). The natural attitude through the lens of phenomenology is exposed as an attitude that commits to the notion that the party is necessary for politics. Both this attitude and the party assist each other in reducing society to a manipulable physical field. Phenomenology on the other hand, by aiming to be a complete philosophy of social reality (Cooper 1981: 99), overcomes the ordinary fixed way we live, thus countering the fixity brought on by the natural attitude and the party (Cooper 1981: 101). And so, the life-world and its accompanying social reality through phenomenology are framed as meaning’s ultimate horizon. Within this reality several “sub-worlds” co-exist (work, theory, etc.), which is why Cooper propounds: “social reality is multi-dimensional, heterogeneous, and internally articulated. […] Phenomenology, then, contradicts the belief […] that self-understanding is most truly found by way of mathematical or quasi-mathematical formalism, which is called by its exponents, ‘objectivity’ (Cooper 1981: 102).” Phenomenology brings to the fore the notion that the social world, or Lebenswelt, in which we as human beings reside, is a world which cannot be completely reduced to analysis. The party is a manifestation of the cosmopolitan aim to reach such a reduction by fixing individuals and member states in order to create an analyzable static world. The consequence of this is a ‘covering over’ of the fluid life-world of which we are a part (Moran 2013: 102). Alasdyr MacIntyre notes that through phenomenology, however, we can consider that there are many different approaches to being rational. The modern project of cosmopolitanism is not the only manner to attain rationality (MacIntyre 1988: 15). Countering such a modern project, phenomenology coincides with demoicracy’s approach of respecting the multi-demos (within its plurality) as rational. This involves judging the many accounts of justice in society instead of modernity’s approach of freeing ourselves from our traditions through abstracting ourselves from customs. Such abstracting has the goal of reaching neutrality or impartiality. Phenomenology and demoicracy do not aim to reach such a universal point of view, as we see their support of pluralism counters the cosmopolitan approach of monological replication.

From above, we can consider that deliberative demoicracy needs phenomenology as a method to reach its goals of mutual respect and recognition between demoi. In society, each individual standpoint should not just make emotive claims, but rather authentic ones if there is to be no overriding objective theory of practical rationality or justice (MacIntyre 1988: 354). Phenomenology is thus able to show us the value within demoicracy and the importance of the deterritorialization of the EU’s demoi for authentic transnational deliberation (Besson 2006: 183).
Phenomenology shows us the democratic notion that through others, the human mind manifests itself as dialogical, not monological (Taylor 1994: 31). Since we can never truly free ourselves from our traditions nor abstract self from our customs in order to be neutral and impartial for reaching a rational universal cosmopolitan point of view (MacIntyre 1988: 15), we will never reach a true pan-European demos. Democracy is thus a feasible candidate for the complications of participation in the EU and its members. The EU is an institution that should be joined by citizens who recognize phenomenologically created as an intersubjective identity for themselves that counters cosmopolitan pan-Europeanization and party identification. European citizenship counters alienation phenomenologically by involving a democratic ‘siblinghood’ based on mutual recognition; a form of identity that shifts amongst the multiple demoi and thus reveals the social constructed identity formed through horizontal democratic ideas (Cheneval and Nicolaidis 2016: 9). Through the method of phenomenology, we are thus able to examine identity in the EU, but also how the EU institutions themselves are created through horizontal and intersubjective means. Through the promotion of a transnationality, democracy is phenomenological in scope as it emphasizes the horizontal and mutual openness between individuals in a shared polity (Nicolaidis 2012: 252). It should contest against the Kantian based liberal democratic society, which allowed for the cosmopolitan model of the EU to dominate.

One of the dire consequences for the cosmopolitan model is due to the vertical relations between states and citizens. This model’s preference is a political arrangement in which one dominant culture suppresses the plurality of minority ones through a demos. It aims to convert minority cultures into one universal pan-European identity existing through monological and vertical assimilation (Taylor 1994: 68). For Charles Taylor, an individual is not authentic from any inward derivation or cogito because such inwardness cannot be the only source of identity; hence, the crucial feature of human life neglected under modernity is human life’s dialogical character (Taylor 1994: 32). For Taylor, within the politics of difference, a universal potential or power in society is not about coalescing identities into a universal uni-demos, as cosmopolitanism, the party, and the current EU aims to do, but through collective culture and so a multi-demos (Taylor 1994: 42). Cosmopolitanism does not coincide with this pluralistic view of identity, rather it considers the concepts of the good and just as sufficient for providing identity in virtue of being acknowledged vertically between the state and citizen (Habermas 1994: 111). For the cosmopolitan supporter Habermas, who prefers an EU based on a constitution (Nicolaidis 2012: 251), we can see why cosmopolitanism is uni-demos or pro-demos and anti-pluralist, as it requires an EU with a demos at the top to orchestrate the vertical relations with citizens and member states below.
Conclusion

The party-less model of governance for the EU reciprocates with deliberative democracy by allowing for more authentic citizens to live within an intersubjective society. Of course, there are numerous factors not mentioned in this study that can assist in the justification and manifestation of democracy in the EU. Proportional representation as a voting system, for example, increases the chances of independent winning elections. The non-partisan state legislature in Nebraska, as one example, shows increased independence of ministers that can lead to unicameral legislatures. Charlyne Berens explicates the benefits of this model, claiming that for this legislature’s architect George Norris: “one house would eliminate the need for conference committees and make the legislature’s workings far more open, and individual legislators far more accountable (Berens 2005: 9).” Corporatism is also worth mentioning as cohering with deliberative democracy. Corporatism is opposed to a pluralist approach to private and public sector relations, as pluralism (not to be confused with the pluralism of identity formation above) maintains a clear division between the private and public spheres of a state, where government does not aim to work with interest groups and business horizontally, but rather performs policies that avoid opposition (Norton 2000: 57). Corporatism on the other hand provides for more horizontal decision-making, blurring the separation between private and public interests (Cradden 1994: 101). This clearly shows in its horizontal nature, a mutual compatibility with democratic norms. As for the international sphere for the EU, we should also mention whether or not international law should be placed under national member state responsibility or the EU’s. Having the EU responsible, we have seen, is a more cosmopolitan approach to liberal internationalism, since it aims to eliminate the anarchy between member nations via international institutions (Jackson and Sorensen 1999: 119). This leads us to question if universal rights should be considered above the nation-state and international law or in the case of Europe, recognized only by the EU.

The EU is an organization that provokes its demos to question their identities, but by doing this, it also puts its own identity under scrutiny. The intersubjectivity between separate demos themselves and between demos and the EU itself, can be investigated through phenomenological methods of identity politics. When identity is uncovered this way we do not just encounter fruitful conceptions of the self and member state nationality, but we also see that the political party does not respect the fluidity of identity, but rather fixes it to the party. This fixing is responsible for much of the political anxiety citizens and member states of the EU face today. Perhaps this is one of the aspects which the voters in favour of Brexit were appealing to when they voted to leave the EU. It can be interpreted as an indirect ‘cry’ for a democracy in the EU; however, it is important we note that investigation into the truth of this interpretation is one for which phenomenology can ascertain.
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Intervention or Non-intervention, the Legalities of R2P and the Human Rights Agenda

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Abstract

The threat of violence alongside the deep-rooted fear of falling into old patterns of animosity and violence have pushed the international community towards stringent controversial approaches regarding international conflicts. R2P initially started as a call on states to respect international policies pertaining to human rights within their own sovereign territories and to intervene when these rights are threatened. Currently, R2P has evoked controversial responses from the international community which have resulted in undesirable situations which include the violation of international law as well as the death of countless innocent civilians alongside public property. By researching the procedure behind intervention into numerous conflicts, as well as the legal aspect of intervention as an acceptable foreign policy, R2P as a response to conflicts will be scrutinized with the aims of arriving at a practical and response to the legalities of international intervention into conflicts.

Keywords

Conflict, Global Community, Intervention, Iraq, NATO, Peace Building, R2P, The Former Yugoslavia, UN
Introduction

“The inability of the international community in Kosovo to reconcile these two equally compelling interests – universal legitimacy and effectiveness in defense of human rights – has revealed the core challenge to the Security Council and the UN as a whole in the next century: to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand.”

*Former UN Secretary General Kofi Annan in his address to the 54th General Assembly in the aftermath of the intervention of NATO in Kosovo.*

International Intervention and the principles of R2P, the responsibility to protect, prevent and rebuild are considered the essentials of what David Chandler coins in his book “*From Kosovo to Kabul*” as the foundations of a new ethically and morally committed world order (Chandler, 2006, p. 2). The phenomena of an internationally recognized human centered approach have put the human being, the individual, at the center of ethical foreign policy with a value that allegedly far surpasses those of economic gains or the interests of national governments. The United Nations Commission on Global governance has stated that Global policy making is ever influenced by humanitarian issues such as war, conflicts, poverty and the rights of minorities (CGG, 1995). In a world convulsed by years of conflicts and two world wars that resulted in the deaths of millions of human beings, indiscriminate against civilian and soldier, a global strive for justice and human rights seems to be not only legitimate, but crucial to ensure that the many atrocities of our pasts remain in hindsight, allotting us a progressive outlook towards our future as an ever-globalized international community.

