Reducing Armed Violence with NGO Governance

Edited by Rodney Bruce Hall
Reducing Armed Violence with NGO Governance

Nongovernmental organizations (NGOs) have proliferated in number and become increasingly influential players in world politics in the past three decades. From the 1970s, with the access of social movements and private NGOs to local and international institutions, NGOs have enjoyed an opening to bring impact to global policy debates. Yet NGOs find themselves highly constrained in bringing their material and epistemic resources to bear in the security arena where their activities normally must be authorized by states, or international organizations acting with authority delegated from states. They also find that their activities, particularly in the security arena, frequently come under attack as lacking accountability or lacking legitimacy, as NGOs are self-appointed private actors, often representing only themselves, and are seen by many as self-appointed meddlers in transnational affairs.

This book provides a comprehensive and accessible analysis of whether, or the extent to which, NGOs can contribute as private actors to authoritative governance outcomes in the security realm, and thereby help mitigate armed violence by plugging governance gaps in this arena that state actors or intergovernmental organizations (IGOs) either neglect or could better address with NGO assistance. This book examines the current and future issues surrounding this objective in four sections: i) a practitioner’s perspective of the potentials of conflict governance NGOs; ii) global civil society and legitimation of conflict governance NGO activities; iii) conflict governance NGOs as norm entrepreneurs and norm diffusion in global governance; and iv) conflict governance NGOs in action.

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For the victims of armed violence worldwide
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“A voice was heard in Ramah, wailing and loud lamentation, Rachel weeping for her children; she refused to be consoled, because they were no more.”

(Matthew 2:18)
## Contents

*List of illustrations* xi
*List of contributors* xii
*Foreword* xiv
*Acknowledgements* xvi

1 Introduction: NGO governance and armed violence 1  
RODNEY BRUCE HALL

### PART I  
Conflict governance NGOs: a practitioner’s perspective 15

2 NGOs, governance, and peace building 17  
JEFFREY FRENCH AND ROBERT HAYWOOD

### PART II  
Global civil society and legitimation of NGO conflict governance activities 39

3 Functional differentiation and legitimate authority 41  
JENS BARTELSON

4 War, peace and civil society: can non-state actors stop intra-state violence? 58  
RONNIE D. LIPSCHUTZ

5 Private authority, sociological legitimacy and NGO governance 75  
RODNEY BRUCE HALL AND CHRISTOPHER MARC LILYBLAD
PART III
Conflict governance NGOs as norm entrepreneurs and norm diffusion in global governance 95

6 Transnational civil society as agents of norm diffusion 97
AMITAV ACHARYA

7 The weak persuading the powerful: norm diffusion and enforcement, without internalization 114
EAMON ALOYO

PART IV
Conflict governance NGOs in action 131

8 The transnational battle over gun control: implications for NGO governance 133
CLIFFORD BOB

9 The non-profits of peace: conflict resolution NGOs 146
JULIA AMOS

10 Micropolitics, NGOs, and global governance 165
BRENT J. STEELE

11 Violence, authority and governance in territories of limited statehood 183
CHRISTOPHER MARC LILYBLAD

12 Casting law over power? Understanding the NGOs’ contribution to the independent prosecutor and universal jurisdiction negotiations on the International Criminal Court 209
VANESSA ULLRICH

PART V
Conclusions and directions 233

13 Conclusion: prospects and challenges for conflict governance NGOs 235
RODNEY BRUCE HALL AND CHRISTOPHER MARC LILYBLAD

Index 252
List of illustrations

Figures
11.1 The three governance contexts 188
11.2 Map of favelas 194
11.3 Phase one operations in Complexo do Alemão (2010) 196
11.4 UPP headquarters Cidade de Deus 197
11.5 A SESI computer lab in Cidade de Deus 198
12.1 Theoretical model 215
12.2 Synthesized results for the independent prosecutor and universal jurisdiction case 225

Tables
12.1 State support of the two options offered by Article 12 on the proprio motu prosecutor 219
12.2 State support of preconditions to the exercise of jurisdiction 223
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Foreword

Rodney Bruce Hall’s edited book, *Reducing Armed Violence with NGO Governance*, is the thirteenth in a growing number of research volumes in our “global institutions” series that examine crucial global problems as well as policies and solutions that could help attenuate them. These volumes—written by some of the very best scholars in the field and representing cutting-edge scholarship in their respective areas—serve as lengthier and more specialized treatments of given topics than is possible in the general series. As such, they are essential components in advancing the overarching aim that motivated us to launch the series in 2005: to render more visible the often complex and poorly understood world of “global governance.”

In addition to these longer research volumes, the series strives to provide readers with user-friendly and short (usually 50,000 words) but definitive guides to the most visible aspects and institutions of what we know as “global governance” as well as authoritative accounts of the issues and debates in which they are embroiled. We now have over 80 books that act as key points of departure for the most significant global organizations and the evolution of the issues that they confront. Our intention has always been to provide one-stop guides for all readers—students (both undergraduate and postgraduate), interested negotiators, diplomats, practitioners from nongovernmental and intergovernmental organizations, and interested parties alike—who seek information and insights about the most prominent institutional aspects of global governance.

Despite public and media opinion to the contrary, there has been a significant reduction in armed conflict—both between states and within them—since the end of the Cold War. Nevertheless, armed conflict, especially civil war, persists, especially in a crescent from southwest Africa through the Middle East to South Asia. Individual states and such intergovernmental organizations as the United Nations and the
African Union have devoted enormous resources to a variety of military, diplomatic, and humanitarian missions to mitigate this violence.

Yet it is another aspect of contemporary global problem solving, namely the participation of nongovernmental organizations (NGOs), which preoccupies contributors to this volume. While acknowledging some of their successes and potential, the contributors to Rodney Bruce Hall’s volume are more critical of such inputs. The role of NGOs in preventing, mediating, and mitigating armed conflict—both in advocacy and in operations—is insufficiently analyzed and theorized in the academic literature. The chapters here probe such varied issues as arms control, conflict resolution, global governance, the International Criminal Court, and institutional legitimacy and norm diffusion.

Rod Hall’s oft-cited theoretical work ranges from the emerging processes and mechanisms of economic and financial global governance, particularly the role of central banking as an emerging mechanism of global financial governance, to the evolution of policy norms in the management of global financial crises in the developing world. He was well placed to pull together and guide a distinguished team of authors who call into question received wisdom.

Ideally, this and other volumes in the research stream will be used as complementary readings in courses in which other specific titles in this series are pertinent—a selection of the most pertinent for readers of this volume can be found in the “About the Series” section at the front of this book, and a complete list at the back. Our aim is to provide enough room for specialized topics of importance to be dealt with exhaustively but also to complement them with shorter, authoritative treatments.

As always, we look forward to comments from our readers.

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As editor of this volume I’d like first to acknowledge Jeffrey French and officers of the One Earth Future Foundation (OEF) for generous funding for two workshops held in Oxford in the Spring of 2011 and the Summer of 2012, which permitted volume participants to meet twice in comfortable surroundings. The first workshop saw the presentation of two- or three-page summaries of planned research, and was critical in helping to generate the intellectual design of the second workshop where full papers were presented, and the design of this volume. They very humbly permitted my academic colleagues and me to tutor them in the academic literature on global governance, and conformed their mission statement to our jargon, as well as taking on board constructive criticisms. Without their financial generosity, personal courtesy, and generosity of spirit, none of what is offered in the volume to follow would have been possible.

I am grateful to Ms Saltanat Temirbekhovna Rasulova for her hard work and patience in administrating the workshop, organizing its logistics and particulars and voluminous correspondence with participants. I am grateful to my colleagues for their insightful offerings published within, for what I have learned from them in workshop discussions and in editing their writings, and for travelling long distances across the planet to attend the workshops—in many cases twice. I am grateful to my student Christopher Marc Lilyblad for substantive insights and his very generous editorial assistance.

Finally, thanks to the Global Institutions Series editors Thomas Weiss and Rorden Wilkinson for their interest in the project, and for giving this volume a home among excellent company.

Rodney Bruce Hall
1 Introduction

NGO governance and armed violence

Rodney Bruce Hall

- Conflict governance NGOs
- Outline of the book
- Part I: conflict governance NGOs: a practitioner’s perspective
- Part II: global civil society and legitimation of NGO conflict governance activities
- Part III: conflict governance NGOs as norm entrepreneurs and norm diffusion in global governance
- Part IV: conflict governance NGOs in action
- Part V: conclusions and directions for future research

Nongovernmental organizations (NGOs) have proliferated in number and become increasingly influential players in world politics in the past three decades. From the 1970s, social movements and private NGOs have enjoyed an opening in access to local and international institutions. Initially, this opening up applied mainly to “soft” issues that did not seem to engage directly with the Cold War ideological conflict, mainly the environment and women’s issues. For example, the Stockholm Conference on Environment and Development 1972 marked the beginning of the parallel summit as a way of organizing global civil society organizations on particular issues. By the 1980s, development and humanitarian NGOs also began to be seen as partners for governments and international institutions in agenda setting, and providing nongovernmental sources of expertise to bear on the problem-solving agendas of these issue areas. In the post-Cold War period, governments and international institutions became more responsive to NGO participation in the problems of peace and human rights.

Yet NGOs find themselves highly constrained in bringing their material and epistemic resources to bear in the security arena where their activities normally must be authorized by states, or international organizations acting with authority delegated from states. They also find their activities,
particularly in the security arena—where the claims of state sovereignty to represent national polities authorize a monopoly of the use of force, or claims to represent the state-based international community to which the use of force has been delegated—come frequently under attack as lacking accountability or lacking legitimacy, as NGOs are self-appointed private actors, often representing only themselves. Rather than being seen as members of a “global civil society,” the concept that is helping to “reconstitute” a global civil “public domain,” they are seen by many as self-appointed meddlers in transnational affairs, bringing their private resources to bear to push their own agendas into multilateral negotiating forums, and thus subverting the notion of a true global civil society that could contribute to democratic global governance.

This book seeks to contribute to the debate on the question of whether, or the extent to which, NGOs can contribute as private actors to authoritative governance outcomes in the security realm, and thereby help mitigate armed violence by plugging governance gaps in this arena that state actors or international governmental organizations (IGOs) either neglect, or can better address with NGO assistance. Uniquely, this book begins with a contribution by officers of an NGO, the One Earth Future Foundation (OEF), who propose to do precisely this. The book will then reply in various ways to the NGO’s manifesto, or “mission statement.”

This volume results from two workshops held in Oxford on this topic in the spring of 2011 and the summer of 2012. In the first workshop participants provided and presented a brief, two- or three-page précis of their topics. This useful workshop was employed by the volume editor to refine the intellectual design for a second workshop (and the resulting volume), at which full papers were circulated and presented. New participants with substantive expertise in areas deemed absent during the first workshop were recruited. Participants of the first workshop worked with me at its conclusion to refine and confirm the intellectual design of the second workshop, and the volume presently before the reader.

Conflict governance NGOs

The contributors to the volume reference several types of non-state actors (NSAs), including IGOs as well as NGOs, and civil society organizations (CSOs). For a shorthand to denote the particular form of actor that interests us most, namely NGOs with conflict governance aspirations, we refer to “conflict governance NGOs.” These are NGOs that work and aspire either to prevent or mediate armed conflict, or to mitigate its consequences. As our contributors’ studies demonstrate,
NGOs can help prevent armed conflict by providing public and private goods and services that can obviate bases of many local common disputes that lead to armed conflict, and by acting as norm entrepreneurs who originate, diffuse and advocate in international forums, new pacific and human rights norms that can result in new institutions. NGOs can mediate ongoing armed conflict through active mediation and dispute resolution efforts, singularly or more often in tandem with IGO mediation efforts. Finally, NGOs can mitigate the consequences of armed violence by providing humanitarian assistance and relief and by working with civil authorities in pacified regions to provide various forms of community support.

NGOs that perform or aspire to perform any of these tasks we refer to as “conflict governance NGOs,” which term should not be confused with “conflict resolution NGOs” that focus exclusively on mediation. The contributions by Amitav Acharya, Eamon Aloyo, Clifford Bob, and Brent Steele all illustrate different means by which conflict governance NGOs help to prevent armed violence. The contribution by Julia Amos illustrates how, with mixed results, conflict governance NGOs can help to mediate armed violence. The contributions by Christopher Lilyblad and Vanessa Ullrich illustrate some means by which conflict governance NGOs help to mitigate the consequences of armed violence.

Outline of the book

The book is organized into four topical sections that grew out of the workshop proceedings and the intellectual design that arose subsequent to the first workshop. Part I has a practitioner’s perspective of the potential of conflict governance NGOs; part II looks at global civil society and legitimation of conflict governance NGO activities; part III is on conflict governance NGOs as norm entrepreneurs and norm diffusion in global governance; and part IV discusses conflict governance NGOs in action. Finally, in part V, Christopher Lilyblad and I will summarize what we’ve learned and discuss implications for future research.

Part I: conflict governance NGOs: a practitioner’s perspective

Jeffrey French and Robert Haywood of OEF provide a trenchant, powerful and erudite critique of state-led and IGO-led global governance, and the tragic failure of our global governance structures to date to prevent or mediate armed violence, or mitigate its tragic consequences for innocent people around the world—violence often perpetrated on people by their own governments. Their criticisms of the “territorial
myopia” of states and the “sovereign prize” entailed by their recognition by other states and IGOs indeed identify many sources of armed violence against innocents that they would like to help obviate, even as they recognize that sovereign states protect billions from armed violence as well. They discuss highly plausible sources of NGO authority in participation in governance solutions, as well as many plausible short-term means by which NGOs might help plug governance gaps in conflictual issue areas that are unaddressed or inadequately addressed by state and IGO actors. Their unique practitioner perspective, which they have worked painstakingly to translate into the jargon of our academic literature on global governance, is an invaluable starting point for the debates and studies that follow.