Throughout the research yet to come, the ideas of international intervention and the legal and moral obligations of R2P will be intensively analyzed and explored. Three different case studies from three different regions of our planet will be selected, (The Balkan Wars during the falling of the Former Yugoslavia, 1991- 2001, The First Iraq War better known as the Gulf War 1990-1991, as well as the Afghan wars 2001-2014), to go head to head to better understand the circumstances and augmentations (or lack there of) of international intervention and R2P. Each case study will be reviewed from the vantage point of complete objectivity, including the legal basis for intervention as well as its repercussions, in furtherance of answering the most pressing of questions: In a world where the Human Rights agenda has never been more prevalent and a strive for equality and peace never so significant, should international intervention and R2P pertaining to crimes against humanity and other atrocities be a policy that leads our global community towards peace and prosperity in a “new world order”, or is it a tool of the past, tainted with ulterior motives, deception, and distrust.
International and the Responsibility to Protect

International intervention, better known by its more neutral title as “the responsibility to protect” (R2P), received its full-fledged endorsement as a part of ethical foreign policy by the world’s leaders after a unanimous vote by the UN in 2005 (Arbour, 2008, p.447). International intervention was a new approach to global politics that completely reformed the notion of what was traditionally known as state sovereignty. International Intervention into the conflicts of sovereign states altered the very essence of international relations as it has come to been known, creating new norms and practices that were allegedly established with the sole goal of creating a human centered approach to foreign policy and extending the reach of international justice (Chandler, 2006, p. 120).

Traditionally, a state’s sovereignty was a concept deemed untouchable, resilient to modification regardless of the many actions taken by a specific country internally or externally. Sovereignty was considered to be something almost divine, derived from the traditions of European royalty, whom were considered “sovereign” due to their “divine” legitimacy from the Gods. Initially, international intervention and R2P was never a policy that came to challenge state sovereignty, R2P first and foremost was a duty be fulfilled primarily by the government with jurisdiction over a territory that was suffering from human rights violations. If a state was incapable or unwilling to exercise its responsibility to protect its citizens from violations of human rights, the task of protection falls upon the international community, whom are legally allowed to intervene with the aims of helping the said country fix the infractions it was incapable of stabilizing (Arbour, 2008, p. 448).

In theory, although legally ratified by the UN general assembly in 2005, international intervention in its very essence is illegal. Chapter 1, article 2(4) of the UN charter strictly reaffirms that “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” (UN 1). Considering the article previously stated above, if the use of force is against international law, then how have we as an international community created a framework of international relations that not only condones intervention but demands its implementation under the necessary circumstances? This phenomena of a “trigger happy” international community derives from Chapter 7 article 42 of the UN charter that specifies; if a country engages in acts that are deemed as a threat to world peace or an act of aggression, the UNSC may decide to use force in order to bring back stability and security to the global community (UN 2). The Chicago Council on Global Affairs has stated that out of a survey of 10 countries, a majority of public opinion polled that the UNSC should intervene wherever human rights are being violated (Arbour, 2008, p. 446). While this may correlate with the arrangement of
our current political system, the dawn of international intervention as well as its implementation before and after its global acceptance in 2005 is an odious story. Although there have been cases of international intervention into conflicts before the 90’s in cases such as India’s intervention into East Pakistan (1971) and Vietnam’s intervention in Kampuchea (1978), the necessity for international intervention truly commenced with the start of the 1990’s, during a series of devastating international conflicts that strained the principles of non-intervention that held together a fragile post-cold war political system and perpetually changed the working of international relations. (Arbour, 2008, p. 446).

With the copious amounts of cases of international interventions that went less than smoothly, most recently the intervention into Libya in 2011 (Paris, 2014, p. 569), it is understandable that in recent years the international community can be rather hesitant to deplore military personnel or weaponry into conflict zones and is less enthusiastic about intervening into a sovereign states conflicts. Unfortunately, not all issues and complications that are usually involved with intervention can be foreseen, and not all precautions are able to be implemented in the field, even if the tactics and frameworks of the operation at hand were perfectly planned and prepared in the decorated halls of the UNSC, NATO, and other international institutions. Taking this into consideration, there is still room for the discussion on whether intervention should be considered a legitimate tool for foreign policy, even from the most basic legal standpoint, regardless of its wide acceptance amongst the international community.

In theory Intervention does not necessarily mean the use of force and encompasses more than just coercive intervention. The main tactics of R2P are less violent in nature and advise the use of diplomacy and other non-military methods for promoting human protection in lieu of more violent tactics (Paris, 2014, p. 570). Former Secretary General of the UN, Ban-Ki Moon speaks of the “Three Pillars of R2P”, the first being the responsibility of the state to protect its own population from crimes against humanity, the second being various forms of international assistance and only the third pillar involves the use of force from the international community, which could also take the form of economic sanctions (Paris, 2014, p. 572). Moreover, the theory of R2P is humanitarian and universal in character, intervention is being undertaken on behalf of countries either unwilling or unable to deal with humanitarian crises within their own borders and hypothetically has no connection to the political or economic gains of specific world actors (Ayoob, 2002, p. 83). This human centered approach to international relations seems to have blatant disregard for the consequences that arise as a result of playing with the legitimacy of international sovereignty. This development of a sort of “disintegration of the importance of state sovereignty” is an advancement widely accepted amongst the international community, even if it
deteriorates and delegitimizes the political structure of our international political system (Paris, 2014, p.570). Former Secretary General Ban-Ki Moon and his predecessor Boutros Boutros Ghali have even gone to the lengths of publicly proclaiming that state sovereignty is not absolute and exclusive and can be circumscribed, even overridden, under special circumstances (Ayoob, 2002, p.83). While the theory of R2P seems to be docile enough, there are still many issues that arise regarding intervention and the R2P doctrine. While Ban-Ki Moon glorifies semi-successful initiatives like the ICTY and endlessly promotes his pliable take on intervention and his three “Pillars of R2P” with little to no affirmations in his favor, in the long history of international intervention the international community has consistently failed to address the question on which methods should and shouldn’t be allowed to be used when it comes to such interventions. A study concluded in 2006 examined the military planning in the UN, NATO and certain Western countries with a history of intervening in international conflicts and found little to no doctrines that dealt with the legalities concerning operations that were authorized to use force to protect civilians under imminent threat either in the context of a peace support operations or as a stand-alone mission (Paris, 2014, p. 571). Furthermore, in order to insure global security, which is allegedly the core mission of R2P, some suggest it is essential that states respect each other’s sovereignty by adhering to the norms of non-intervention in the internal affairs of other states (Ayoob, 2002, p. 81).

The Balkan Wars
The Collapse of the Soviet Union represented the most significant geopolitical event in Europe since WW2. With all of the positive ramifications that resulted from a soviet free Europe, such as former communist countries releasing their ties with dictatorships in favor of democracy and inclusion within the European Union, the opportunity for power alongside old ethnic tensions led to a devastating dismantlement process of the newly independent eastern Europe, most infamously the savage and bloody wars in the former Yugoslavia, located in the Balkan peninsula in south eastern Europe (Sobell, 1995, p. 210). The wars in Yugoslavia represented the most formidable moral change Europe had seen since the atrocities of WW2. Crime against humanity, ethnic cleansing and possible genocide are just a few violations of human rights that can be attributed to the Yugoslavian conflict (Sobell, 1995, p. 213).

With the disintegration of Soviet power and influence in the region, many of its allies including the Yugoslavian Federation weren’t slow to follow in its footsteps. With little to no jurisdiction alongside a rise of nationalistic tensions, hostilities would be inevitable in the territories that were once ruled by the iron fist of The Yugoslavian Federation with its strong backing from Moscow
(Sobell, 1995, p. 213). One of the main issues that prevented the peaceful “unraveling” of Yugoslavia was its unique mosaic of ethnic minorities, that overlapped in everything from territory and language to culture (Sobell, 1995, p. 214).

From the years 1991-1995, ethnic Serbs and Croats from Bosnia, Croatia and Serbia under the leadership of Slobodan Milosevic and his comrade in arms Croatian Franjo Tudjman, (with assistance from “voluntary” violent militia groups such as The Tigers), initiated a bloody campaign of decimation within the territories of the former Yugoslavia, with the goals of mass territorial achievements as well as the systematic allocation and eradication of “undesired populations” from an area foreseen to be the new Serbian “mother land” (Schulman, 2003, p. 224). Ethnic cleansing was not a side effect of the conflict in Yugoslavia, rather its primary purpose. Vojislav Seselji’s government in Serbia with the help of his commander in chief Milosevic, implemented a series of ethnic purges, mass deportations and the genocide of thousands of ethnic Bosnian Muslims, and Kosovaars. Men were separated from their families and either murdered or sent off to concentration camps, houses were systematically looted and villages burned. Additionally, refugees fleeing Kosovo, Bosnia and Croatia were robbed at borders of their passports and motor licenses to make the possibility of return back to their ancestral homeland post war unattainable (Schulman, 2003, p. 225). With tensions in Europe at an all-time high, fearing the possible spread of the conflict in the Balkans and its repercussions on the current fragile state of ever growing EU federalism, NATO and its coalition, referred to as the stabilization force (SFOR), seized the opportunity to demonstrate its legitimacy and justify its excessive yearly funding, by initiating a series of indiscriminate haphazard air raids allegedly targeting Serbian military targets throughout the Balkan region, as well as ill-informed UN peace keeping forces UNPOF and ill-placed aid and relief operations (Sobell, 1995, p. 213). With the conclusion of the conflict in the Balkans due to NATO’s intervention and the implementation of the Dayton Accords which effectively paved the framework for a post war governmental infrastructure in the former Yugoslavia, the war spearheaded by the Serbian Army, along with Serbian forces in Bosnia, Croatia and Kosovo resulted in the death of over 250,000 human beings as well as the displacement of over 3.5 million refugees (Schulman, 2003, p. 224).

The First Gulf War

Following a costly war in the late 80’s between Iraq’s neighbor to the east, Iran, the Iraqi government found itself victorious, however, heavily burdened by a crippling debt of over 37 billion USD that was to be paid to neighboring Gulf countries whom helped fund Iraq’s offensive against Iran, mainly Kuwait and the Emirates (Office of the Historian). Than Iraqi President,
Saddam Hussein requested from his weak but wealthy Arab brothers in The Emirates and Kuwait to cancel the debt, for he argued that Iraq’s campaign against Iran was an initiative that protected the entire Arab world from Iranian expansion and therefore the money “donated” by the broader Arab community was Kuwait and The Emirate’s contribution to an Arab Coalition against Iranian aggression. Needless to say, Saddam’s requests went unanswered, which in turn initiated a conflict that would ravage the region for many years to come (Office of the Historian).

After Kuwait’s blatant refusal of Saddam’s terms, the Iraqi government chose to reignite an old dispute between the two countries concerning a series of Islands in the Persian Gulf that remained the only alternative to accessing Iraqi ports due to the Shatt al Arab, another waterway, being filled with debris from the previous conflict with Iran. Iraq’s claim over these Islands known as the Bubiyan and Warbah islands as well as its claims over Kuwait in its entirety is no new phenomena. During Ottoman times Kuwait in its entirety belonged to the Wilayah’ of Basra which in turn belonged to Iraq, and some Iraqi Prime Ministers such as Abd Al Karim Qasim have always asserted that Kuwait is an integral part of Iraq (Office of the Historian). It is important to note that while Iraq brought an end to the disagreement by recognizing Kuwait’s independence, the Iraqi government never incorporated a boundary between the two countries into its legal system.

Immense Economic pressure resulting from the aftermath of the previous war with Iran pushed Saddam Hussein to use any means necessary to drag his postwar country out of its economic encumbrance. Upon Kuwait’s refusal to cancel Iraqi debt, Saddam Hussein accused Kuwait of robbing Iraqi oil fields that straddled the ominous Iraqi Kuwait border, as well as an excessive use of resources in the region that in turn had a horrible impact on Iraq. In addition, Saddam Hussein demanded that the Bubiyan and Warbah Islands be returned immediately to their rightful position under Iraqi jurisdiction (Office of the Historian).

As a result of Iraqi aggression, US relations with the Middle Eastern power deteriorated, as Iraq blamed the US for supporting Kuwaiti initiatives that deliberately effected Iraq, such as lowering its oil prices in competition with Iraqi oil. In a bid to save diplomatic ties that were quickly deteriorating, then US President George H.W. Bush sent a delegation of US senators to spread a message of peace with the aims of neutralizing another hostile conflict in the region (Office of the Historian). Regardless of US attempts at reconciliation, on August 2, 1990 Iraq invaded Kuwait and effectively occupied the entire country within a matter of hours. The condemnation of Iraq’s occupation of Kuwait was unanimous throughout the international community and led to a United Nations Security Council embargo and sanctions on Iraq as well as a U.S.-led coalition that included indiscriminate air raids as well as the introduction of ground troops, from January 16, 1

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1 Arabic Word for district and or province.
1991 ending only once Iraq effectively surrendered and ended its occupation of Kuwait on February 28, 1991 (Office of the Historian).

The Afghan Wars

The Country of Afghanistan as we know it today gained sovereign independence in 1919 proceeding two Anglo-Afghan wars. Afghanistan, a country of around 25 million people mostly living in rural farming towns, has an extremely dynamic ethnic makeup with roughly 44% of its citizens being Pashtuns, 25% Tajik, 10% Hazar and 8% Uzbeks. While vastly different, common ties that seem to trend amongst the different ethnic groups are the retainment of a strong tribal system as well as the adherence to Islam\(^2\) (Ayub, Kuovo, 2008, p. 642). Afghanistan’s strategic location in the heart of Central and South Asia has caught the eye of many international powers over the years, who saw the Asian power as an opportunity for economic and political interests with in the region. Ages of occupation and conflicts with the Soviet Union and the British have left its mark on the Afghan collective, sharply defining Afghanistan as it is today (Ayub, Kuovo, 2008, p. 643). With the fall of the Soviet Union, Afghanistan found itself independent, yet suffering immensely from years of war and an overall lack of international aid in rebuilding and restructuring its newly independent country. The post-Soviet Union government of Afghanistan held until 1992, upon which it collapsed due to political disagreements as violent outbreaks amongst rebels and separatists groups erupted, each eager at the opportunity to gain power. Formally armed by the US and Saudi Arabia with the aims of defeating the occupying Soviet Union, parliamentary fractions within Afghanistan found themselves flushed with resources, each obtaining immense military capabilities in the forms of artillery and an extensive amount of weaponry, which inevitably led to civil war (Ayub, Kuovo, 2008, p. 643).

As an outcome of the civil war, the Taliban, a group initially thought to be one that could stabilize the country as well as a becoming a future ally for peace, took precedence in regard to control over the weak and war-torn country. The Taliban, which initially received immense support in the form of supplies and military training from the US, Saudi Arabia and Pakistan, would embark on a vigorous campaign of human rights violations as well as crimes against humanity on Afghanistan’s militant and civilian populations. It was during this time that the infamous Osama Bin-Laden consolidated his Al-Qaida movement in Afghanistan, while simultaneously secretly channeling funds to the Taliban government (Ayub, Kuovo, 2008, p. 643). Despite extreme unpopularity amongst the international community, as well as economic and diplomatic sanctions, the Taliban managed to retain control over a majority of the country. In the 90’s, UN peace initiatives with the

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\(^2\) A majority of Afghans adhere to Sunni Islam, with a significant Shia minority (Ayub, Kuovo, 2008, p. 642).
aims of creating sustainable peace and an end to the civil war in Afghanistan went unanswered and the Taliban’s rule over Afghanistan continued without disruption until September 2001. September 11, 2001 marks the day in which the Twin Towers in Manhattan, New York, were attacked by radical militants organized and trained by Al-Qaida in Afghanistan, resulting in the deaths of thousands of US citizens. The events in September 2001 reiterated the consequences of ignoring Afghanistan after the Afghan-Soviet war, and the network of violent and hostile actors that was established within the framework of the newly independent country. On October 7, 2001, the US notified the UNSC that it was launching military strikes with in Afghanistan aimed at eliminating the Taliban and Al-Qaida. The UNSC accepted the US action as a legitimate exercise in self-defense and supported US-led military efforts in Afghanistan, giving the authorization of assistance as well as a green light for coalitions and NATO to intervene (Ayub. Kuovo, 2008, p. 647).

The Legalities of International Intervention in the Balkans, Iraq and Afghanistan

Throughout the research in this section, the main arguments will deal less with the implications of intervention regarding the three main case studies and relate more to its justifications. There is no question that the deterioration of the former Yugoslavia created one of the most pressing issues for the wider European collective since WW2. The NATO led coalition which included UN peacekeepers, collectively referred to as the SFOR, carefully devised what they alleged to be prominent and efficient legal backing, legitimizing NATO’s premier mission as well as international intervention including the use of force into the former Yugoslavia.

NATO alleges that there were a number of crucial reasons for its coalitions intervention into the former Yugoslavia. First and foremost, NATO claims that its military intervention led to the successful bringing of warring factions to the negotiating table as well as ensuring success in peace talks in which alliance members were actively participant (NATO, 2005). In justification of its “air campaign”, NATO discusses operation Deliberate Force which consisted of a 12-day air raid that NATO alleges was “critical in helping to shift the balance of power between parties on the ground and helped persuade the Bosnian Serb leadership that the benefits of negotiating a peace agreement outweighed those of continuing to wage war” (NATO, 2005). NATO’s self-justification continues as it alleges its main reasons for the adoption of its operating procedures was to become an extremely effective peacekeeper, building up invaluable experience for SFOR missions on a global scale (NATO, 2005); more or less meaning that NATO seems to have seen the conflict in
the former Yugoslavia as a sort of “exercise” to determine the efficiency of its military and “peace building” tactics.

UN involvement as part of NATO’s coalition, deploying thousands of UN peacekeepers whom participated in many activities the least of them keeping the peace, unsurprisingly also has numerous justifications. In 1991, the UNSC unanimously adopted resolution 713, which expressed a deep concern for the violence in the former Yugoslavia and called on all states to immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia. Once initial resolutions were passed promoting UN attention regarding the conflict in Yugoslavia, the UNSC continued to spew a wide variety of resolutions, most important of which was UNSC resolution 743 in 1992 which established the United Nations Protection Force UNPF for Yugoslavia (UNPROFOR, 1996).