Part II: global civil society and legitimation of NGO conflict governance activities

The organization of the book largely flows naturally from the engagement of each of the academic contributors with claims of the OEF manifesto. Part II of the book will constitute analytical contributions by two scholars who have significant doubts regarding whether NGOs can contribute to authoritative governance outcomes by reducing or mitigating armed violence. One skeptic analyzes the issue from the strongly Lockean perspective of republican theory (Jens Bartelson), and a second from a highly critical engagement with the notion of a liberal global civil society (Ronnie D. Lipschutz) as “epistemic violence” in itself. The book cannot avoid the analytical task of addressing the question of legitimation of the “authority” of private actors in global governance in conflict regions. A third contribution (by Rodney Bruce Hall and Christopher Marc Lilyblad) will provide a more positive evaluation, stipulating the sources of NGO private authority, and the sometimes stringent conditions under which it may be enjoyed. We will develop the notion of sociological legitimacy and argue that it is a more appropriate standard for assessment of the question of whether NGOs can participate in authoritative governance arrangements than the highly normative standards that Bartelson and Lipschutz apply in their contributions.

A healthy and good-natured debate regarding the existence and constitution of global civil society, and the question of whether a new global public sphere or domain is emerging for the transnationally public debate of global issues is continued in this section. Participants bring, as they have in earlier manifestations of this debate, highly different perspectives to the question, apply highly different standards to the
question of NGO legitimacy, and draw upon highly different scholarly traditions to answer, ranging from Lockean republican theory, Foucauldian conceptions of “governmentality,” and constructivist notions of authority and legitimacy drawing upon structurationist and organizational sociology as well as organizational ecology.

In Chapter 3 Bartelson asks under what conditions non-state actors in general, and conflict governance NGOs in particular, could be considered legitimate authorities. The chapter makes several important points about the changing conditions of legitimacy in a globalizing world. Yet since much hinges on the legitimacy of these actors, he argues that the issue of legitimacy deserves more attention, analytically as well as normatively. He argues that legitimacy is not only or even primarily a normative concern, but also an important source of compliance in the absence of coercive enforcement.

He notes that global political authority is relatively weak and decentralized, and the pluralistic make-up of global society has conspired against the formation of anything like global demos that could provide global institutions with the kind of legitimacy that derives from popular consent. He dismisses attempts to replace the requirement of popular consent with other standards of democratic legitimacy—such as transparency and accountability—as making any real difference in terms of the possibilities of democratic participation in the absence of a global civil society, which he does not find. His test of the legitimacy of non-state actors engaged in governance arrangements is the question of whether most human beings actually could be said to enjoy the kind of political liberty necessary to respond effectively to a perceived lack of accountability and transparency on behalf of global governance institutions and transnational actors, and whether global civil society networks are inclusive enough to cater to such needs. He asserts that democratic participation is meaningful only in the context of a political community within which they can be effectively exercised, and that exercise in turn presupposes that agents are free and safe to express and act upon their beliefs and desires in ways conducive to such participation. Unless these preconditions are fulfilled, any global governance arrangement will be susceptible to the objection (warranted or not) that it merely serves the particular interests or identities of the dominant actors.

In Chapter 4, Lipschutz asks whether agents of “global civil society” can intervene successfully in violence-torn societies to (re)construct a more peaceful social order. Lipschutz interrogates the concept and practices of global civil society and offers a somewhat contrary view of the role of civil society in liberalism. The general understanding of political theorists is that civil society requires a robust state in order to
flourish; absent the commitment of Leviathan to “keep the peace” through the threat of punishment, there is no incentive to organize collectively. Under this umbrella, however, he argues that liberal civil society comes into being with a dual purpose: first, to provide shared goods among group members and, second, to police and discipline group members through peer pressure. Thus civil society shares with the state the task of keeping order through mechanisms of (largely) epistemic violence. Lipschutz posits a problematic of “global” civil society under contemporary conditions of globalized economic liberalism, evident in the diffusion of capitalist relations throughout the world. In the absence of a world state promising punishment of those who refuse to abide by liberal norms and practices, he asks whether a global civil society is even possible. He argues that while there may be an incipient world state in the making, with the rise of state-like authorities, centers of coercive and social power remain strongly national. Hence, missions of peace making tend to reflect interventions by liberal states, acting collectively and with the assistance of transnationalized NGOs.

Finally, Lipschutz examines how such NGOs, notionally acting to support peacemaking and state making projects, also play a role in constructing the conditions of epistemic violence required for successful political liberalism. Hence, civil society organizations play the role of developing the civil associations through which peer pressure can operate and, in so doing, help to create and support the liberalism of fear. He offers examples of how this process operates and how it can fail, generating winning and losing groups as a consequence of liberal intervention, with specific emphasis on Rwanda.

In Chapter 5 Lilyblad and I provide alternatives to the requirements for NGOs as authoritative sources of governance in the conflict arena presented by Bartelson and Lipschutz. While Bartelson argues that legitimacy is an important source of compliance in the absence of coercive enforcement and that defense of liberty is the appropriate standard of legitimacy, we follow Weber’s reminder that many social institutions deemed highly legitimate today originally arose within social relations of coercion. We argue that Bartelson’s highly normative standard, and his insistence that legitimacy must arise within a demos, or a political community, deriving from popular consent among all stakeholders, is too stringent a standard for the successful exercise of authoritative governance, by either public or private actors. We argue that a less normative, more sociological, empirical standard of legitimacy should apply, drawing upon Weber’s sociology of legitimacy, and recent work in organizational sociology and organizational ecology.
We return to my earlier work with Biersteker\textsuperscript{6} to argue about the conditions under which private power may result in private authority and consequently private authoritative governance, to assert that Bartelson’s contentions appear to conflate political authority with authoritative governance. NGOs can attain legitimacy though their capacity to provide expertise (the authority of authorship), their status as non-state, neutral actors (the authority of the referee), or often their claims to represent either socially progressive or morally transcendent positions (the authority of normative legitimacy). To the extent that NGOs enjoy this status with stakeholders in a conflict, or with the international community authorizing their activities in a conflict arena, they are potential sources of private authoritative governance.

We credit Lipschutz’s argument that the coercive application of civil society actors acting at the behest of consortia of liberal states on illiberal societies can generate new forms of conflict, and can lead to NGOs serving as agents of liberal governmentality, as per Foucault. However, we find difficulties with too broad an application of this normative standard of legitimacy as well, and instead advocate a focus on output legitimacy: sociological, empirical legitimacy in various forms as a metric of exercise of authoritative governance.

\textbf{Part III: conflict governance NGOs as norm entrepreneurs and norm diffusion in global governance}

Part III addresses a literature that has developed on the question of NGOs as norm entrepreneurs, which build epistemic communities that involve other private actors and international civil servants and work to transform global normative beliefs regarding what constitute admissible and inadmissible practices, thereby gaining agenda-setting capacity in IGOs and other multilateral forums. Coupled to this is a growing literature on norm diffusion and the question of in what role private actors such as NGOs can assist the process of diffusing new norms generated by the activities of norm entrepreneurs to other arenas, issue areas and geographic regions. This is one means by which NGOs have been effective in exercising a form of governance capacity. One contributor to this section of the book (Amitav Acharya) can play a role in suggesting pathways to conflict management through norm diffusion through networks between local civil society groups with transnational linkages, effecting norm diffusion into a conflict region that is resistant to new norms arising from external actors. Eamon Aloyo’s contribution generates a model of norm diffusion that helps explain how NGOs, by persuading powerful state and IGO actors with
coercive capacity, can generate new conflict mitigating norms without internalization by subject actors to whom these norms might be applied. He illustrates his argument with a development of the increasing recognition and application of the NGO-originated notion of states’ Responsibility to Protect (R2P) their own citizens.

In Chapter 6 Acharya reexamines the ideational role of the transnational and local civil society groups in conflict resolution. Despite significant progress, the constructivist literature on norm diffusion continues to be state-centric. Moreover, most people see transnational and local civil society activists as norm takers, rather than norm makers. Their role is seen to lie in the practical domain, in organizing resistance to policies that are viewed as unjust or inadequate to meet certain normative goals, and/or in promoting new and alternative pathways to security, development, disarmament, human rights protection, peace building, etc. However, Acharya argues that the gap between transnational activist groups and epistemic communities (or groups that generate and diffuse policy ideas and knowledge), may be narrower than commonly assumed. He identifies the different ways in which transnational civil society groups create and propagate norms. Drawing upon his previous work on norm diffusion, he examines how these groups help to redefine and spread global norms in a local context—a process that he has elsewhere designated “constitutive localization.” He also argues that norms generate and propagate local ideas and practices to the global level—a process that he has elsewhere labeled “norm subsidiarity.”

To illustrate these processes at work, Acharya presents two examples. The first example concerns human rights in Southeast Asia, where a network of human rights groups, through their publications and participation in track-two seminars and conferences, influenced policymaking processes that resulted in the creation of the Association of Southeast Asian Nations (ASEAN) Inter-Governmental Human Rights Commission—Asia’s first regional human rights mechanism.

In a second example, Acharya examines how the pathways to norm diffusion such as constitutive localization and norm subsidiarity could also help with a better understanding of the role of NGOs in conflict zones. In this context, Acharya examines the Maoist insurgency and conflict that is active in several states of India. Thus far, governmental policies and approaches to it have been ineffective. Acharya argues that local civil society groups with transnational linkages might bridge the gap between official approaches to the conflict and that of the international community.

In Chapter 7, Aloyo provides his own framework of norm diffusion from NGOs and addresses the puzzle of how materially weak actors, NGOs, can convince some coercively powerful actors to change their policies,
or create new regimes or institutions. This chapter argues that NGOs can persuade states and international institutions to enforce norms for which NGOs advocate even when the internalization of norms has not occurred. This ability to persuade explains how NGOs can contribute to peace and accountability even when they cannot themselves enact and enforce their goals. He demonstrates how his argument differs from leading theories of norm diffusion, and conceptions of power and authority. He explicates several strategies that make NGOs’ attempts to persuade states to enact changes more likely to succeed. NGOs can use their private authority to promote novel ideas and strategically target state leaders who are sympathetic to their goals. These states and their organizations can ratify international treaties and enforce new norms. In this way, NGOs have become important players in the prevention of violence and holding to account those who have committed mass violations of human rights. To illustrate his argument, he examines how NGOs influenced the creation of the R2P doctrine in the United Nations (UN) and its role in the justification for the humanitarian intervention in Libya.

**Part IV: conflict governance NGOs in action**

This section comprises five empirical pieces that assess the capacities of conflict governance NGOs in action to contribute to authoritative governance outcomes intended to reduce, mitigate or pre-empt armed violence. Far from being uniformly sanguine, the results are mixed, but rife with prospective lessons for the conditions of success or failure for NGOs working in this issue area.

In Chapter 8 Clifford Bob examines the difficulties of effecting conflict governance through NGOs and their networks in the case of the attempt to control small arms in Brazil. Here, conflicting NGO agendas, sometime diametrically opposed, generate difficulties.

His contribution examines ways in which transnational NGOs have involved themselves in Brazil’s recent conflict over gun control, and thereby highlights some of the difficulties in creating conflict governance NGOs relating to security issues—and proposes some possible policy responses. Bob thereby raises broader issues about the ways in which transnational NGOs might be able to solve various global problems attending armed violence—and limitations in their ability to do so.

Bob outlines the rise of the Brazilian gun control movement and its linkages to this international network, and examines the reaction this campaign elicited in Brazilian civil society: the politicization of Brazil’s small number of gun owners, under the direction of a rival transnational
network led by the World Forum on the Future of Sport Shooting Activities (WFSA), America’s National Rifle Association (NRA) and other national gun groups. Bob’s analysis of this conflict is as a key problem in establishing effective NGO governance in many issue areas, not least of which are deep differences in values between powerful forces operating at the global level. These differences manifest themselves in conflicting views of what constitutes a global or national “problem” and what would be the best “solution,” as often one civil society organizational network’s solution is in fact viewed as a critical problem by another network. As one network proposes “solutions” to a “problem,” new groups may enter the process believing that their interests will be hurt by the proposal. Bob provides numerous examples of this in all aspects of the Brazilian conflict.

Bob argues that newly established conflict governance NGOs and their networks will remain contested and will be able to enforce their views only with aid from or at sufferance by states. This suggests limits to the ability of these organizations themselves to establish and enforce binding rules.