The aims of the UNPF according to the UNSC was the conformation that the force should be an interim arrangement to create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslavia crisis within the framework of the European community’s conference on Yugoslavia. Resolution 743 requested the immediate deployment of elements of the UNPF that were able to assist in developing an implementation plan for the earliest possible full deployment of forces (UNPROFOR, 1996). Coincidentally, it seems as if the UNSC momentarily displaced the rule of law or the principles of the UN charter on which the legitimacy of the UN in its entirety was established. UN failure to calculate the implications of failing to abide by formally agreed upon standards must have been due to an earlier complication regarding protocol; otherwise a blatant disregard for international law especially pertaining to R2P and intervention by an international institution would be deeply troubling.

Discussing International Intervention in the frameworks of the First Gulf War is a conversation that lacks transparency, accountability and most importantly valid legal support regarding the numerous intermingled UNSC resolutions that legitimize or delegitimize intervention into conflicts in general “ad hoc” the Gulf War. The Raison D’être upon which the international community, spearheaded by the US and the UK, built their case for military intervention into Iraq during the First Gulf War was article 42 under chapter 7 of the UN charter (White, 1999, p. 75). Article 42 specifically dictates that: “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations” (UN 2). In general, this forthright allots legitimacy to not only more moderate forms of intervention into conflicts such as sanctions,
but creates the basis for the UNSC to legislate, when deemed necessary of course, the use of military action against sovereign states that don't follow international protocol.

The UNSC legislations that transformed article 42 from written theory to a controversial conflict were UNSC resolutions 660, 661, 678, 686 and 687. With the outbreak of the Gulf War the UNSC instated resolution 660 stating that Iraq’s military incursion of Kuwait was alarming and that it portrayed a breach of international peace and security, a dubious alignment with the UN charter’s criteria for international intervention (UN 3). In the first phases of the conflict resulting from Iraq’s occupation of Kuwait, the UNSC under article 41 which dictates the means for a more moderate form of intervention, implemented economic sanctions on Iraq, with the hopes that further action would be deemed unnecessary. Under pressure from the US and the UK, the UNSC instated resolution 678 when the international community addressed its concern to the UNSC regarding the needs of a more concrete threat of force in order to insure Iraq’s compliance with international law and an end to a conflict that threatened the stability of peace in the region (White, 1999, p. 75).

Resolution 678 not only gave the jurisdiction for international intervention into Iraq, rather it created a legally binding commitment from the international community to implement the use of force within Iraq to restore peace and security to the international community (White, 1999, p. 75). With the commencement of resolution 678, the international community wasted no time in conceiving its military campaign against Iraq, only seceding once Iraq agreed to the terms of resolution 686, which specified Iraq’s responsibilities and repercussions in relation to its occupation of Kuwait. Iraq’s compliance with international law led to UNSC resolution 687 which effectively appealed to the US led coalition to instate the immediate cancellation of military action against Iraq as well as the creation of the United Nations Special Committee on the Disarmament of Iraq or UNSCOM that embodied a culpable delegation of qualified individuals who would insure that all Iraqi military expenditure be strictly documented and controlled as well as the deactivation of all nuclear facilities (White, 1999, p. 76).

On October 7, 2001 the US along with a significant international contribution initiated its defensive on Afghanistan with a coalition numbering no less than 75,000 troops (Viet, 2002, p. 8). Regarding US intervention in Afghanistan, from all of the three case studies that are being researched, the US offensive on Afghanistan appears to be the most concerning. From the perspective of the legalities of US-led initiatives in Afghanistan, the US and its allies along with UNSC approval entered Afghanistan on the basis of “self defense” which is definitely an unusual call for action if one is familiar with international law and its protocols (Ayub, Kuovo, 2008, p. 647). Regarding UN approval of international intervention and its involvement pertaining to
Afghanistan, on 20 December, the UNSC passed resolution 1386 (2001), creating the Afghan Interim Authority as well as authorizing the establishment of an International Security Assistance Force (ISAF) to help the Authority maintain security in Kabul and its surrounding areas. The UN had expressed its deep concern over the political and security instability in Afghanistan which it reiterates in its manifesto labeled “The Deepening Crisis” which highlighted the desperate and worsening humanitarian situation faced by Afghans across the country and how despite numerous attempts, the UN was no longer able to act within such a dangerous framework and was unable to provide the humanitarian assistance Afghanistan so desperately needed. On 22 December in Kabul, the internationally recognized administration of Afghanistan’s then current President, Burhanuddin Rabbani handed power to the UN Interim Afghan Administration, established in Bonn and headed by Chairman Hamid Karzai. Special Representative Brahimi moved to Kabul to commence his activities in support of the new Afghan Administration. At the same time, the first of the ISAF troops were deployed, under British control to join US and international troops who have already commenced their offensive on Afghanistan (UN 4).

Inquiry on the Legitimacy of the Legalities surrounding International Intervention in The Balkans, Iraq and Afghanistan as well as its repercussions

The NATO-led intervention into the former Yugoslavia as previously stated was based off of three main assumptions; firstly, NATO seems to have implemented a “shoot than ask” policy regarding international intervention as its first legal reasoning for intervention into Yugoslavia is based off of the success of its mission in bringing warring factions to the negotiating table as well as facilitating peace agreements (NATO, 2005). Secondly, NATO insists that its operations in Yugoslavia helped to shift the balance of power between parties on the ground and helped to persuade the Serbs that continuing to wage war would be less than practical (NATO, 2005). Thirdly, NATO self-proclaimed itself as the international peacekeeper and saw its involvement in Yugoslavia as an “invaluable experience for SFOR missions on a global scale”.

While NATO’s initiatives appear to be deeply admirable, there just seems to be one issue with NATO’s human centered approach to IR; a direct violation of international law. Even if we disregard Chapter 1 article 2(4) of the UN charter which states that countries must respect each other’s sovereignty and refrain from intervention (UN 1), Chapter 7 article 42 of the UN Charter only authorizes UNSC approval for the use of force if a conflict is classified under international law as a threat to world peace and stability (UN 2). The conflict in the former Yugoslavia was in no way recounted as a threat to world peace, least of all by NATO, who saw their intervention as a
sort of “team building exercise”. It is deeply troubling that a coalition containing some of the strongest actors in our political system lack the decency to properly justify their incursion into another countries’ internal affairs, effectively violating the rule of law we hold so dear. Furthermore, in regards to UNSC approval of international intervention in Yugoslavia, it is of little surprise that the UNSC and NATO seem to work in unison so efficiently, for a total of three of NATO’s founders (UK, US, and France) as a collective hold permanent member status on the UNSC, with the power to legislate as much policies as they see fit, regardless if these policies pertain to the code of conduct that each member state of the UN assigned and legally obliged itself to when joining the United Nations.

Regardless of the legal framework that dictates international law, one may heedlessly justify international intervention into Yugoslavia under the pretense that it ended a deadly conflict and that the NATO led coalition’s only goal was to bring peace and security to the millions of civilians caught in the middle of the deadly conflict. This notion however can be disputed due to three atrocities that bare a direct correlation to the NATO-led coalition acting within Yugoslavia. First was the massacre of Srebrenica. The massacre of Srebrenica occurred during the ending of the Balkan wars when Serbian forces entered a UN safe zone and continued on to separate and murder thousands of ethnically Muslim men and children in what was regarded by the ICTY as a genocide. Making matters worse, video footage as well as personal testimonies place the dutch peace keeping forces dispatched by the UN at the scene of the crime. While Serbian forces butchered Muslim men and children, the Dutch peace keepers laughed, danced and smoked cigarettes with Serbian forces whom they were supposed to be preventing from entering the alleged UN safe zone (Klep, 1998, p. 65). The second occurrence that questions The UN and NATO’s human rights agenda in the former Yugoslavia was its less than sufficient supply of humanitarian aid to the hundreds of thousands of civilians starving to death after Serbian forces besieged Sarajevo. The international led coalition fighting to end the Yugoslavian conflict under the pretenses of humanitarianism must not have cared that much for the starving civilians in Sarajevo for when international aid was needed most pressingly amid the longest besiegement of a European city since WW2, the UN not only provided Bosnian Muslims with rotten meat left over from the Vietnam War, it was also Pork, a meat that Muslims are forbidden from eating (Charles, 2011). The last affair that besmirched the slogan of international intervention into Yugoslavia as part of a human centered approach to IR was the mass amounts of civilian casualties that could have been easily avoided. According to the Helsinki Committee for Human Rights, thousands upon thousands of civilians and military personal were needlessly killed due to reckless and ill
placed air raids carried out by the NATO led coalition (HCHR, 2009, p. 159-185, 211-361,451-565).
The US led intervention into Iraq, better known as the First Gulf War was proposed under the pretense of various UN resolutions that authorized the use of force against Iraq. The primary UN resolution that invoked the responsibility to protect was UN resolution 678, which allotted the use of force by the international community in furtherance of ending Iraq’s military occupation of Kuwait (White, 1999, p. 75). While UN approved, resolution 678 was created on the basis of article 42 of chapter 7 of the UN Charter which specifies the laws for intervention as only when a conflict threatens the stability of the international community (UN 2). Once again, it is upon the international community to decide when a conflict is considered a threat at a global level and when it isn’t. *Id est*, why did Iraq’s occupation of Kuwait constitute as a threat to world peace demanding international intervention along with the use of force while the international community turns a blind eye to Serbia’s occupation of Kosovo and Israel’s occupation of the Palestinian people? There seems to be less of an issue with the law of war itself and more of an issue with the international organizations that dictate international law. If institutions like the UN and NATO aren't going to enforce their jurisdiction equivalently, it arises suspicion regarding the true intentions of their various forms of intervention. In addition, former US President G.W. Bush’s infamous “New World Order” speech candidly appoints economic gains as grounds for intervention in Iraq, which once again is deeply concerning.