In Chapter 9 Julia Amos examines the successes and difficulties of what she calls “conflict resolution NGOs” (CROs) in fomenting “two-track” (NGO private, alongside IO/state public) mediation attempts to diffuse civil conflicts in the developing world—namely in northern Ghana and Sierra Leone. Generalized advantages and disadvantages of NGO mediation are analyzed alongside detailed empirical development of these proceedings, capturing change in the role and nature of CROs through a dual historical and contemporary focus. Just as NGOs were conceived as a general alternative to state provisions, emergent CROs can be portrayed as an antidote to the failings of a distant and mistrusted state-centric system. Such conceptualizations translate the many perceived NGO advantages to the peace-building field, while offering to relieve the pressure of a UN strained by rising humanitarian commitments or circumventing its bureaucracy to engage with a strongly felt need. CROs imagine themselves, like NGOs more generally, as an effective means of local delivery—as constituents of global and local civil societies in which lie many of the answers to solving conflict better. However, her research suggests that CROs are too small to take on many of the tasks of peace building, such as addressing underlying structural factors that generate conflict. Instead CROs achieve indirect influence by lobbying for their visions of how such activities should be undertaken and by whom, as well as by direct action.

The research demonstrates both the possibilities and dangers of CRO peace building. The CROs studied were able to be more flexible than official mediators and take advantage of NGO-generated social capital,
while their lack of state connections made them more likely to be seen as neutral by the warring parties. However, a lack of state support hampered the institutionalization of agreements, making them less sustainable. Externally supported CRO interventions in a context of large-scale political violence also raised questions of legitimacy as any backlash after failed initiatives endangered civilians. CROs lack the power to force the hand of either combatants or governments, so their forms of mediation and peace building center on attempts to reframe and disseminate norms in favor of negotiated settlements.

In Chapter 10 Brent Steele provides a contribution that explores the intersections of food insecurity and armed conflict in the developing world in a study of the NGO Heifer International’s unique work to help restructure the local conditions of “micropolitics” through interventions designed to promote values conducive to reducing armed conflict and food insecurity. The contribution also examines the means by which stability can be developed through NGOs. Steele illustrates the micropolitical possibilities via the work of Heifer International, a non-profit NGO that provides training, assistance, livestock, and sustainable practices to areas around the world. Heifer develops “long-term” solutions to problems (such as food insecurity) that can lead to conflict, and yet Heifer’s approach is inherently localized, and demonstrates the promise of micropolitical insights such as the building of a relational context and the basis of solutions in technical “expertise.”

Steele engages the literature linking food insecurity with armed conflict—literature that demonstrates the mutually constitutive relationship between food insecurity and conflict. While food insecurity as a form of scarcity promotes conflict, conflict also prevents or inhibits the effective distribution of food via networks. Examining Heifer International’s work in conflict-ridden areas via micropolitics, what emerges is a shift in metaphors for confronting armed conflict. While it addresses an immediate need, as an NGO Heifer International seeks also to promote the values of “democracy” and “gender equity,” thus it takes the provision of a “basic need” and extends this provision into a more complex network of values. Heifer’s work can be seen as more of an “acupunctural formation” at the core of micropolitics, something with which to “treat” conflict rather than an approach that, once and for all, might “cure” an area of violence and armed conflict. As pragmatic, but also timid, as this approach to the reduction of conflict sounds, it may have the advantage of being a more nimble method to confront armed conflict in areas that “the state,” and even international organizations, cannot easily access.
In Chapter 11 Christopher Lilyblad develops an analytical model of the conditions under which private governance constituted by “illicit authority” as per Hall and Biersteker can develop in “territories of limited statehood.” Here illicit private actors (like drug lords and regional war lords) penetrate areas where state institutions and/or capacities are weak and provide public goods under-provided by the state. Lilyblad further develops Hall and Biersteker’s conception analytically, explaining how these illicit actors can become illicit authorities and govern territories within the jurisdiction of sovereign states—supplanting state authority and governance locally when they: i) enjoy social legitimacy with the locals; ii) monopolize the local means of violence; and iii) generate socio-economic security locally that would not otherwise be enjoyed by the locals. Subsequently, he develops empirically how illicit authorities have generated these conditions within the *favelas* (shanty towns) of Rio de Janeiro, Brazil. Noting an absence of empirical cases available whereby NGOs have replicated these successes to compete for authoritative governance in territories of limited statehood with their present “illicit” governors, he demonstrates how NGOs are helping to re-stabilize demilitarized *favela* territories socially by providing public goods that serve these communities.

Finally, Vanessa Ullrich explores in Chapter 12 the important empirical puzzle of why NGOs and their networks were successful in pursuit of an independent prosecutor but failed in the pursuit of universal jurisdiction for the International Criminal Court (ICC). Both of these NGO aspirations were fundamental in determining the reach and nature of the ICC’s jurisdiction. Drawing on constructivist theories of International Relations (IR) based on the logic of arguing, she introduces the concept of legal arguing to explain the success and failure of NGO agenda items. As she argues in her work, given that both the adoption of an independent prosecutor and universal jurisdiction were strongly opposed by many powerful states at the start of the conference, it is puzzling that any one of the two measures was adopted. That the independent prosecutor was adopted over universal jurisdiction thus provides a useful empirical puzzle to explore the analytical value of a private authority perspective in explicating the outcome. The empirical analysis finds that legal arguing contributes significantly to our understanding of why NGOs succeeded in their pursuit of an independent prosecutor but failed in their pursuit of universal jurisdiction. In practical terms, it helps us to understand the possibilities and limits of the ability of NGOs discursively to shape the legal texture of issues such as combating impunity.
Part V: conclusions and directions for future research

These are left entirely for the summative chapter of the volume, where I will discuss them along with Christopher Lilyblad.

Notes

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Part I

Conflict governance NGOs

A practitioner’s perspective
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2 NGOs, governance, and peace building

Jeffrey French and Robert Haywood

- Systemic shortcomings for sustainable peace and security
- Roles for NGOs in conflict governance and peace building
- Non-state actors, issue-specific authority, and conflict governance
- Conclusion

Contemporary global governance reserves a privileged place for states and their intergovernmental organizations (IGOs). Sovereign entities and the institutions they create, like the United Nations (UN) and the World Trade Organization (WTO), act as the decisive authorities over a growing number of global, national, and even local issues. States maintain their collectively self-mandated claims to sovereign authority, interacting with changing understandings of the legitimacy inherent in authority. The benefits of sovereign authority and the responsibility of states to represent their citizens’ welfare, create a context where states are motivated to act to protect their interests and the current state system through claims of legitimacy if they can, and through violence if they must.

The rise of global, non-state actors can be considered either an additional stress on the current system or a legitimate response to the deficiencies of the state-centric system. The role of global civil society and business society remains heavily contested, especially in relation to their roles in peace building. We argue that empowered non-state actors can have a constructive, or even essential, public role. States will continue to maintain the central role in governance, but it is essential that they encourage and enable non-state actors from civil and business societies to govern particular domains, especially in the face of globalization. This will be best achieved by states empowering civil and business societies via the ascription of authority over bounded governance domains. States, then, will be bolstered by non-state actors operating either independently of, or in co-operation with, states as private authorities over specified and limited issue areas.
We demonstrate the presence and need for this governance shift by first examining relevant aspects of the state-centric model of governance and its implications for peace and security. We pay particular attention in this section to the difference and gaps between coercive power and modes of authority. In the following segment we briefly explore and re-emphasize the importance of issue-specific networks in global governance helping states manage difficult governance domains. We end with an open-ended assessment of what implications and roles issue-specific governance by non-state actors may have for peace and security. Ultimately, we conclude that these structures can augment current global governance mechanisms and lead to a more peaceful world.

**Systemic shortcomings for sustainable peace and security**

**Modes of authority**

States currently assert such a coterminous authority over both scope (territory) and domains (issues) that it has become common in global governance to refer to the state as synonymous with the public interest in all spheres of governance. States claim this expansive political space by means of the normative construct of sovereignty, which grants states exclusive authority within their territorial borders, including the right to represent their citizens’ interests abroad. This governance model evolved out of the Westphalian treaties that ended the Thirty Years War. At the time, it was useful as a means to foster peace and security across Europe. This system consolidated divergent modes of authority, primarily authority derived from a monopoly on violence within a delimited territory with forms of moral or legitimated authority into one paramount form: sovereign authority. It defined a recursive, external source of sovereign legitimacy. States recognized states. Whoever maintained coercive supremacy within a territory, acted as the sole locus of authority for the society within that territory, and was acknowledged as a sovereign authority by other sovereigns.

This external recognition accorded states legitimacy to mobilize force to provide security for their citizens. In turn, it also enabled them to own or sell a territory’s natural resources, and to supply public goods to their citizens. While states have a number of legitimating arguments supporting their sovereign claim, all states retain the right to use coercive force against non-consenting domestic rivals.

However, authority is also a sociological, normative, and dynamic concept that defines legitimacy from the perspective of the governed. Not only is it granted horizontally from states to other states, but it
also operates vertically from citizen to state. At a minimum, then, it indicates consent of the governed, and typically relies directly upon it. In sociological definitions of the right to govern, the governed must believe their leaders and sociopolitical system are morally and structurally appropriate. Similarly, normative legitimacy is evaluated when an authority or a governance system’s appropriateness is evaluated, either by the governed or third parties, according to specific criteria such as respect for human rights or the acquisition of consent through agreed frameworks. Such normative classifications reveal legitimating paths available to private authorities to acquire sociological legitimacy. Adherence to human rights remains one of the more well-known means for states to be perceived as legitimate by their citizens, although other sources such as adherence to religious, cultural, or ethnic identity also apportion state legitimacy.

Therefore, legitimate governance is also characterized by the willingness of the governed to be governed. Such authority does not require a monopoly on violence, due to a general recognition of an authority’s competence or values, and is established once an actor establishes institutionalized compliance. Gramsci demarcated this distinction between consent and coercion as a shift away from governance by domination. Similarly, Buchanan and Keohane note that legitimacy confers a normative “right to rule” through which rule making and enforcement may be asserted by attaching costs, a more subtle but non-violent form of coercion, to noncompliance. This institutionalization of authority can develop due to a range of factors, from perceptions of right to rule, to self-interest, to self-preservation.

Notably, private authorities have a range of legitimating paths available to them, both from third parties (external/horizontal) and from the governed (internal/vertical). A private authority can result from institutional, delegated, expertise, principled, and capacity-based types of legitimation. The different channels available to acquire legitimacy point to the presence of legitimation conflicts, as governors acquire authority through some conduits but lack the legitimacy proffered through other means. For instance, the WTO maintains a heavily contested role in global economic governance, as questions about its legitimacy draw upon principled claims such as a lack of inclusiveness and a democratic deficit in its structure. However, it maintains its role due to its perceived expertise and the authority delegated to it by states.

These different channels underscore a significant fact about legitimate governance: if internally legitimate governance is recognized by consent without coercion, then it is not necessary to tie legitimate governance specifically to the current state systems or existing claims of sovereignty.
Other pathways may be sufficient to engender compliance without coercion.

While conceptually distinct, coercive power and authority can and do reinforce each other. As early as Hobbes, it was recognized that the fundamental role of a state is to provide for the security of its people. In Christopher Lilyblad’s contribution to this volume, the foundational role the provision of order plays is made apparent in the *favelas* (shanty towns) of Brazil. He revisits the compelling claim that for there to be successful governance of either the market or civil society, societies must first assert control over political violence. Such control historically has required state violence to be established. Without this violent creation of order, states lose their claim to authority.\(^\text{12}\) All functioning states, then, must and do rely upon violence.

Yet, coercive force is not sufficient for sustainable authority. Legitimacy implies uncoerced consent.\(^\text{13}\) As shown by Weber, for authority to remain stable it must also be legitimate among the governed. The modern state often relies upon its internal legitimacy to engender general compliance without reliance upon force. Examples of this nonviolent form of authority within states are seen in the high voluntary compliance rates for tax reporting in most Western democracies, the use of courts to resolve disputes, and in the smooth transition of power between political opponents after elections.

The recognition of authority as dependent upon, yet still distinct from, the establishment of a right to govern through coercive force poses a challenge for peace building and governance. Territorially bounded supreme might remains well established as an essential characteristic of a functioning state, but it does not necessarily create an internally recognized legitimate right to rule. This potential gap between modes of authority drives conflict.

**States and governance of armed conflict**

Given that states, at least in the Hobbesian construct, originated as a response to violence and disorder, what prospect does the contemporary state-centric system hold for global peace and security? Of particular concern is whether states, or their IGOs, can effectively stop crimes against humanity, mass atrocities, and genocide. That the twentieth century was, in absolute terms, the bloodiest in human history lends additional urgency to the task of constructing governance structures capable of stopping humanity at its worst.

Encouragement is found most notably in the ongoing evolution of norms reflected in international law. In response to the atrocities of
World War II, multiple streams of human rights norms developed in international institutions. The UN Universal Declaration of Human Rights, the establishment of war crimes tribunals, and the International Criminal Court (ICC) each bear witness to states’ burgeoning recognition of the need to establish a minimum set of sovereign responsibilities and to punish state authorities committing mass atrocities. UN intervention in conflict areas demonstrates acknowledgement by states of the need to prevent mass atrocities. Contemporary normative movements, such as the Responsibility to Protect (R2P), attempt to bolster the credibility and authority of IGOs that intervene across state sovereign borders.¹⁴

Yet, “never again” events continue. Even powerful normative movements like R2P have only mixed success given their inconsistent application. That the majority of genocidal tragedies typically occur within the borders of sovereign states continues to be problematic. Despite the movements highlighted, states consistently hesitate to intervene internationally at sufficient levels to stop atrocities. Significantly, obstacles preventing states and their IGOs from reliably providing a peaceful world order stem from conflict in the sources of authority in the state-centric system itself. Two dominant impediments are the responsibility to be myopic and the sovereign prize.

The responsibility to be myopic refers to each state’s duty to act in their citizens’ self-interest and to privilege their welfare above the welfare of other states’ citizens. Whether basing one’s actions on the perceived geopolitical logic of neorealists, a sacrosanct concern for the sovereign principle of nonintervention, or on the democratically legitimated policy of a liberal government, the fact is that few, if any, states may be consistently counted upon to intervene where mass atrocities occur outside their borders.¹⁵

R2P and other intervention advocates consistently encounter the objection that all states, to a certain degree, have a responsibility to be myopic beyond their borders. In accordance with democratic norms, states must represent the interests of their own citizens in world affairs. When citizens deem humanitarian intercession morally unpalatable or just too costly, democratic national leaders have an obligation not to intervene. In undemocratic states lacking internal legitimacy, it must be considered better that governments do not send their citizens into violent conflicts when those citizens have no voice in deciding whether they should participate in the attempted peace building.

Such a dynamic also constrains IGOs. The responsibility of its member states to be myopic in favor of their own citizens often deprives IGOs, even when given proper authority under international
law, to construct or sustain effectively governance institutions that end violent calamities. The underfunding of war crime tribunals, the refusal of states to honor the arrest warrant for Omar al-Bashir, and the ongoing mass atrocities and acts of impunity committed in Syria, Darfur, and elsewhere offer troubling examples.

States’ responses to mass atrocities also fail when considering the relative levels of funding available to IGOs mandated, in part, to end war. The paramount IGO in this regard is the United Nations. The UN receives resources through a combination of mandatory and voluntary contributions from member states and non-state actors. At the end of the last decade, despite the range of income sources, for peacekeeping operations the UN had only US$7.1 billion to distribute between 18 peacekeeping operations staffed by 89,000 personnel.\(^1\) This annual amount is less than half of the monthly US expenditures spent on its wars in Iraq and Afghanistan.\(^2\) Such capacity shortfalls reveal the unwillingness or inability of states effectively to fund institutions they create to redress crucial governance issues.

The second dynamic problem area originates in the principle of nonintervention between states and the conflation of power with authority: the sovereign prize. Here, a distressing pattern occurs within international affairs. States grant external legitimacy to de facto sovereigns even when the sovereign’s monopoly on political violence is established without corresponding or counterpoised forms of internal legitimacy. Usurpation of power by illegitimate actors is facilitated when other states in the Westphalian system choose to follow their international obligation not to intervene. This immunizes those violently contesting de facto sovereignty from external discipline for their domestic atrocities.\(^3\) While not a universal standard, illustrations of this pattern continue, as states recognize each other’s authority despite ongoing domestic atrocities. Current examples include the recognized governments of Guinea, Equatorial Guinea, and Syria.

This dynamic acts as a driver of conflict for two often interrelated reasons. First, the state may be seen as a means to, or as a competitor for, control over valuable resources and resource rights or privileges.\(^4\) Some of the worst intra-state conflicts of the past two decades centered around the issue of state versus rebel control of valuable extractable resources such as diamonds (Sierra Leone), tungsten, tantalum, tin, and gold (the Democratic Republic of the Congo, or DRC).

Second, history demonstrates that where struggles over sovereign authority interplay with cleavages in identity politics, horrific consequences ensue. The twentieth century is particularly rife with examples of the state’s potential for evil being used as a key source of
oppression. The establishment and maintenance of coercive power can increase domestic fear and oppression based on ethnicity, religion, and culture.

Two different patterns emerge. Foremost is the existential fear of annihilation of one’s group or identity. As persuasively modeled by Judith Shklar, perceptions of existential threat operate as one of the dominant drivers of cruelty and violence, particularly when state sanctioned and/or supported. Will Kymlicka similarly observed the role that desire for a culturally homogenous polity plays in fuelling ethnic cleansing and genocide.

The 1994 Rwandan horrors offer a clear illustration of this process. Having assumed control over all organs of the government and media, Hutu genocidaires mobilized a program of extermination of all Tutsi and moderate Hutu within Rwanda. The totalitarian nature of the Rwandan government, a characteristic entrenched over the previous three decades, enabled the Hutu elite to direct mass participation in massacres centrally. The extermination campaign resulted in the deaths of nearly 1 million innocents in three months of violence.

The Rwandan Tutsi’s lack of a state severely handicapped attempts to appeal for international assistance; their cries for intervention were not answered because they lacked the legitimate claim for help of a sovereign people. Meanwhile the Hutu regime sought to make Rwandan national identity synonymous with Hutu identity through extermination.

The only viable response for the Tutsi was to overthrow the Hutu regime and install their own government to provide for their security.

Coercive power in the hands of a dominant elite can also generate anxieties concerning indirect threats to identity such as state-sanctioned language, local autonomy, and internal boundaries. These issues drive factional violence even in countries with democratic government. Since India’s independence in 1947, which saw its own identity-focused cataclysm, India was frequently beset by other episodes of ethnic and culturally oriented upheaval. These spasms were typically triggered by anxieties about the suppression of language, religion, and local autonomy. One of the earliest episodes saw the Telugu and other linguistic groups commit acts of widespread violence in the early 1950s motivated by a desire to remold the borders of Indian states. This bloodshed resulted in the 1956 States Reorganization Act which redrew state boundaries along linguistic lines. Today ethnonational violence continues in India’s northeastern provinces, where groups such as the United Liberation Front of Asom and National Democratic Front of Bodoland continue seeking sovereign statehood.
In summary, the current system of international relations is derived from a consolidation of modes of authority under one supreme form. This formulation ended the wars of religion in Europe, but did not create a global governance structure capable of resolving even domestic conflicts without violence. Instead, it sometimes drives violent conflict, as combatants see authority as a winner-take-all, existential conflict, and the international community often stands aside due to each state's responsibility to their own citizenry.

Roles for NGOs in conflict governance and peace building

Much has been written about non-state actors serving public roles as private authorities. Within this increasingly globalized world non-state actors often create more intense transborder connections than do states, often around recognizable issue domains. Non-state actors have resources and organizations rivaling or exceeding the capacity of states to respond to domestic and global opportunities and problems. This interconnectedness and faculty have created global awareness, global identities, and global obligations. How will these developing realities interact with the existing governance paradigm? How might NGOs be mobilized to reduce armed conflict?

Intriguingly, an essential mechanism already exists and has been highlighted within literature: governance by issue specificity. This paper seeks to reemphasize the role issue-specific networks of affected stakeholders can and do play when, as a network of state and non-state actors, they generate compulsory and enforceable decisions over a particular social issue or public good domain resulting in authoritative governance. The importance of these networks has been highlighted before in literatures on international regimes, private authority, and other governance institutions. The common thread running through this literature is the issue-specific focus of these structures.

Much of the value of these governance institutions stems from focusing on specific public good provision problems. Where concerns transcend state borders, so too must these networks. In terms of political space, their domain stretches to the confines of the issue area being addressed. These may be truly global or may only involve a very limited locality. Should an issue-specific network attempt to extend its authority beyond its issue area into domains outside its expertise, it risks losing authority as it lacks the legitimacy to operate in those domains.

This form of governance relies upon a range of combinations of sources of legitimacy to foster authority, examples including but not limited to: institutional, delegated, expertise, principled, and capacity-based
forms. Arguably the most effective of these forms is delegated authority, particularly when the authority delegated comes from sovereign states or their IGOs. Importantly, these networks typically do not rely upon coercive force to acquire compliance. These networks instead draw upon authority granted through various legitimation paths, thereby illustrating how actors, both public and private, each can lead, innovate, and participate in these issue-specific institutions as their unique sources of authority empower and constrain their activities.

Other features of these issue-specific networks include their inclusivity across social sectors. There is no set combination of representation from the three main areas of society: commercial, civil, and political. Different arrangements arise depending on the issue at hand. Recent pushes by civil society provide encouraging illustrations of issue-specific governance generally being inclusive across social sectors. Prominent civil society organizations (CSOs) like International Alert, Global Witness, and Partnership Africa Canada are bringing transnational corporations (TNCs) in the extractive industries and states into conflict governance via conflict-sensitive business practices and conflict mineral monitoring mechanisms. In such agreements civil society and commercial society actors cooperate with states to develop research and training programs necessary to set, implement, and monitor standards reducing the violence surrounding extractive industries.

These networks of affected stakeholders leave political space for organizations outside the state to participate in the decision-making, implementation, and enforcement levels of governance. This shared space necessarily means that states and IGOs are not excluded from governance, although there are instances where they might not be involved. Fundamentally, these networks are not necessarily “governance free of government” as per Rosenau, since governments often play central roles in such networks.

Norm entrepreneurs and issue-specific governance

Literature on these issue-specific networks also emphasizes that such governance institutions arise through norm entrepreneurs. These individuals or groups provide the leadership and take on the risk necessary to push governance structures towards effectively managing or providing desired public goods. In these instances, then, norm entrepreneurship refers to the means or process utilized to acquire the normatively identified end.

The classic example of an organization created by a norm entrepreneur that has acquired authority over a governance domain is the
International Committee of the Red Cross (ICRC). The ICRC began when a Swiss banker and norm entrepreneur named Henry Dunant, horrified by what he saw in a war hospital during a Franco–Austrian conflict fought in 1859, started a movement striving “to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers.” His initial efforts achieved a regional norm cascade, codified into international law in 1864 as the first Geneva Convention.

Since Dunant’s first efforts the ICRC has gone on to push successfully for additional codified wartime protections, achieving further Geneva Convention treaties and protocols. These accords empowered the ICRC to govern certain domains of international conflict, such as the protection of civilians. Articles 8 and 10 of the 1949 Conventions allow the ICRC to be named as a “protective power.” Such status empowers the ICRC to act as internationally recognized legal guardian over issues such as humanitarian aid to civilians and those no longer able to fight. This process now finds the ICRC being treated and operating as equivalent in status to IGOs.

That the ICRC often depends upon states in some capacities to function does not disqualify them from being considered an issue-specific authority. In fact, the recognition and dependence of states on the organization enhances the ICRC’s standing by means of authority delegated to it by states. This authority operates similarly to the delegation of authority to IGOs highlighted by Barnett and Finnemore.

The ICRC has been granted treaty-making capabilities by some states, and its agreements with states are considered to carry the weight of international law. ICRC staff members even enjoy diplomatic immunity and privilege in a number of countries around the world. Its stature was further confirmed by the UN on 16 October 1990 when it was given “observer status,” a position normally reserved for non-member states and intergovernmental organizations. The ICRC began purely as an archetypical NGO and norm entrepreneur movement but quickly evolved into an organization acting in authority due to its recognized moral appeals (principled legitimacy) and eventual capacity and expertise.

The capacity of issue-specific authorities

Literature on global governance already highlights the potency that issue-specific governance derives from a focused expertise and capacity. This operates in three ways: first, through the functionality of domain-specific, issue-oriented expertise; second, through their productive...
power often originating from a moral appeal; and finally, through their ability to obtain legitimacy in governing certain domains that often trouble states.

Authority via expertise is seen in the turn by governments and IGOs toward non-state actors for expert authority on specific issues as well as in governance areas where non-state actors fill voids left by states. This transition from being “an authority” to “in authority” is a complex one in both private and governmental institutions. By democratizing knowledge through inclusiveness, these networks increase their ability to recognize or reframe socially and technically complex problems and create norms and rules that effectively redress the issue at hand.

Importantly, this productive power extends beyond the provision of knowledge as input into state policy, as epistemic communities have tended to do. Issue-specific authorities, by filling governance gaps, effectively seize opportunities to form new epistemes around issue areas. By constructing and deploying policy-relevant knowledge, they redefine which stakeholders have legitimate claims and valid knowledge, thereby reshaping the institutions managing various domains. Such a process already has been identified within the capabilities of global civil society organizations, and by epistemic communities, to create new zones of authority. In this manner, nonterritorial governance structures are taking the initiative, remapping authority, and coming to play crucial governance roles in issue areas ranging from sustainable forestry to humanitarian law in times of war.

This creation of political space and the application of productive power to issue-specific networks is enabled in no small part by norm entrepreneurs. These actors propel new standards of appropriate behavior for societal actors and entities through the stages of a norm’s life cycle. From norm emergence, when a new set of behavioral standards are introduced, through a tipping point ushering a norm cascade demarcated by a critical mass of stakeholders adopting a norm, this can generate internalization of the new norm by social actors. Norm entrepreneurs play roles in persuading key actors to accept new standards. This process relies on the dynamic nature of norms and the governance structures they create and sustain. Such a normative movement is also readily identifiable in the life cycle of organizations extending from the ICRC, an issue-specific organization with comparatively heavy state involvement and dependency, to the Forest Stewardship Council (FSC), which includes states only in observer roles.

The FSC arose in response to the UN and other IGOs proving incapable of effectively governing forest management despite years of convening multiple conferences and working groups. Stepping up to
this governance challenge, the FSC created a sustainable forestry standard and monitoring mechanism to fill the void. Beginning with a working group in the early 1990s, it evolved into today’s FSC, which now sets the global sustainable forestry standard. Notably, the FSC operates without the UN or other IGO bodies taking an active role, making it the de facto global authority concerning sustainable forestry despite lacking delegation of authority from states.