Moreover, the US led coalition in Iraq marked the outset of the end of a country that would never survive the constant embargo of foreign soldiers, intent on its destruction. It is estimated that over 100,000-300,000 Iraqi military personnel were killed, with an additional 2,300 Iraqi civilians being killed as well due to the US led aerial campaigns that have been criticized by many international institutions as an inadequate form of warfare (HRW, 1991).

R2P and international intervention into Afghanistan launched by the UN backed US coalition was legitimized under resolution 1386 of the UNSC (UN 4) which legitimized foreign involvement in Afghani internal affairs as well as the implementation of the use of force both by UN ISAF forces as well as military personnel from the US led coalition. While former Secretary General of the UN Kofi Annan expressed deep concerns in relation to the humanitarian crisis in Afghanistan as the prominent backing for UNSC resolution 1386, UN backing for US incursion into Afghanistan was based solely off of US pressure regarding the right to self defense (Ayub, Kuovo, 2008, p.647). Technically, the US incursion into Afghanistan does not hold the US government responsible for war crimes under international law due to UNSC approval, however this in no way means that no one should be found culpable. The UNSC clearly went outside its jurisdiction by validating foreign
intervention into a sovereign country’s internal affairs which included the use of non-traditional fighting tactics such as air raids and the excessive use of force with little regards for civilian lives or property. The US received heavy international criticism for the number of civilian casualties, estimated at over 4,000, as well as other incidents which included the bombardment of Afghan wedding parties (Viet, 2002, p. 7). While the US campaign in Afghanistan led to the defeat of some 50-60,000 Taliban troops while killing approximately 8,000 and dislodging the Taliban’s foothold in strategical locations throughout the country, it is clear that the US coalition’s ad-hoc policy and undefined goals led to an enormous amount of destruction and unprecedented numbers of civilian casualties (Viet, 2002, p. 7).

Conclusion

With the culmination of the research pertaining to the three case studies of the Balkans, Iraq and Afghanistan, my initial research question seems almost absolute. I was confident that given the amount of affirmations and attestations pertaining to R2P and international intervention, somehow R2P would be able to be classified, contained, put into a box. One cannot say whether international intervention is a useful tactic in IR nor whether it is ethical. As was ascertained throughout the various case studies, intervention was successful in terms of ending conflicts, albeit, the question should not be whether it is a legitimate tool in IR, rather what should be its limitations. In all three cases, there was found to be an unjustified number of civilian casualties which was a direct result of military tactics and protocols used by the intervening powers. There is no justification for indiscriminate air raids as precision is almost impossible, especially during urban warfare.

Furthermore, it is crucial to enforce accountability and responsibility amongst international organizations such as NATO and the UN who seem to have little disregard for international law. While there were various UN resolutions backing intervention and the role of R2P in the Balkans, Iraq and Afghanistan, a trend was found amongst all case studies in which there were no legal litigations under international law or international humanitarian law (the law of war) for the UNSC approval of international involvement. What we have witnessed is the Global North’s monopoly on international policies, justifying their post-colonial agendas under the pretense of a seemingly humanitarian agenda endorsed with full UN support. If we want to create a progressive planet Earth where justice and equality heal the scars of colonialism and countless conflicts, it is essential that international institutions as well as our governments operate with consistency and transparency, paving the way towards a brighter future and a safer more secure Global community.
Bibliography


Decolonizing One Petition at the Time: A Review of the Practice of Accepting Petitions and Granting Oral Hearings in the Fourth Committee of the UN General Assembly

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Abstract

The Fourth Committee of the General Assembly of the United Nations has extensively used the instrument of petitions as a tool of inquiry on Non-Self-Governing Territories (NSGTs). Despite a surge in recent years in the number of petitioners speaking on behalf of NSGTs, there has been no detailed investigation of the practice accepting petitions and granting oral hearings in the Committee. This study fills a gap in the literature by defining the legal framework and the shortcomings of the practice. It raises important questions about the usefulness of petitions as a tool of inquiry, and it shows how this practice has introduced a double standard on human rights within the UN system and created legal imbalances among member states of the Fourth Committee.

Keywords

Decolonization, Fourth Committee, Petitions, Revitalization of the General Assembly, United Nations
Introduction

The Fourth Committee of the General Assembly of the United Nations has played a pivotal role in the process of decolonization. Under its guidance, 750 million people from Non-Self-Governing Territories (NSGTs) have gained independence and over 80 territories have changed status to be recognized as decolonized accordingly to GA Resolution 742 (VIII). The Fourth Committee has played over the years a crucial role in promoting dialogue among the Administering Powers and the people of the territories. This success is in part attributable to the modus operandi of the Committee, which has extensively relied on the practice of accepting petitions and granting oral hearings as an instrument of inquiry on the state of NSGTs. However, to date, the use of petitions has largely outgrown its scope and usefulness.

Despite the drastic reduction of NSGTs (today only 17 territories are listed as non-self-governing), the number of petitioners has significantly increased to the point in which oral hearings now occupy much of the time allocated by the Fourth Committee to the debate on decolonization. At the same time, the usefulness of the time spent hearing petitioners is very much questionable. The instrument of petition as envisioned by the Committee seems to be a relic of the past. Petitioners are still required to be available in person to give an oral statement in New York City during a given time in which the Committee meets. In an era of video conferences and emails, the requirement for petitioners to be available in loco is anachronistic, to say the least.

The vast majority of NSGTs’ citizens is incapable of meeting the requirements posed by the Committee to be granted the right to petition. For most of them, a self-funded trip to New York is just not an option. The consequences of this hidden barrier to the right to petition are non-trivial. The people who have the means to afford the trip to the UN Secretariat do not constitute a representative sample of the population of NSGTs. Indeed, many petitioners appear to be spokesmen of associations already located in the USA or representatives of international organizations. Other petitioners, which seem to do not have any affiliation, are instead in conflict of interest for having received monetary reimbursements by member states to cover their travelling expenses to the Secretariat.

Despite the relevance of the subject matter, scholars have not studied in much detail the use of petitions made by the Fourth Committee. Most of the publications on the topic are dated and very little research has been done to study the evolution of the practice after the 1960s. At the same time, the issue has found renewed relevance in recent years due to the sharp increase in the

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4 During the 71st session, the author had the chance to interview several petitioners who disclosed having received funding from member states.
number of petitioners granted the floor during the meetings of Committee. Both member states and UN seem to be increasingly aware of the problem and have been trying to find a balance between time constraints and the necessity of granting oral hearings to all those who file petitions. Although a balance has not yet been found, the Ad hoc Working Group on the Revitalization of the Work of the General Assembly (AHWG) has recently started investigating the issue.

Overall, this paper fills a gap in the literature by providing a historical overview of the evolution of the practice of accepting petitions in the Fourth Committee and by describing the legal framework that regulates the instrument of petition. Moreover, this study investigates the shortcomings of the practice and proposes a course of action for the UN to reduce structural inefficiencies caused by the instrument of petition. Information was collected from primary and secondary sources. The former include General Assembly (GA) resolutions, Fourth Committee resolutions, interviews, and summary records. The latter consist of papers and essays. The Charter of the United Nations and the Rules of Procedures of the General Assembly (UN Doc. A/520/Rev.17) have also been extensively used as references. Data were also gathered by the author from multiple sources at various time points during the Seventy-First Session of the Fourth Committee.

The Origins of the Practice of Accepting Petitions and Granting Oral Hearings in the Fourth Committee

The only provision of the Charter of the United Nations on the use of petitions is contained in Chapter XIII, Article 87, which states that the General Assembly and the Trusteeship Council can accept petitions regarding trust territories and examine them in consultation with the administering authority “in conformity with the terms of the trusteeship agreements.” The use of petitions was therefore envisioned by the Charter as an instrument of inquiry on the matter of trust territories at the sole disposal of the GA and the Trusteeship Council. Hence, the Fourth Committee’s recourse to petitions and oral hearings on NSGTs goes beyond the provisions of the Charter. It is indeed the result of a customary practice that has evolved over decades of discussions and resolutions on the topic of decolonization among the Committee members.

The practice of granting oral hearings in the Fourth Committee started after the 15th session of the GA in 1960. However, the preceding period is worth being studied because it was foundational to the procedural changes occurred in the 1960s. During the first 15 sessions of the GA, the Assembly dealt for the first time with problems of efficiency caused by the high number of petitions received, then it expanded its role in dealing with colonial issues vis–à–vis the Trusteeship Council, and finally it carried out an important debate on the “right to petition.”
Before the 15th session, the General Assembly took action on all those colonial disputes in which either the Trusteeship Council or the Security Council missed to act (David A. Kay 1967: 789). For instance, the Assembly bypassed the Trusteeship Council on several occasions granting oral hearings to petitioners of trust territories before the Council had the chance to take them into consideration. In 1948, with GA Res. 321 (IV), the Assembly demanded the Council to take measures to facilitate and accelerate “the examination and dismissal of petitions.” After that, with GA Res. 435(V) and 552 (VI), it recommended the Council to establish an Ad Hoc Committee on petitions to deal with the issue. In a different instance, the Assembly promoted the use of petitioners regarding the Question of South-West Africa, and in another occasion it debated whether the right to petition was to be considered as a fundamental human right. As David A. Kay argued, “by the start of 1960 the Assembly through a decade and a half of active, probing concern with colonial problems had established for itself a dominant position in the Organization with respect to these problems” (Kay 1967: 789).

The period following the 15th session was instead marked by sharp changes regarding the scope of action of the Fourth Committee on the theme of decolonization. The vicissitudes that occurred during the 1960s can only be understood by taking into consideration the influx of new member states into the UN. In 1960, 17 new decolonized members joined the Assembly (Kay 1967: 786), and “between 1955 and 1965, almost fifty former colonial territories entered the world organization as members, providing postcolonial countries with the majority of votes in the GA” (Jan Eckel 2010: 119). The new states voiced against Chapter XI of the UN Charter, which they claimed to institutionalize “juridically organized colonialism” (Aurora A. E. Santos 2012: 251). They lamented the lack of an ‘independence clause’ for Non-Self-Governing Territories and argued that the General Assembly should not have limited itself to the sole role of monitoring the status of NSGTs, but instead it should have been proactive in pressuring the Administrating Powers to work toward granting independence to the subjugated territories.

GA Res. 1514 (XV), titled “Declaration on the Granting of Independence to Colonial Countries and Peoples,” formalized the political shift occurring in the Fourth Committee. The Declaration demanded immediate action to grant independence to the people of trust territories and NSGTs alike. In addition, the Fourth Committee established with GA Res. 1654 (XVI) a Special

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6 On the Question of South-West Africa, see GA Res. 844 (IX). On the debate concerning the right to petition, see GA Res. 435(V) and 552(VI). Whereas an analysis of the debate on the right to petition goes beyond the scope of this research, it is worth noticing that the existence of this debate within the GA shows that there has always been a push to go beyond the provisions of Art. 87 of the UN Charter on the use of petitions, see UN Docs A/RES/217(III), E/CN.4/316, A/RES/435(V).
Committee on decolonization to monitor the implementation of the Declaration.\textsuperscript{7} The Special Committee, subordinated to the General Assembly, was similar to the Trusteeship Council but with jurisdiction on the sole NSGTs. The Special Committee also adopted procedures on the use of petition similar to the one of the Council (Eckel 2010: 120).\textsuperscript{8}

In sum, by adopting GA Res. 1514 (XV), the Fourth Committee set apart from the juridically organized colonialism of the 1950s and pursued a proactive aim of decolonization of all NSGTs. This new goal, however, required it to go beyond the provisions of the UN Charter, Chapter XI. The first practice to be affected by the changes of 1960 was the one related to the transmission of information under Article 73e of the Charter. Under the provisions of GA Res. 567 (VI) and 648 (VII), the General Assembly indicated that it was its competence to “establish a list of factors which should be taken into account in deciding whether a Territory has or has not attained a full measure of self-government” (GA Res. 742 VIII). These factors, drafted by an Ad-Hoc Committee on Factors and adopted with GA Res. 742 (VIII) in 1953, stated that a NSGT would reach a full measure of self-government by either 1) becoming independent, or 2) by associating to an independent state, or 3) by integrating into an independent state.\textsuperscript{9}

Since there is only a blurred line between association/integration and other forms of colonial domination, the Assembly needed to receive timely and multiparty information about each NSGT to be able to determine eventual changes of status. For this reason, Article 73e, Chapter XI of the Charter of the United Nations, states that Administering Powers should “transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories.” Article 73e did not require the transmission of political information. However, as Harold Jacobson pointed out, most Administering Powers voluntarily transmitted political information regarding the development of self-administration in the dependent territories (Jacobson 1962: 46).

The practice of transmitting political information, as it is often the case, eventually became a custom through its codification in resolutions.\textsuperscript{10} First, GA Res. 1468 (XIV) affirmed in 1959 that the “voluntary” transmission of political information was in accord with the spirit of Article 73. Then, in 1960, GA Res. 1541 (XV) restricted the “voluntary nature” of the transmission of

\textsuperscript{7} The committee is also known as “Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence of Colonial Countries and Peoples” or “C-24”.

\textsuperscript{8} It should also be noted that the Special Committee on decolonization took over the work of the Committee on Information from Non-Self Governing Territories and the Committee on South West Africa, see UN Doc. A/RES/1970(XVIII) for the former and A/RES/1805(XVII) for the latter.

\textsuperscript{9} The three principles are summarised in UN Doc. A/RES/1541(XV) and in Oliver Turner (2013): 1195.

\textsuperscript{10} On the codification of the transmission of political information in accord to Article 73e of the Charter of the United Nations, see UN Doc. A/RES/637(VII) and A/RES/848(IX).
information by granting the General Assembly the power of defining the parameters under which an Administering Power had to comply in transmitting information about the NSGT. Resolution 1541 (XV) was understandably controversial at the time because it increased the procedural discretion of the Committee and bounded member states to a new customary rule.

It took four years of debate in the General Assembly for Resolution 1541 (XV) to be approved. The question on the transmission of information was first presented in the 11th session when the representative of Iraq brought up the issue of Portuguese NSGTs (Edward T. Rowe 1964: 225). Portugal, who joined the UN in 1955, was ruling over several territories that were non-self-governing accordingly to the parameters set by GA Res. 742(VIII). However, the status of these territories had not been addressed before by the Fourth Committee since Portugal was not a member state of the UN. Moreover, Portugal had never recognized its overseas territories as NSGTs, and therefore it refused to comply with the transmission of information required by Article 73e.

The non-compliance of Portugal motivated Ceylon, Greece, Liberia, Nepal, and Syria to submit a draft resolution (L.467) to establish an Ad Hoc Committee of 8 members “to study the application of the provisions of Chapter XI of the Charter in the case of members newly admitted to the UN” (UN Doc. A/3531). In other words, these states were trying to affirm the right of the Fourth Committee to declare which territories were to be classified as NSGTs and which Administering Powers were obliged to transmit information to the General Assembly. The resolution did not reach the necessary votes due to opposition from Western European states and the USA during the 11th, 12th and 13th session (Rowe 1964: 225). Nevertheless, during the 14th session, the Soviet bloc and post-colonial member states reached a majority in the Committee and adopted GA Res. 1467 (XIV). Resolution 1467 (XIV), which was similar in scope to draft resolution L.467, set the ground for Resolutions 1541 (XV) and 1542 (XV).

Whereas GA Res. 1542 (XV) recognized Portugal as an Administering Power, Res. 1541 (XV), as previously explained, obliged it to transmit information under Article 73e. Portugal, however, objected the resolutions and did not comply with the request of transmission of information. For this reason, during the 16th session of the General Assembly in 1961, the Fourth Committee discussed at length about the Portuguese non-compliance and sought for an alternative solution to the problem. Draft resolutions L.704 and L.706 put forward the idea that the Committee could retrieve information on its own by accepting petitioners from the Portuguese territories. On the

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11 Resolution 1542 (XV) classified Portuguese NSGTs based on the work of GA Res. 742 (VIII)
12 During the 16th session, the GA voted Res. 1699 (XVI) to condemn Portugal’s non-compliance and to establish a Special Committee of seven members set to investigate and retrieve information on Portuguese’s NSGTs in the context of Chapter XI. The Special Committee was allowed to accept petitions and grant oral hearings in order to gain accurate information.
mattered, the Representative of the United Arab Republic stated during the 1189 meeting of the Fourth Committee that:

Faced with Portugal's defiance of the General Assembly resolutions, the United Nations would have to consider what action to take in order to fulfill its obligations towards the peoples of the Non-Self Governing Territories under Portuguese administration before it was too late. [...] The Portuguese Government's attitude should not be allowed to prevent the General Assembly from supervising the administration of the Territories and collecting information on conditions there from every possible source. He therefore felt it important that petitioners from the Territories should be allowed to appear before the General Assembly. (UN Doc. A/C.4/sr.1198, ¶22)

The representative of Senegal took the initiative and proposed a vote on operative paragraph no. 5 of draft resolution L.704 to allow the Fourth Committee to begin accepting petitions and granting oral hearings during its meetings. The Senegalese proposal was adopted in 1961 during the 1208th meeting by 78 votes to 5, with one abstention (UN Doc. A/C.4/SR.1210). In its 1210th meeting, the Committee granted for the first time an oral hearing to a petitioner speaking on behalf of a NSGT.