The FSC demonstrates many of the advantages of issue-specific authorities. Foremost among these strengths resides their specialized expertise and the democratization of knowledge relative to many state-centric organizations. This democratization of knowledge acts to bring in previously omitted forms of local knowledge while also subjecting traditionally powerful groups to new forms of critical evaluation. The value of this process of localization is highlighted in works in this volume—most notably in Amitav Acharya’s consideration of global norms in local contexts and Brent Steele’s contribution on the importance of micropolitics. By using a more inclusive participatory structure not only do issue-specific authorities include stakeholder groups who generally are excluded from substantive positions in IGOs, but they are better able to graft global efforts onto local contexts.

In the FSC this participatory structure takes the form of a chamber system. The three Economic, Social, and Environmental chambers are each divided into North and South chambers. Following the “FSC way,” each chamber and subchamber has the same level of decision-making power as every other chamber. This gives indigenous rights NGOs, such as the National Aboriginal Forestry Association from Canada or the Asociación Interétnica de Desarrollo de la Selva Peruana from Peru, and NGOs representing global South perspectives, representation and voting power precisely equal to their northern counterparts.

Non-state actors, issue-specific authority, and conflict governance

Short-term roles

While some non-state actors are quite violent, most non-state actors base their capacity to participate in governance upon legitimacy rather than coercion. How might they come to be a dependable pillar within the conflict governance world of peace building, conflict resolution, and humanitarian interventions? Much of the answer depends on timeframes. If one looks at many of the horrific and “intractable”
conflicts in the world, such as those in Palestine, the DRC, and Somalia, the prospects are slim for such actors to play central roles in the resolution of these crises over the next decade. Instead non-state actors will augment the efforts of concerned states through their ability to monitor belligerents, create epistemes, initiate dialogue, and mobilize resources.

Short-run governance functions in conflict governance that non-state actors will play are largely those they already fulfill. These areas range from second-tier diplomacy to posts as neutral observers in post-conflict elections and third-party verifiers for conflict mineral certification mechanisms. A further example is seen in civil society organizations maintaining crucial roles in the monitoring of genocide, documenting evidence that can be used in war crime tribunals such as the International Criminal Court.\textsuperscript{49} This role of advocate and monitor has garnered much academic attention, notably in the works of Mary Kaldor.\textsuperscript{50} She views this form of civil society involvement in international humanitarian law regimes as the most hopeful component of peace and security governance.

Beyond functional roles within human security, non-state actors’ most vital role comes through their use of productive power to affect or create norms, epistemes, and new governance structures. Perhaps the most successful global civil society-driven effort was the 1990s push to ban landmines. There, global civil society shifted the dominant discourse from disarmament towards a focus on humanitarianism. This move brought the discussion of landmines into an area of discursive strength for the NGOs promoting the prohibition of landmines.\textsuperscript{51} Such crucial use of productive power is also evident in conflict mineral governance, summarized later. There NGOs have repeatedly forced conflict mineral governance onto the agendas of IGOs such as the United Nations.\textsuperscript{52}

Nevertheless, the current function of non-state actors in human rights and security governance undoubtedly remains inferior and dependent upon states and their capacity to monopolize violence. That most contemporary norm entrepreneur movements in the area of human security focus their attention on trying to change IGO structures makes this situation clear. Further, Kaldor denotes the experience of European CSOs trying to staunch the wave of violence at the onset of the 1992–95 Bosnian war as fundamentally flawed due to the mobilization of civil society independent of a corresponding mobilization of any state protection.\textsuperscript{53} Security is a necessary precondition for non-state actors to participate effectively.

Less discussed in global governance literature, yet often just as vital to the prospects of conflict resolution and peace building, is the role of
commercial society. These actors are generally noted for their detrimental roles in conflicts, particularly extractive industries’ efforts procuring conflict minerals in the DRC or oil from Nigeria. Nevertheless, market-oriented actors already carry out constructive roles in the provision of public security. The role of learning networks in the identification and dissemination of best practices garners most attention in extant literature. Ruggie describes best practice epistemic communities like the Global Compact as venues in which transparent research can be sources of dialogue, deliberation, and learning about how industries can avoid practices engendering violence and other social ills.54

At local levels, commercial society entities perform essential functions in peace building. As detailed by Banfield et al.,55 and Tripathi and Gunduz,56 the role of local business in conflict resolution is often decisive. Businesses in conflict areas frequently make decisions concerning economic drivers of conflict such as investment, hiring, and production that either inhibit or enable peace agreements. Commercial society also maintains vital positions as “peace entrepreneurs” within weapons-collection programs and the creation of early-warning community-level security arrangements. They also exert vital influence within peace agreements through their indirect roles including supporting shuttle diplomacy, off-the-record meetings, and participating in multi-sector dialogue.57

The years leading up to South Africa’s 1994 transition ending the apartheid government offer an encouraging illustration of these dynamics. In the 1980s a group of business leaders called the Consultative Business Movement (CBM) initiated a process of consultation and relationship building with key black political players like the African National Congress (ANC). These forays allowed dominant black South African political actors to overcome their deeply embedded distrust of the ruling National Party (NP) to institute an inclusive formal peace process. Major impasses throughout the national peace accord negotiations were often broken when the CBM capitalized on the “passive approval” of the major political parties to let the CBM, alongside the South African Council of Churches, initiate international mediation. The sustained credibility of the CBM as a nonpartisan organization throughout the peace process led the NP and ANC to request that the CBM manage core arrangements of the multiparty constitutional negotiations that followed.58

South Africa’s post-1994 democratization similarly saw significant mediation tasks carried out by its private sector. One such body at the center of this effort was the National Business Initiative (NBI), which formed when the CBM merged together with South Africa’s Urban
Foundation, a domestic socioeconomic development NGO. The NBI then went on to play the non-state role in a public policy network oriented towards the development of South Africa’s economy and democracy.\(^{59}\)

For most industries, especially those exclusively operating at local levels, peace is not only in their interest but is a necessary condition for them to thrive. The loss of employees, access to capital and markets, together with damaged infrastructures, opportunity costs, and increased costs associated with increased risk make many commercial entities acutely aware of the consequences of violence.\(^ {60}\) This awareness may be even more severe for local businesses lacking the ability to diversify risks across borders or abandon risky locations.

Commercial society’s motivations include considerations beyond profit. The successful role of business in peace mediation processes also exhibits a moral component, whereby economic interests are complemented by civil or religious understandings of a civic responsibility for business leaders. Such normative values spring both from localized understanding and values, and from efforts catalyzed by external actors.\(^ {61}\)

The commercial sector also brings significant resources and capabilities to governance structures. From local operations to global TNCs, businesses often have the monetary resources necessary to propel governance forward, but their contribution runs much deeper. They must often think beyond the borders of their headquarters. TNCs in particular operate on a global level, and therefore often remain very aware of the issues across borders. While remaining mindful of borders, TNCs have developed effective and efficient methods for moving across them. “[T]he sheer fact that (commercial society) has global reach and capacity, and that it is capable of making and implementing decisions at a pace that neither governments nor international agencies can match,”\(^ {62}\) indicates that issue-specific authorities involving commercial society, civil society, and governments could develop response mechanisms more effectively by than governments and civil society acting alone.

The roles of various governance actors in issue-specific forms of authority are exemplified in promising programs such as the International Conference on the Great Lakes Region (ICGLR) Certification Mechanism for Conflict-prone Minerals. Here we see how epistemic communities develop. NGOs, corporations, and states continue to work together to create a certification mechanism better than the Kimberley Process Certification Scheme for rough diamonds. Following a pattern emphasized by Virginia Haufler in the formation of the UN Global Compact, NGOs first set the agenda by drawing sustained
attention to the need to improve the behavior of extractive industries. They then assisted the evolution of authority by providing expertise during the formation of rules for the monitoring mechanism. Partnership Africa Canada was particularly central throughout planning, researching, and creating recommendations which ICGLR member states adopted. Most encouragingly, this conflict mineral governance scheme explicitly sought to learn from the mistakes and successes of predecessor mineral tracking mechanisms, concluding it needed to increase the role of corporations in monitoring while NGOs, rather than governments, act as third-party auditors.

Long-term roles

Issue-specific governance networks hold the most promise for those concerned with peace and reducing armed violence over the next century, rather than over the next decade. Quite simply, this is due to their capacity to overcome gaps between coercive power and authority in governance structures. Building on Weber’s insight, fostering dependence upon authority rather than political violence:

- makes coercive violence less essential for enforcement mechanisms;
- gives globally minded actors greater capacity to overcome state-based territorial myopia; and
- weakens sovereignty’s role as a driver of greed- and grievance-based violence.

The long-run elevation of the role of issue-specific private authorities in global governance, by definition, necessarily implies the formulation of myriad less state-centric authorities governing global issues. This dynamic likely promises pacifying benefits for global society. It has been noted that one of the drivers of issue-specific governance, global civil society, may bolster the ability of citizens to influence the decisions affecting their lives, by offering platforms for participation in governance beyond the state. In doing so, global civil society facilitates the expansion of governance based upon consent while also enabling individuals and groups to escape the territorially prioritized responsibilities constraining their respective states. We suggest that this is true of all issue-specific authorities. These organizations can gain legitimacy through effectiveness, inclusiveness, and transparency, or by adherence to widely admired values.

Likewise, organizations originally dependent upon expertise or capacity, such as the Internet Corporation for Assigned Names and
Numbers (ICANN), can also earn principled legitimacy over time. This nonprofit took over many of the internet management tasks formerly undertaken by the US government and now maintains the rules and protocols sustaining the internet’s stability. Often criticized during its first decade for being “only” an NGO comprising private corporations and for the lack of involvement of state representatives, the organization has survived such challenges based upon principled legitimacy. Through openness, an expanded role for stakeholders within its bureaucracy, and particularly effectiveness, ICANN bolstered its claims to authority and continues to organize one of the global economy’s most essential sectors.

Increasing the world’s cooperative power lessens our need for reliance upon coercive forms. Political science and political economy literature each offer illustrations of the role legitimacy plays in lessening reliance on coercive force. Studies of natural resource sustainability observe that when stakeholders are engaged in the construction and maintenance of rules shaping natural resource usage they are significantly less inclined to trespass against those structures. Yet, when those same entities are considered illegitimate by local resource users, governance bodies more often must resort to compulsion backed by coercive force.

Similar findings arise in evaluations of tax collection in India, where the tax culture is revealed to be distinctly “anti-tax” in orientation. The common conceptualization of India’s tax system as corrupt and illegitimate leads Indian citizens voluntarily to pay their income taxes less than 50 percent of the time without the state using audits or penal mechanisms. In sum, the illegitimacy of India’s corrupt tax system forces the state to resort to coercive force and inefficient collection activities more than would otherwise be necessary.

Increasing the role of nonterritorial, issue-centric, networked governance holds direct benefits to peace and security beyond the pacifying impact of genuine authority. The transition to issue-specific governance away from governance by coercive authorities dilutes the drivers of sovereign prize conflict. Already the growth of civil society has been seen as effective in placing constraints on the exercise of state sovereignty. Further, the movement towards issue-specific authorities will lessen identity-based existential fear. Just as Westphalia initiated a process of separating the state from religion, so too can these burgeoning systems engender increased political space for culture under the state. As governance institutions narrow in scope and become more predictable and inclusive of all legitimate stakeholders, concerns that states will construct omnipotent structures favoring domestically dominant groups might weaken as marginalized groups find access and
influence via less state-centric channels on crucial issues. As transnational identities align with inherently transnational issues, “de-statization” of political identities is engendered.

These new identities are responses to existing fissures. The global CSO-led movement to ban landmines was a response to the horrors of a method of coercion that disproportionately harmed civilians. Similarly, movements to regulate conflict minerals are reactions to a lack of state or corporate responsibility to end natural resources driving some of the world’s worst conflicts.

As demonstrated by Hall in his examination of different epochs in sovereignty, revolutions in collective identity compel transformations in authority.\(^\text{73}\) Shifts from the dynastic sovereignty of the medieval era through the territorial, ruler-based sovereignty to a reliance on national citizen-based sovereignty in the contemporary Westphalian era each reflect the productive power of identity. Over the long run, then, identities tied to issue-specific networks of authority will engender new nodes of authority. In turn, this expansion of identity-authority relationship from the citizen-state relationship to accommodate stakeholder-institution relationships can render legitimacy gaps inherent in some states less threatening to marginalized groups that gain access to authority through these new channels.

### Conclusion

A chief intent of governance should be the minimization of the role of violence and fear. Yet governance gaps between coercive power and authority allow the state-centric system inadvertently to become a driver of violence. By conflating a monopoly of violence throughout a territorial area with the legitimate authority to govern myriad issues, states themselves become violently contested nodes of control that can threaten citizen access to resources or even their identity.

Authority remains a dynamic component of governance. Many observers note that current global authorities include actors beyond states and their IGOs. As the world becomes more complex and interconnected, we encounter an increasing range of empowered actors exercising enforceable authority within particular public good domains, suggesting that additional political space for these actors might enable non-state actors to augment our governance system within specific issue areas.

In particular, new nodes of authority can alleviate drivers of conflict associated with the spoils of coercive power, or cause gaps between coercive power and perceptions of authority to become less catastrophic.
due to new forms of inclusivity. Issue-specific authorities tend to encompass actors across social sectors at a variety of levels. They are only necessarily exclusive when it comes to their domain—their issue area. Moving forward states and their IGOs must augment existing trends towards participation in governance by non-state actors through these networks by opening political space and even delegating authority to them.