France, Portugal, and the United Kingdom opposed to the Senegalese proposal because they saw it as a breach of the UN Charter, which only envisioned the acceptance of petitions on the issue of Trust Territories, and not also on the one of NSGTs (UN Doc. A/C.4/SR.1208, ¶12 to 15, 60, and 64). As stated by the representative of Portugal:

If the Senegalese proposal were adopted, his delegation would be obliged to draw two conclusions: firstly, either the decision to grant hearings would henceforth apply to all Non-Self-Governing Territories or else the action in question was clearly discriminatory; secondly, once a particular measure was applied to a special case a precedent was established and that would mean that petitioners from any Non-Self-Governing Territory or independent country might be heard in the Fourth Committee or other United Nations bodies. (UN Doc. A/C.4/SR.1208, ¶12 to 14)

An alternative position was taken by Australia, who voted in favor of resolution L.704 in the belief “that no precedent was being established and that the United Nations was dealing with a special case arising out of the failure by the Portuguese government to transmit information on the territories under its administration” (UN Doc. A/C.4/SR.1208, ¶16). Far from Australia wishes, the vote of 1961 set a precedent for a practice of accepting petitions and granting oral hearings that still lasts today.

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13 The petitioners were Mr. Henry LaMry and Mr. Jean Ko Gomis, representatives of the Mouvement de Libération de la Guinee et du Cap-Vert (MLGC). Their request for hearings were distributed among member states with document A/C.4/504. See UN Doc. A/C.4/SR.1205.
The Evolution of the Practice of Accepting Petitions and Granting Oral Hearings

As John Carey (1966) wrote, “the extension in 1961 of the petition-and-hearing process to other than Trust Territories breached the dike” (p. 796). However, it still took a few more years for the practice of accepting petitions to be codified and regulated. Only in 1963, during its 18th session, the Committee codified the rules of procedures for accepting petitioners while discussing on the “Question of procedure concerning the hearing of petitioners.” Member states agreed that petitioners should have been heard as soon as they presented themselves to the Committee under the Agenda Item of “Information from Non-Self-Governing Territories” (UN Doc. A/C.4/SR.1433, ¶ 45 to 52). Moreover, they decided to set boundaries to the instrument of petition and agreed that only petitions regarding NSGTs should have been accepted.

A challenge to this limitation occurred a few years later during the 20th session of the General Assembly, when the Committee granted oral hearings to a petitioner on the Question of Oman. The UK, opposing the decision, stated that “since Muscat and Oman constituted a sovereign and independent State, a discussion of [the question of Oman] would be tantamount to interference in the domestic affairs of a country. The Committee should not risk setting a precedent by granting the request for a hearing” (UN Doc. A/C.4/SR.1518, ¶ 20). As it can be inferred, the critique moved by the UK was not against the use of petitions (as it had been the case in the 16th session), but only against the use of petitions for agenda items not concerning NSGTs.

By the 20th session of 1965, the practice of granting oral hearings started to be regarded as an established custom of the Fourth Committee. For instance, when Portugal complained once again about the legality of the practice, it was tersely reminded by the Chair of the Committee that it was up to the majority to decide on the matter and that, in this case, the majority had already decided to grant oral hearings (UN Doc. A/C.4/SR.1527, ¶ 4). Following the 20th session, only in few occasions states questioned the use of the instrument of petition. Delegates have at times argued against granting oral hearings to a specific petitioner due to contested political reasons, but never against the practice of petitioning per se.

For example, in the 31st session of the General Assembly, Mauritania and Morocco protested against the granting of hearings to a petitioner who was representing the Front Populaire pour la Liberation de Saguiet el-Hamra et du Rio de Oro (POLISARIO Front). Yet, in doing so, they reaffirmed that they “did not propose to resurrect the question of hearings of petitioners, which

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14 See UN Doc. A/C.4/SR.1481 and A/C.4/SR.1568. It should also be pointed out that Portugal, continued to voice his disagreement during the 17th and 18th sessions of the GA, see UN Doc. A/C.4/SR.1282, ¶ 70; A/C.4/SR.1290, ¶ 16.
was an established practice in the Fourth Committee” (UN Doc. A/C.4/31/SR.10, ¶ 25 to 26.). Instead, they contested that the Committee was not respecting the tradition of “not to take up questions relating to the Sahara without their prior submission for consideration by the African Group” (UN Doc. A/C.4/31/SR.10, ¶ 24).

In a similar case, during the 50th session of the GA, the Committee voted against granting an oral hearing to a petitioner who was said to be infringing the UN Staff Regulations. The case, also known as Frank Ruddy’s case, is mostly known for having set a precedent in regard to the rejection of petitioners. This case also provides useful insights on the state of the practice of granting oral hearings in the Fourth Committee. As for the previous example, no member states disputed the legality of the practice while arguing against the granting of oral hearings to Mr. Ruddy.\(^\text{15}\)

From the late 1960s, Committee members increasingly focused on working by the new rules instead of contesting the rules. In particular, they worked to organize the practice and set boundaries to it. In a more recent evolution of the practice, member states have tried to streamline the acceptance of petitioners to reduce inefficiencies. This new trend started with the establishment of the Ad hoc Working Group on the revitalization of the work of the General Assembly (AHWG) in the 62nd session in 2007. Thus far, the Working Group has commented on the use of petitions by the Fourth Committee on several occasions (see AHWG’s reports from the 66th, 68th, 69th and 70th sessions).

Concluding this section, it can be said that the practice of granting oral hearings in the Fourth Committee evolved in a consistent way that fits the relevant standards and *opinio juris* for the purposes of the identification of customary rules. Administering Powers were required to transmit information to the General Assembly accordingly to Article 73e and GA Res. 1541 (XV). The non-compliance of Portugal motivated the Committee to independently retrieve information by hearing petitioners speaking on behalf of Portuguese NSGTs. Far from being an extraordinary measure, the Committee increasingly resorted to the use of petitions as an instrument of inquiry on all NSGTs. The practice remained contested and highly criticized on a legal basis by a minority of member states until the early 1970s. However, from the mid-1970s, member states stopped questioning the legality of the practice as a whole to instead use a case by case approach to the acceptance of each petitioner.

The Introduction and Codification of a Legal Double-Standard

Some of the critiques moved by the member states opposing to the introduction of the practice in the 1960s are still relevant today. As some states pointed out, the practice of granting oral hearings in the Committee introduced a double standard regarding the right to petition in the UN (UN Doc. A/C.4/SR.1208). As Carey explains, the “UN’s double standard on human rights complaints meant simply that individuals’ complaints could be publicly lodged with a United Nations body only when directed against colonial governments […], and not when directed by persons generally against their own domestic governments” (Carey 1966: 799). To make an example, if the human rights of a British citizen were to be violated by the local administration of Gibraltar, the citizen would be able to voice her complaints as a petitioner in front of the Fourth Committee. Conversely, if the same violation were to occur to her in London, the citizen would not be able to petition in any UN organization.16 In other words, different administrative regions equal different rights to petition.

The double standard on the acceptance of petitions creates in turn procedural discriminations against member states of the Fourth Committee with dependent territories. Some might argue that this bias against Administering Powers is justified (if not even necessary) in the fight against colonialism. But this bias exists because of political calculations and not because of agreed-upon principles on decolonization. It should not be forgotten that it is up to the majority of the Fourth Committee to define what colonialism is and which territories are to be listed as NSGTs (see GA Res. 742 VIII and 1541 XV).

Politics defines what constitutes a Non-Self-Governing Territory. Principles on decolonization, human rights, self-determination are only tangential to the definition. And politics on the topic of decolonization, as Turner (2013) argues, has historically been driven by an outdated “North-South divide” between member states. Only from this perspective, it is possible to understand why, for example, the 49 citizens of Pitcairn can petition to the Fourth Committee while the thousands of Kashmir, Kurdistan, South Ossetia, and the Palestinian West Bank are left unheard.17 Or, to make another example, why Gibraltar, the Falkland Islands (Malvinas), Guam, and Bermuda are still listed as NSGTs when all of them have shown their will for the status quo through various referendums.18

Shying away from a normative judgment of the work of the Fourth Committee, it should be pointed out that the Committee’s reliance on politics over principles has been counteractive against

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16 This holds true as long as the violation is not related to the Question of Gibraltar.
the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, which expresses “the desire the end of colonialism in all its manifestations” (UN Doc. A/RES/1514 XV). The narrow definition of NSGT adopted by the Committee is rooted in outdated concepts of territory and administration that miss to grasp the nuances of neo-colonialism, which is transnational and impersonal (Turner 2013: 1197). But, again, this narrow definition is the outcome of a codification process of a customary practice which found legitimization in the will of a political majority, and not in a shared consensus on political values.

The work of the Fourth Committee on NSGTs ultimately appears to be out of touch with the reality of modern forms of neo-colonialism because is still trying to fight colonialism as it was conceptualized in the 1960s. Such conceptualization is today anachronistic and irrelevant. Instead of focusing on only 17 NSGTs and their Administering Powers, the Fourth Committee should be invested in codifying a new legal framework to counter new forms of colonialism. Because the North-South divide between member states has lost much of its centrifugal force, it would be now easier than ever for member states to revise the scope of the Fourth Committee and try to eliminate the double standard on the use of petitions. However, thus far, no states have manifested their interest in doing so.