Notes

1 Rodney Bruce Hall and Thomas J. Biersteker, The Emergence of Private Authority in Global Governance (New York: Press Syndicate of the University of Cambridge, 2002).
13 Hall and Biersteker, The Emergence of Private Authority in Global Governance, 4–5.
15 Full consideration of the responsibility to be myopic must include the benefits to having norms of non-interference and the freedom of sovereign peoples to govern their own affairs.
26 Kymlicka, *Multicultural Citizenship*.
30 Hall and Biersteker, *The Emergence of Private Authority in Global Governance*.
32 Avant et al., *Who Governs the Globe?* 8–11.


41 Hall and Biersteker, *The Emergence of Private Authority in Global Governance*.


50 Kaldor, *Global Civil Society*.


52 Shawn Blore and Ian Smillie, “Taming the Resource Curse.”


60 Banfield et al., *Local Business, Local Peace*, 16.


64 Blore and Smillie, “Taming the Resource Curse,” 4, 34–35.
65 Kaldor, *Global Civil Society*, 110, 156–60.


Part II

Global civil society and legitimation of NGO conflict governance activities
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3 Functional differentiation and legitimate authority

Jens Bartelson

- From segmentation to functional differentiation
- Functional differentiation and the problem of legitimacy
- Re-conceptualizing legitimacy
- Conclusion

Non-state actors typically do not claim authority over portions of space, but over distinct functional domains or issue areas. Herein lies much of their appeal and advantage. As argued by French and Haywood in this volume, to the extent that territorialized authority has been a source of discord, non-state actors might be instrumental in reducing violent conflict between as well as within states. Yet some of the implications of non-state authority claims have largely been neglected.

First, to the extent that non-state actors have been successful in claiming authority within their respective domains, we should acknowledge the possibility that the international system might become encapsulated within a functionally differentiated world society. Second, the prospects of such a transition raise important questions about the legitimacy of these actors and their authority claims: what could legitimate authority possibly mean in a functionally differentiated world, and under what conditions can non-state actors be considered such within their respective domains?

The issue of legitimacy is of great importance in this context. Since non-state actors normally do not rely on coercion to attain their objectives, being perceived as legitimate within their respective domains is crucial to their ability to secure compliance. With being perceived as legitimate comes increased compliance, and with increasing compliance comes the predictability essential to the effective exercise of political authority. Yet it is reasonable to suspect that legitimacy will mean something quite different in the context of functional differentiation. In
the territorially segmented international system, the problem of legitimacy is essentially one of justifying territorial boundaries and the restrictions they pose on membership and transnational flows. Although modern democratic states supposedly derive their legitimacy from the consent of their members, their boundaries cannot be justified with reference to that constituency alone, but must take outsiders into consideration as well. The ultimate implication is that the only \textit{prima facie} legitimate \textit{demos} must comprise everyone who is subjected to \textit{some} state authority, which includes everyone who happens to inhabit the international system.\footnote{Jens Bartelson}

However, even if stretched to include all of humanity, democratic standards of legitimacy are not very helpful when assessing the legitimacy of non-state actors. Those standards of legitimacy presuppose a uniformity and continuity of subjection characteristic of a segmented political order, but when political authority is distributed across functional domains, subjection to authority becomes multiform and discontinuous in character. In that case, an individual is not subjected to political authority by virtue of his or her membership in a given political community, but subjected to different political authorities depending on his or her shifting roles and activities across time. Although this subjection largely is \textit{indirect} since it almost invariably runs through states, legitimacy becomes a question of justifying the functional scope of political authority \textit{within} different issue areas, as well as justifying the boundaries drawn \textit{between} different domains of authority. So given the nature of the authority claims raised by non-state actors, the boundary problems to which these give rise cannot be solved with reference to any pre-constituted community, bounded or unbound, but must be addressed in terms of the \textit{intrinsic limitations} of political authority. Here long-forgotten problems about the source and scope of political authority return with a vengeance, perhaps making the escape from statist conceptions of authority less easy than many of us might have wanted. However, without addressing the above problems, we will have no principled way of distinguishing authority claims made by non-state actors from mere acts of usurpation, and no non-arbitrary way of settling disputes over competence between them. In short, we will have no way to tell right from might.

These are the issues I want to engage in this chapter. I will start by elaborating the contrast between segmentation and functional differentiation. Regardless of whether we believe that the principle of segmentation trumps that of functional differentiation or conversely, I shall argue that the rise and proliferation of non-state actors compel us to take the consequences of functional differentiation seriously, and
that doing this necessitates a reconceptualization of authority and the conditions of its legitimacy. I shall then propose a way to handle this problem by suggesting that in order for an actor to be legitimate, it must be recognized as rightful by those subjected to its authority. Since being recognized as rightful is essential for non-state actors, the extent to which non-state actors achieve such recognition will in turn determine the extent to which they are successful. In order for those subjected to a given authority to recognize its rightfulness, they must be essentially free and unconstrained in so doing. This implies that any political authority that aspires to be legitimate must safeguard the liberty of those who are supposed to recognize its rightfulness, but also that those on the receiving end must be able to resist illegitimate forms of authority. It follows that the legitimacy of non-state actors ought to be judged according to how well they succeed in protecting the political liberty of those subject to their authority claims, and how well those subjected succeed in resisting different forms of domination.

From segmentation to functional differentiation

Throughout the modern period, the social fact of territorial segmentation has been the unquestioned foundation of most accounts of political authority. Already when a recognizably modern conception of sovereignty emerged towards the end of the sixteenth century, the territorial framework for its exercise was largely taken for granted by those philosophers responsible for the articulation of modern theories of sovereignty. This tendency to take territorial segmentation for granted had been greatly facilitated by the cartographical and geographical revolutions, which had bequeathed to these authors the notion that the world constituted a single spherical whole that could be subdivided into distinct portions of space through the application of simple geometrical principles and methods. Consequently, from the seventeenth century onwards, all inhabitable planetary space has gradually been appropriated and compartmentalized into distinct territorial portions, each being subjected to distinct sovereignty claims by likewise discrete authorities. With the notable exception of imperial modes of governance, most innovations in the art of government since have had to adapt to the fact that the exercise of political authority is confined to bounded portions of space by default.

While many theories of international relations still assume that the international realm is territorially segmented into states, other forms of differentiation have long been a key concern to sociologists and anthropologists. As Luhmann has pointed out in a seminal paper on
this topic, at least three forms of differentiation are theoretically possible, each of them representing a distinct stage of social evolution from the simple to the more complex. While *segmentation* implies that a society is differentiated into equal subsystems, *stratification* entails that society is differentiated into subsystems of unequal standing. *Functional differentiation*, finally, implies that a society is divided into equal subsystems defined according to the functions these systems fulfill in relation to that society as a whole. Theories of differentiation tend to assume that as societies become more complex, further differentiation becomes necessary to handle common problems. Functional differentiation is thus intimately connected to processes of modernization. Modern societies have generally moved beyond segmentation and stratification, and have become functionally differentiated largely as a consequence of an ever more fine-grained division of labor.

In a recent effort to apply the concept of differentiation to International Relations, Buzan and Albert have argued that the first two principles correspond to two familiar types of international order. The international system of territorially demarcated states represents a clear case of segmentation, since units are nominally equal and functionally similar. Since stratification entails a hierarchical relationship between units, this can be exemplified by various forms of institutionalized inequality in international relations, such as empires, hegemony and great power dominance. Thus the modern international system seems to be based on a blend of segmentation and stratification. To Buzan and Albert, the principle of functional differentiation remains to be systematically applied within International Relations theory, but the concept points to the “increasing division into legal, political, military, economic, scientific, religious, and suchlike distinct and specialized subsystems or sectors of activity, often with distinctive institutions and actors.”

This resonates well with the widespread belief that globalization has pushed the international system in the direction of a functionally differentiated world society. As argued by some theorists, such functional differentiation is the likely outcome of the de-territorialization and denationalization of political authority brought about by intensified global flows of capital, goods, people and information during the last couple of decades. As a consequence, we are witnessing the emergence of a world society tied together by a common awareness of its existence, increasingly differentiated along functional rather than territorial lines. As Kessler has summarized as the possible outcome of this transition, “globalization or the overall transformation of the state system does not only lead to an integration of markets or the
dispersion of Western ideas, but redefines the meaning and communicative reproduction processes concerning the spatial and temporal conditions of world society.”

A neglected aspect of this transition is the extent to which the art of government has been globalized, making it possible to project methods of rule previously confined to bounded societies right into the global realm. The global realm has thereby been constituted as a target of governmental activity in its own right and, as a result, most people today are subjected to the authority of actors other than states, either directly or indirectly. Rather than diminishing the role of the state, governmentalization has implied that states increasingly function as conveyor belts of functionally differentiated authority. This has had important consequences for the conditions of political liberty in the contemporary world. Not only has the globalization of governmentality paved the way for authority claims by non-state actors aspiring to fulfill similar functions as states once did, but the technologies of rule now practiced on a global scale cut deep into the lives of individuals and communities. This transition has also led to the arbitrary exercise of power by a wide range of actors other than states, leading to a net loss of liberty among those on the receiving end of new governmental tactics.

Therefore, in the present context, I think it is important to discuss the dangers of domination associated with non-state actors, and especially with those nongovernmental organizations that are not subjected to intergovernmental accountability regimes. I thus do not agree that “only a perverted sense of priority would suggest that they are the principal problem in this area.” While I certainly do not want to argue that states are unimportant in this regard, I do think that the very nature of the authority claims raised by non-state actors should compel us to reconsider the question of legitimacy. Hence, for the purposes of this chapter, it does not really matter whether the international system ultimately will be replaced with a functionally differentiated world society or not: what is more important is the extent to which functional differentiation poses a challenge to existing accounts of legitimate authority in principle and, if so, how best we can re-conceptualize legitimacy in response to these challenges. Such is the task of the next two sections.

**Functional differentiation and the problem of legitimacy**

As I noted in the introduction, expanding the sources of legitimacy to cover everyone subjected to some state authority is of little help when
it comes to assessing the legitimacy of actors with authority claims that are not territorially bounded: cosmopolitanism is the natural correlate of a world government, not of a functionally differentiated world society. Although subjection to the authority of non-state actors runs through and is mediated by states, those subjected do not form a coherent community but rather constitute a multiplicity of individuals with shifting interests and overlapping allegiances. This means that we can hardly derive a coherent account of legitimacy from any corresponding conception of community, whether bounded or unbound. Theories of global governance sometimes reflect a vague awareness of this fact when they refer to those subjected to the authority of global governance institutions in terms that carry few if any communitarian connotations, such as “stakeholders.” However, what does the widespread usage of this term imply for the problem of legitimacy?

At stake here is not the legitimacy of this or that actor, but rather what legitimate authority might mean in a functionally differentiated world. Let us recall that functional differentiation gives rise to two new boundary problems: the first concerns the conditions under which the exercise of political authority within a given issue area can be considered legitimate, the second concerns under what conditions the differentiation between issue areas can be considered legitimate. While these questions are analytically distinct, they tend to blend in the literature. Since it is tempting to answer the first question by arguing that the exercise of political authority within a given issue area is legitimate when it commands the consent or acceptance of the “relevant stakeholders,” this of course begs the question of who is to count as a “relevant stakeholder.”

Typically the answer to this question will bring an answer to the second one, by implying that issue areas can be distinguished in such a way that it becomes possible to gauge the “relevance” of any given stakeholder, and thus decide who is in and who is out when it comes to rights of participation and contestation. Yet this presupposes the possibility of authoritative judgments on both these scores, for how otherwise to delineate the scope and domain of functionally differentiated authority by deciding who is a relevant stakeholder and who is not? Since there is no sovereign authority around that could make these decisions, the obvious way out is to focus on mechanisms of self-legitimation by regarding authority as coextensive with functional domains and hence specific to each issue area. According to this line of argument, since what constitutes legitimate authority within one functional domain is irrelevant within another, no actor has any incentive to transgress the boundaries between domains or issue areas, as that
merely would render the actor in question impotent. The boundaries between issue areas thus become self-legitimating, and so become the exercise of political authority within each domain. Yet such accounts of self-legitimation presuppose that no such domain—not even the political one—is allowed to become dominant by determining the scope and boundaries of other functional domains in an arbitrary way. However, in the absence of any such pre-constituted hierarchical order between domains or subsystems, both boundary problems will remain unresolved. In practice, though, they are commonly resolved through the framing of certain issues that bring the perceptions and interests of different stakeholders in line with those of the framer. However, from a principled perspective, the practice of framing is an arbitrary way of demarcating the scope of authority, contingent upon successful rhetoric rather than public reason.

Given these initial conditions, non-state actors face the problem of obtaining legitimacy of their own accord, and doing so in the absence of any pre-constituted community or any universally accepted standards of governance. Thus non-state actors have to create the pre-conditions of allegiance among those on the receiving end of their authority claims by purporting to cater to their needs and desires better than any other available arrangement. This demand for output legitimacy is frequently supplemented with the requirement that people who are on the receiving end of the decisions of those actors should have a say in their making, but since a global demos is deemed out of reach, scholars have opted for surrogate sources such as transparency and accountability. Yet for transparency and accountability to work as effective constraints on the exercise of authority, there has to be a public sphere with enough freedom for unconstrained opinions to form, and for those subjected to hold actors responsible. While these preconditions might be present in the best-functioning domestic democracies, they are in short supply elsewhere. Even granted that there exists a transnational public sphere, and given that public opinion nowadays extends far beyond state boundaries, there is no political authority with enough clout to safeguard those rights and liberties that would make transparency and accountability viable standards of democratic governance outside bounded political communities.

Partially in response to this lack of democratic infrastructure at the global level, a number of authors have suggested that a global civil society has an important role to play, much in the same way as domestic civil societies are believed to have done during earlier transitions from authoritarian forms of rule to more democratic ones. Thus, according to Scholte, “civil society associations do indeed offer
significant possibilities to increase democratic accountability in global regulatory arrangements.” Such a civil society “might be conceived as a political space where voluntary associations seek, from outside political parties, to shape the rules that govern one or the other aspect of social life.”\textsuperscript{19} Apart from contributing to increased accountability, a global civil society is also believed to foster democratic values more indirectly, by allowing a broad participation of nongovernmental agencies across national boundaries, “with the deliberate aim of drawing the world together in new ways.”\textsuperscript{20}

However, as I have argued elsewhere, the concept of a global civil society is little but an offspring of the same globalized art of government that now stands in sore need of justification. It is therefore hard to see how global civil society ever could constitute a bridle on the exercise of power by non-state actors, since it is part of the problem rather than the solution.\textsuperscript{21} Thus, to the extent that political authority has become increasingly territorially unbound, many of our most cherished standards of political legitimacy have become irrelevant in the process. Since the authority claims raised by non-state actors are not directed towards bounded groups of people, consent and acceptance are no longer viable benchmarks of legitimacy. Since there is no overarching authority there to safeguard the rights of those who are subjected to the authority of non-state actors, standards of transparency and accountability are difficult to apply in a meaningful way, since to whom these actors should be transparent and accountable cannot be decided without inviting infinite regress.\textsuperscript{22} Finally, the concept of a global civil society might merely provide a convenient justification for, rather than an effective constraint on, the exercise of authority by non-state agents in the present. In sum, our standard accounts of legitimate authority become either inapplicable or insufficient under conditions of functional differentiation.

\textbf{Re-conceptualizing legitimacy}

What, then, would legitimate authority look like in a functionally differentiated world, and what would it take for non-state actors to become legitimate authorities in that world? Much of what has been said above could be taken to imply that all normative concerns have become redundant, and that the only thing that counts is whether non-state actors can command enough allegiance by delivering the goods they promise to deliver, and which other actors supposedly have failed to deliver. However, at this point it is important to bear in mind that a focus on output legitimacy does not solve the boundary problems that
ensue from the very nature of their authority claims, and finding a
solution to these is essential if non-state actors are going to obtain the
legitimacy so essential to their ability to make a difference.

The first challenge is conceptual in character. For the concept of
legitimacy to become applicable under conditions of functional differ-
etiation, it is necessary to strip it of those connotations that are rem-
nants of a territorially segmented world and recover other layers of
meaning of more relevance to the present. As already mentioned, when
used in a recognizably modern sense, the concept of legitimacy pre-
supposes the existence of a bounded community, so whenever this
concept is used uncritically in the context of global governance,
domestic analogies are likely to sneak in through the back door. For
example, as Bernstein has argued, “legitimacy always rests on shared
acceptance of rules and rule by affected groups, who constitute the
community that grants legitimacy and on the justificatory grounds they
recognize. The coherence and incoherence of that community matters,
since incoherence or strong normative contestation among groups within
a legitimating community makes establishing clear requirements for
legitimacy difficult.” 23 This means that a community has to be boun-
ded and homogeneous, and exist independently of political authority to
provide the latter with legitimacy, but those requirements are not fulfilled
under conditions of functional differentiation, when authority is divi-
ded along functional lines and subjection varies in a kaleidoscopic way
according to the issues at hand. Thus the conceptual challenge is to
rede
fi
ne this concept in such a way that it allows us to understand how
legitimacy might constitute an intrinsic limit to the successful exercise
of political authority. In other words, we must find a way of accounting
for how actors claiming authority within a given domain can create
and uphold the preconditions of their own legitimacy, as well as under
what conditions people on the receiving end might successfully resist
such claims.

From a broadly constructivist viewpoint, I shall take the legitimacy
of political actors to depend on their being recognized as rightful by
those subjected to their authority. 24 Thus no political actor can be
described as legitimate if it is not recognized as rightful by those sub-
icted to its authority, and whether such endorsement will be forth-
coming or not in turn depends on the social norms prevailing among
those subjected. From this perspective, it makes little sense to maintain
the distinction between sociological and normative accounts of legiti-
macy. Normative and sociological conceptions of political legitimacy
ought rather to be understood as interwoven, insofar as different nor-
mative standards of legitimacy provide the conceptual resources by
means of which actors justify their own authority claims by trying to align them with prevalent norms in order to gain social endorsement from the relevant audiences. From this it follows that a systematic account of legitimacy must stipulate the basic conditions under which a given actor can be recognized as rightful by obtaining such endorsement, the relevant audience consisting of those who happen to be on the receiving end of a given authority claim at any given point in time. This further entails inquiring into the conditions under which political authority can be resisted, since resistance is crucial to the possibility of withholding recognition and endorsement. In the rest of this section, I shall elaborate briefly on what I take to be the constitutive features of legitimate authority in this regard.

First, I think that some important clues to the preconditions of legitimacy can be found in the republican tradition of political thought. Since republican thought emerged in a context that bears some interesting resemblances to our own predicament, I think some of its insights can be applied to contemporary global problems as well. Republican political thought evolved well before political authority had been territorially demarcated, and in an historical context in which the civil liberties of citizens were under constant threat by rival authority claims raised by pope and emperor, as well as by frequent acts of usurpation by local rulers. Early-modern republican thought was concerned with protecting the liberty of those exposed to the threat of having their rights violated or usurped by actors that recognized neither any inner nor any outer limits to the scope of their authority claims.

As Skinner and Pettit have shown, the republican conception of liberty is neither a matter of non-interference nor a question of self-mastery. Republican theorists did not presuppose the existence of bounded communities, but were rather concerned with the possibilities of contestation and participation understood in terms of freedom from domination. As Deudney has argued, security from political violence is the “minimum vital task of all primary political associations, and achieving security requires restraint of the application of violent power on individual bodies.” However, the category of domination can certainly be defined to cover more instances than political violence, and doing this has been a major accomplishment in the recent revival of republicanism in political theory. In republican terms, domination occurs whenever an offer is made that you cannot refuse by an identifiable agent. This implies that an agent dominates another to the extent that he or she is able to interfere on an arbitrary basis with the range of options available to the other, or with the payoffs that result from the choices available.
The sheer awareness of the possibility of arbitrary interference is psychologically inhibiting, reducing people to dupes of the dominant values or institutions in whose name arbitrary power is being exercised. Domination is thus a primitive but effective way of sustaining political order, simply because it destroys the capacity to think and act independently among those exposed to its whims. In a social context in which domination prevails, people are likely to recognize political authority in the same way as slaves recognize their masters. They will bow to authority simply because doing otherwise would expose them to the risk of further degradation and deprivation at the hands of the powerful. So if non-state actors aspire to become legitimate within their respective domains, such domination is precisely what they should avoid.

What, then, would characterize a non-arbitrary exercise of authority under conditions of functional differentiation? It is clear that although formal requirements of legality long have been regarded as necessary requirements of non-arbitrariness in a domestic context, these requirements are hard to apply in a functionally differentiated world for want of a common constitutional structure. While something equivalent to such a structure is operative within some functional domains and issue areas, the overall legal structure of the global realm is still torn between monist and pluralist legal imperatives and thus of little help in the present context. Since existing constitutional arrangements are specific to the legal domain, they cannot be expected to provide a solution to the boundary issues that are likely to arise as a result of competing authority claims between that domain and others, let alone help settle the questions of the proper scope of authority within distinct functional domains. Thus appeals to the rule of law might serve to justify the further expansion of authority claims, rather than putting an effective bridle on them.

Another way to check the arbitrariness of power would be to demand that the interests of those subjected should be taken into consideration. Thus, according to Pettit, a political authority should be forced to track the common and avowable interests of the citizens in order to avoid becoming an arbitrary sort of power. The trouble with this requirement is that it forces us back to square one with respect to the question of who should be regarded as subjected to authority. In this case, the question of who is subjected ought to be determined in a way that is itself non-arbitrary—that is, with reference to the interests of those subjected. In order to circumvent this difficulty, I would like to suggest that we should require of political actors—state and non-state alike—that they recognize agents as bearers of rights, and create and uphold the social preconditions in which agents are free to recognize
them as rightful in return. From this point of view, a political authority is non-arbitrary and therefore legitimate only to the extent that it respects the right to contest the rightfulness of its claims among those subjected. As Pettit has formulated this requirement, “it must always be possible for people … to contest the assumption that the guiding interests and ideas really are shared and, if the challenge proves sustainable, to alter the pattern of state activity.”

It follows that no political authority can be characterized as rightful if it fails to sustain the basic preconditions for being recognized as such by those subjected to it, since contestability presupposes that those subjected are free to withhold recognition without fear of punishment or retribution. Thus conceived, liberty might be understood as a condition of possible legitimacy, since an act of social recognition presupposes that agents are free in the above sense in order to be meaningful.

Thus, in order for non-state actors to be recognized as rightful, they must first and foremost protect the political liberty of those subjected to their authority. Since who is to count as subjected in each particular situation cannot be determined other than factually, it follows that the protection of liberty ought to follow the scope of authority if the ideal self-legitimation through self-restraint is to be viable in practice. Since it takes political authority to protect those liberties that are necessary to legitimacy to the same extent that it takes free agents to recognize political authority as rightful, the relationship between political authority and legitimacy is one of co-constitution. It would follow that non-state actors have an important mission to fulfill by contributing to the creation of political associations wider than those comprising the relevant stakeholders and those immediately affected by their decisions. Doing this can be expected to increase both the legitimacy and the authority of non-state actors, while failing to accomplish this is likely to undermine both.

This brings us to my second point, which concerns the possible sources of resistance under conditions of functional differentiation, and thus to another aspect of liberty: we have to bear in mind that liberty is not only a shield, but also a sword. Thus understood, liberty is not only a condition of possible legitimacy, but also a means of resistance against those authority claims that fail on the above score. Here I think that theories of governmentality provide important clues to the conditions of resistance, but that their critical implications have to be adopted to fit a context in which governmentality has been globalized. As Patton has argued, the analysis of governmentalities “shows not only how different conceptions of the purposes, methods, and objects of government have succeeded one another in the European tradition, but also
how these concepts affect contemporary ways of understanding the limits and the legitimacy of the exercise of state power.”35 In contrast to the republican view of domination and liberty as principally opposed, this view finds some additional support in some later remarks by Foucault, according to which power and freedom are mutually constitutive: “when one defines the exercise of power as a mode of action upon the actions of others, when one characterizes these actions by the government of men by other men … one includes an important element: freedom. Power is exercised only over free subjects, and only insofar as they are free.”36 This means that all authority claims must face an intrinsic limit to compliance constituted by freedom, and as Foucault goes on to elaborate on the conditions of resistance, if “at the heart of power relations and as a permanent condition of their existence there is an insubordination and a certain essential obstinacy on the part of the principles of freedom, then there is no relationship of power without the means of escape or possible flight.”37 Yet if freedom and resistance always are integral to the exercise of power, it would follow that “resistance to existing forms of government must find support in alternative rationalities of government that are also available in the prevailing political culture.”38 In the present context, this means that in order for the withholding of recognition to be a successful strategy of resistance, it has to draw upon normative frameworks already available to those subjected to illegitimate forms of authority.

**Conclusion**

However, what sources of resistance are available in a functionally differentiated world? As we have seen in this chapter, democratic standards of legitimacy lose much of their emancipatory potential under conditions of functional differentiation, and are today either instead twisted into technocratic justifications of global governance institutions, or aligned with nationalist resentment and reactions against the former. Another seemingly potent source of resistance in the contemporary world is provided by pleas for global justice. There is a widespread belief that many non-state actors are complicit in creating increased inequalities, and there is a vast literature advocating different forms of global distributive justice to amend this situation.39 However, since global justice arguably would take global institutions sufficiently strong to bring it about, its proponents might get something other than they have wished for, such as an increased centralization of authority on a global scale.40 Thus, in sum, since standards of democracy and distributive justice are premised on segmented and centralized
authority, resistance on these grounds is in constant danger of being hijacked by the very targets of resistance for the purpose of bolstering their own authority claims. Much the same goes for other universalistic normative proposals, since they are vulnerable to the objection that they are but imperial ideologies in disguise that ultimately serve to justify further hegemonic domination. So perhaps successful resistance against authority claims made by non-state actors will have to be based on notions of human association that defy territorial segmentation and elide the forms of subjection associated with functional differentiation. A likely source of such notions can perhaps be found in a revival of those forms of political life that previously have made the imposition of political authority all but impossible on the fringes of the modern international system.

Notes

1 I would like to thank Eamon Aloya, Rodney Bruce Hall, Christer Jönsson, Oliver Kessler and Anders Uhlin for their valuable comments on earlier drafts of this chapter.

2 I use the admittedly unspecific shorthand “non-state” actors to capture the implications of non-territorial authority claims, yet I certainly do not mean to imply that all non-state actors actually do exercise political authority. In the present context, I take political authority to imply a successful claim to perform some kind of regulatory function within a given issue area. For a useful discussion, see Steven Bernstein, “When is Non-State Global Governance Really Governance?” Utah Law Review 91, no. 1 (2010): 91–114.