**Quantity vs. Quality in the Practice of Granting Oral Hearings**

During the lifespan of the Fourth Committee, more than 80 territories numbering 750 million people have gained independence and changed status accordingly to GA Res. 742 (VIII) to be recognized as decolonized (see Tab. 2). To date, only 17 territories counting about 2 million people are still listed as non-self-governing (see Tab. 1). Despite the reduction of NSGTs, the Committee has seen a surge of petitioners in recent years, marking a record high in 2016 (see Tab. 3).

| Chart 1. List of NSGTs and their Administering Powers per regional location.¹⁹ |
| Atlantic and Caribbean | Asia and Pacific | Africa | Europe |
| Anguilla (UK) | American Samoa (USA) | Western Sahara (³) | Gibraltar (UK) |
| Bermuda (UK) | French Polynesia (France) | | |
| British Virgin Islands (UK) | Guam (USA) | | |
| Cayman Islands (UK) | New Caledonia | | |
| Falkland Islands/Malvinas (UK) | | | |

The increase in the number of petitioners has been primarily driven by the Question of Western Sahara. Western Sahara is the sole NSGT that does not have a well-defined Administering Power since Spain terminated its presence in the Territory in 1976 and informed the Secretary-General that thenceforth it was “exempt from any responsibility of any international nature in connection


The data were retrieved from the UN Journal and from documents.un.org searching the tag “Request for hearings” among the documents of the Fourth Committee.
with the administration of the Territory.\footnote{On February 26, 1976, Spain informed the Secretary-General that as of that date it had terminated its presence in the Territory of the Sahara and deemed it necessary to place on record that Spain considered itself thenceforth exempt from any responsibility of any international nature in connection with the administration of the Territory, in view of the cessation of its participation in the temporary administration established for the Territory. In 1990, the General Assembly reaffirmed that the question of Western Sahara was a question of decolonization which remained to be completed by the people of Western Sahara.” United Nations, “Non-Self-Governing Territories,” accessed on December 5, 2016, \url{http://www.un.org/en/decolonization/nonselfgovterritories.shtml#foot1}.}

The case of Western Sahara is not dissimilar to one of non-compliance of Portugal previously discussed. In both cases, the lack of an Administering Power transmitting information under Article 73e has required the Fourth Committee to seek information on its own via the instrument of petition.

From the figures of tab. 3 it appears that the Committee has been doing a good job in monitoring NSGTs by accepting dozens of petitioners each year. But in reality, the high number of petitioners has been posing a strain on the work of the Committee requiring additional days of hearings and reducing the time spent debating on decolonization. During the 71\textsuperscript{st} session alone, three days of meetings were entirely dedicated to the hearing of petitioners.\footnote{3\textsuperscript{rd}, 4\textsuperscript{th} and 5\textsuperscript{th} meetings of the Fourth Committee, 71\textsuperscript{st} session. See \textit{Journal of the United Nations}, no. 2016/192, Wednesday, 5 October 2016; \textit{Journal of the United Nations}, no. 2016/193, Thursday, 6 October 2016; \textit{Journal of the United Nations}, no. 2016/194, Friday, 7 October 2016.} Moreover, additional time was spent to accept and vet the various request for hearings.\footnote{The request for hearings were accepted at the 1\textsuperscript{st} and 2\textsuperscript{nd} meetings of the Fourth Committee, 71\textsuperscript{st} session. See \textit{Journal of the United Nations}, no. 2016/189, Friday, 30 September 2016; \textit{Journal of the United Nations}, no. 2016/191, Tuesday, 4 October 2016.} Overall, member states spent more time hearing petitioners than discussing the item of decolonization.\footnote{71\textsuperscript{st} session, General Debate under agenda items 54, 55, 56, 57 and 58.} In budgetary terms, three hours of the Fourth Committee costs approximately 77,000 USD in conference management expenditures.\footnote{This expenditure figure is an approximate average of the conference management costs of Fourth Committee’s meetings during the 71\textsuperscript{st} Session of the GA.}

Which means that for the 71\textsuperscript{st} session alone, the Committee spent about 130,900 USD to hear the petitioners (100,100 USD alone for the Question of Western Sahara).\footnote{These figures are approximations based on the figure of the previous above. Overall, each petitioner has spoken for 3 minutes. In total, the Committee has spent 5.1 hours hearing petitioners, of which 3.9 were dedicated to Western Sahara’s petitioners.} Peanuts in the overall budget of the General Assembly, but not so small to go unnoticed.

The Ad hoc Working Group on the revitalization of the work of the General Assembly (AHWG) has noticed the trend and has commented on the use of petitions on several occasions (see AHWG’s reports of the 66\textsuperscript{th}, 68\textsuperscript{th}, 69\textsuperscript{th} and 70\textsuperscript{th} sessions). In particular, it expressed concern over the surge of petitions and stated that the number of oral hearings should be “synchronized” with the program of work of the Fourth Committee. In another instance, it requested the Committee to use a standard request form for all the petitioners to rationalize the workflow of the Secretariat (UN Doc. A/C.4/69/INF/4/Add.1). As of today, the Fourth Committee has yet to find a comprehensive solution to the problem. So far, it has only addressed the issue by reducing the
number of minutes at the disposal of petitioners for their statements. This solution, however, cannot accommodate a further increase in the number of petitioners because there is a practical limit to how few minutes petitioners can be given. For instance, during the 71st session, petitioners were given only 3 minutes each to speak, with the consequence that many of them went overtime and had to be interrupted by the Chair.\textsuperscript{28} More fundamentally, the problem regarding the instrument of petitions appears to be qualitative and not quantitative. Petitioners are required to speak in front of the Committee, which means that they are asked to travel at a given time at their own expenses to the UN Secretariat in New York City to attend a Committee’s meeting. By tying petitions to oral hearings, the Fourth Committee has essentially imposed a hidden barrier to the right of petition. This barrier takes the form of impaired mobility, traveling expenses, visa requirement, etc. For many NSTGs citizens, filing a petition is simply too expensive. And for many others with restricted mobility, like those in the Sahrawi refugee camps, it is simply not possible.

Giving the floor to petitioners during the Committee meetings had a specific purpose, which was the one of allowing member states to have an interactive dialogue with the petitioner. However, the requirement of being available \textit{in loco} can hardly be justified in today’s era of video conferences and instant communications. And as long as this requirement will remain, the instrument of petition will fail to provide the Fourth Committee with timely and multiparty information of what is going on in the territories. Instead, it will only provide information via the voice of those who have the means to be heard. The procedures required to file a petition ultimately distort the image of NSGTs portrayed during the meetings and promote misuses by member states; which have been in several cases reported of sponsoring petitioners’ traveling expenses to the UN Secretariat in exchange of a favorable oral statement.

In conclusion, the practice of granting oral hearings has proven to be problematic because it requires the allocation of significant resources to fight an outdated form of colonialism, while at the same time maintaining a dubious record regarding its effectiveness as a practice of inquiry on NSGTs. As explained in the previous section, the Committee has today a unique opportunity to revise and standardize the use of petitions. In doing so, it should seek for solutions aimed to democratize the practice and improve its outreach. The former Secretary-General Ban Ki-moon was reported saying in February 2010 that: “What we need now are creative solutions for the remaining Non-Self-Governing Territories. […] If the United Nations is to fulfill its obligations in supporting the legitimate aspirations of the peoples of these Territories, a pragmatic and realistic approach […] is most likely to lead to concrete results” (via Turner 2013: 1205). To start, a

\textsuperscript{28} See webcast of the 3rd, 4th and 5th meetings of the Fourth Committee, 71st session.
“creative” response should follow the guidelines of GA Res. 285 (LV) on the Revitalization of the General Assembly, and implement ICT solutions to extend the right of petition to everyone, regardless of their availability to be in loco at a committee’s meeting.29

Final Remarks

The use of petitions and oral hearings in the Fourth Committee goes beyond the provisions of the Charter and is the result of a series of ad-hoc decisions which have resulted in the establishment of a customary practice. This study has shown that the practice of hearing petitioners in the Fourth Committee started in 1961 as an extraordinary measure against the non-compliance of Portugal in transmitting information under Article 73e of the Charter of the United Nations. The research has also shown that this practice fits the relevant standards opinion juris for the purposes of the identification of customary rules and demonstrate that international organizations can contribute to the creation of customary rules of procedures and be bound to them.

This study has also raised important questions about the nature of the practice. The use of petitions was traced to be the root cause of a double standard on human rights within the UN system. One in which human rights violations are discriminated based on their perpetrators or place of origin. Likewise, the instrument of petitions has been recognized by this study as a source of imbalances and discriminations among member states of the Fourth Committee. Which in turn has created different obligations and rights among the Committee’s members. Finally, the evidence gathered in this study suggest that the rules of procedures regarding the practice of accepting petitions and granting oral hearings create significant problems of efficiency and undermine the usefulness of petitions as a tool of inquiry on the status of NSGTs.

Taken together, these findings suggest that the use of petitions in the Fourth Committee should be drastically reformed and modernized. GA Res. 285 (LV), the work of the AHWG and the Secretariat have already paved a road for reforming the instrument of petition. Now it is up to member states to follow up and innovate the practice. Hopefully they will take the chance to change the rules of procedures and allow everyone, regardless of their location and economic means, to be able to file a petition. Even better would be to see a change in the scope of the practice to eliminate the existing double standard on human rights.

29 It appears that the practice of accepting petitions falls in one of the “areas of the work of the Assembly in which the use of modern technology and information technology would contribute to enhancing efficiency in its working methods” (UN Doc. A/RES/55/285, ¶ 23 and 24).
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