16 See for example Terry MacDonald, Global Stakeholder Democracy: Power and Representation Beyond Liberal States (Oxford: Oxford University Press, 2008).


30 Pettit, Republicanism, 52–53.


34 Pettit, Republicanism, 63.


37 Michel Foucault, “Subject and Power,” 794.

38 Patton, “Foucault and Normative Political Philosophy,” 215.

39 Charles Jones, Global Justice: Defending Cosmopolitanism (Oxford: Oxford University Press, 1999); Kok-Chor Tan, Justice without Borders:

For a sustained critique along these lines, see R.B.J. Walker, *After the Globe, Before the World* (New York: Routledge, 2010).

4 War, peace and civil society
Can non-state actors stop intra-state violence?

Ronnie D. Lipschutz

- Civil society in liberal states
- Can civil society be “global”?
- NSAs, “state building,” and intercommunal violence
- What is to be done?
- Conclusion

Can private non-state entities intervene successfully in violence-torn societies to (re)construct a more peaceful social order? Does the premise of “bringing peace” to peoples ravaged by intra-state war actually rest on the “end to war”? Can nongovernmental organizations (NGOs) tasked with the mission of building civil societies in such places do so without infusing forms of liberal violence into the reconstructed societies? Given the classical (Hobbesian) understanding of the sovereign’s use of threats and fears to maintain domestic order, can private groups lacking a state’s policing powers mobilize (or receive) the recognized authority that French and Haywood believe is necessary for them to act legitimately in “conflict governance”?

The burden of this chapter is to examine, in particular, the relationship between non-state actors (NSAs) in civil society and the “state,” and the extent to which the former are autonomous from the latter. If such autonomy is illusory, then NSAs’ efforts to intervene in and end intrastate conflict cannot be regarded as “non-state.” Indeed, insofar as the activities of NSAs are directed toward instantiation of the institutions and practices of political and economic liberalism in war-torn societies, for effect they rely on what might be called the “liberalism of fear” (or “liberalism as fear”), the constant threat of incipient disorder as necessary to the maintenance of social order and the need to instill fear and discipline in the polity in order to maintain that order. It is the state that, on the one hand, can threaten violence against those who disrupt the social order on which its legitimate authority is based...
and, on the other, create the conditions under which civil society can develop and thrive. Lacking such capabilities, NSAs may hold carrots but cannot deploy sticks (or they would become simply another local militia). That stick is usually held by an entity with state-like characteristics, if not a state. In this chapter, I argue that notwithstanding the seeming success of some NSAs in brokering peace agreements among groups in conflict, it is structurally impossible for civil society to displace the state in establishing a durable and meaningful peace in post-war societies. More to the point, the operations of such NSAs must be regarded as intrinsic to transnational governmentality, that is, the extension of government into and over post-conFLICT societies, of which NSAs are a part and in which they play a role.

Over the past 25 years, “civil society” has come to be regarded as a foundational building block of liberal, democratic societies, offering the public space in which citizens can freely associate, engage in civic projects and exercise civic virtue and, where appropriate, challenge the institutionalized structures and practices of domestic politics. The “freedom of action” of civil society, especially against state authorities, was lionized during the 1980s in the Soviet bloc, in new democracies across the global South during the 1990s and, most recently, during the “Arab Spring” (which has taken something of a violent turn in Syria). Yet, there is also a dark side to civil society, one that is rarely noted except by those who caution that not all of its agents are necessarily “progressive” or peace loving. By the same token, before simply regarding nongovernmental organizations as appropriate agents of peace building and peacemaking, we ought first to analyze more carefully the role of civil society in the constitution of so-called democratic, liberal societies and better understand its relationship to the state. Civil society and NGOs are as likely to be agents of violence, both instrumental and epistemic as they are advocates of peace, and the role that they play in sustaining peace in liberal societies is not always as straightforward as is often claimed. We may discover that “Things are seldom what they seem, Skim milk masquerades as cream.”

I begin this chapter by interrogating the concept and practices of global civil society and offering a somewhat contrary view of the role of civil society in liberalism. The general understanding of political theorists is that civil society requires a robust state in order to flourish; absent the commitment of Leviathan to “keep the peace” through the threat of punishment, there is no incentive to organize collectively. Under the sovereign’s umbrella, however, liberal civil society comes into being with a dual purpose: first, to provide shared (private) goods among group members and, second, to police and discipline group members
through peer pressure and social regulation. In other words, civil society shares with the state the task of keeping order through mechanisms of (largely) epistemic, rather than direct, power and violence.

I then turn to the problematic of “global” civil society under contemporary conditions of globalized economic liberalism, reflected in the diffusion of capitalist relations throughout the world. In the absence of a world sovereign threatening punishment of those who refuse to abide by the liberal norms and practices of appropriate civil behavior, is a global civil society even possible? While there may be an incipient world state in the making, with the rise of state-like authorities and the hybridization of public and private administration, existing centers of coercive and social power remain embedded in national states. This means that the construction of politically liberal global orders, necessary to counteract the anarchic tendencies of global economic liberalism, must emerge within and out of national institutional contexts. Hence, missions of peace making tend to reflect interventions by liberal states, acting collectively and often through the offices of seemingly autonomous transnational NSAs, in conflicted societies.

As suggested above, such peacemaking is best understood through the lens of governmentality, which connotes a system of “government” or regulation that incorporates states, NSAs and a panoply of other groups and entities.11 The third part of the chapter develops this point and the growing role of market mechanisms in the governmental project. The paradox here is that efforts to broaden and deepen global regulatory systems through international regimes have stalled as national governments find it difficult to come to agreement on concrete political actions. By contrast, proffering market-based responses to complex problems appears to sidestep contentious interstate politics (although it does not really do so). The apotheosis of such a market-based approach to politics is found, of course, in the United States, although the European Union’s effort to end the so-called euro crisis has also exhibited similar methods.

In the fourth part of the chapter, and building on my earlier arguments, I examine how NSAs, notionally acting to support peace-making and state making projects, also play a role in constructing the conditions of epistemic violence required for successful political liberalism. The key point here is that the individualism at the center of political and economic liberalism facilitates the pursuit of self-interest at the cost of social well-being; as a rule, the state punishes, or threatens, individuals who stray from social norms and the law, rather than groups or collectives. Hence, civil society organizations play the role of developing the civil associations through which peer pressure can
operate and, in so doing, help to create and support the liberalism of fear, especially through threats of loss of property and life from a failure to hew to those norms.

Civil society in liberal states

I will not, in this chapter, provide a detailed theory or genealogy of either civil society or “nongovernmental organizations.” Strictly speaking, the two are not the same but, for my purposes, they can be collapsed into each other, inasmuch as civic associations are regarded as being outside of the state. Under the civil society rubric, I also include the business sector, associations as well as corporations, both of which are increasingly engaged in political activism and “corporate social responsibility” (CSR). As we shall see, bringing in economic actors is not as heterodox a move as it might seem, for two reasons. “Civil society” is commonly regarded as being outside both state and market—that is, it is neither part of the organizational framework of the state nor does it have, as its raison d’être, exchange, profit and accumulation. Moreover, as I shall argue below, the market has become an important channel or mechanism through which political policies are being undertaken by states. In the first instance, corporations find that their social license to operate requires provision of various social resources to communities and their residents. CSR notionally represents a corporation’s commitment to social obligations, such as human rights and environmental protection, neither of which can be considered fundamental to the conduct of business. Given these activities, however, it makes sense that businesses be regarded as being “in” civil society. However, as I shall argue, below, the growing hybridization of public with private activities and responsibilities suggests that the divisions between state, economy and civil society have become increasingly blurred and, not infrequently, almost meaningless. Not only are agencies of the state colonizing civil society, in the guise of seemingly autonomous NSAs, but the converse is taking place, too: private organizations are seeping into the state.

Civil society, NGOs and other NSAs play another, more fundamental role in the affairs of both state and markets: social reproduction, regulation and discipline. To act effectively as an NSA, an organization must survive, and survival requires funds to support payrolls, operations and projects. As a general rule, those NSAs that seek radical change may find reliable sources of revenue difficult to come by (which is why such groups sometimes find it necessary to engage in illegal activities and criminal enterprises, such as drug-running, hacking and
kidnapping). As a result, successful NSAs cannot afford to stray too far from the relatively restricted path of reform, appealing to funders’ sense of social improvement rather than transformation. Their projects serve mostly to instantiate relatively conventional approaches to social problems—education and training, good government, free markets—which do not destabilize the social order. Thus, NSAs are regulated to behave properly by the constraints implicit in operating in a liberal environment. At the same time, their projects are organized in such a way as to discipline those who are their subjects. Failure to follow the rules could lead to denial of project benefits.

The state, by itself, is hard put to deploy the coercive and institutional power necessary to discipline and order society; even in tightly regimented police states, the maintenance of social order relies on a high degree of acquiescence and even collaboration by the majority of the population. In our notionally democratic, liberal states, reproduction of the social order is even more dependent on “right behavior” and self-discipline by citizens and residents. Many will discipline themselves more or less by habit (“habitus” in Pierre Bourdieu’s terms), treat deviations from the norm as troubling if not wholly unacceptable, but the “free” individual cannot always be relied on. Peer pressure through civil society groups and organizations can provide the means whereby wayward individuals are brought into line. Civil society, in other words, is less a realm apart from the state than an active handmaid in helping to keep law and order. In this respect, whether civil society is an agent of social order or social violence is contingent and contextual, not given.

To get along, civil society groups must go along with the dominant (and hegemonic) tendencies, norms and practices of their home societies. As indicated by the growing number of public funders and private foundations that require clients to attest that they are “terrorist-free workplaces” as well as indictments filed against individuals who have provided legal advice to putative terrorists, NGOs are expected to collaborate with the state in vetting their staff, supporters and fellow travelers for dangerous tendencies. The result is that many, if not most, NSAs can be relied on to follow and reproduce the disciplinary stric-tures, beliefs and practices that organize and structure the society around them.

Now, is there anything necessarily wrong or maleficent about such behavior or discipline? After all, an NGO that loses its funding is also in danger of losing staff, operations and mission, undermining whatever causes or campaigns it is managing or supporting, but it is even more important that foreign NGOs operating in host countries are
expected to teach and propagate “civil behavior” and set an example for those who are the object of NGO activities. In this process, NGOs are likely to reproduce the social practices and organizational norms of their home societies, however much these might disrupt or undermine the host society. Indeed, it is entirely possible that the well-meant activities and interventions of foreign NSAs lead to further inter-communal violence. The liberalism of fear might not be sufficient to terrorize host populations into liberal order. I return to this matter in the fourth section of this chapter.

Can civil society be “global”?

Inasmuch as civil society and the liberal state appear in a mutually constitutive relationship—you can’t have one without the other—we face a problem. In the absence of a global state—and few would argue that such an institution exists—how can there exist a “global civil society”? One solution to this dilemma is to suggest that there does exist something like a world state, albeit not as a relatively distinct public entity such as that we associate with “really existing states.” To delve into the process of modern state formation and its relationship to capitalism and the market would take us far afield from the topic in hand, but it is the case that recognizably modern capitalist markets probably appeared before the modern nation-state (especially if we date sovereign state from Westphalia)—at a minimum, the two were co-constitutive. Certainly, prior to the mid-to-late seventeenth century, any distinction between public and private or state and market would have been difficult to discern. Under feudalism, the distinctions did not exist as we understand it today; under early capitalism, there were intense struggles across Europe among sovereigns, churches and societies to prevent or establish the realms of “public” and “private.” Under modern conditions, this division is the fiction that makes market society possible. It is not altogether surprising that a “global market” might precede—and, indeed, help to constitute—a global state.

Over the past 30 years, a great deal of ink has been spent over the status of state sovereignty and its possible diminution by various transnational forces and phenomena. In the 1970s, this process was called “transnationalism” and “interdependence.” By the 1990s, it had become “globalization” and even “the end of the nation-state.” Events over the past decade have demonstrated with fair certainty that the nation-state is not dead, although its relationship to the myriad other transnational and global actors and entities remains unclear. I will not repeat here the multifarious arguments made on all sides of
this debate, except to note that very few shed much light on the many-layered social cartography that is emerging across the world. Among International Relations scholars, in particular, the intellectual struggle over the relationships among states and NSAs continues apace, with one group insisting that states (will) remain dominant, and another averring that groups, lobbies, campaigns, movements, criminals, pirates, terrorists, etc. are growing in power and influence, and may even be replacing states. What is not much commented on is the co-constitutive nature of contemporary states and NSAs. Ultimately, it is the globalized market system through which co-constitution of “global” state and “global” civil society are developing. Whether this arrangement fully fits Michel Foucault’s notion of “governmentality” is not clear; that the arrangement is not the same as our common understanding of the distinction between state and society is only too evident.

Indeed, through the globalized economy, state, market and civil society have become interpenetrated to such an extent that it makes less and less sense to speak of them as distinct spheres, especially the discursive space of International Relations (IR). The emphasis on “relations” in IR motivates a focus on that which seems to transpire among seemingly discrete territorial entities. Conventionally, then, studies of war assume combat between states or state-like groups. Although corporations can support or get caught up in wars, we do not treat them as active participants (a similar blindness rules with respect to other NSAs). Intrasocietal and civil wars are regarded in much the same terms, although the participation of identifiable social groups and organizations on one side or the other is often clearly evident.

Where “private” entities become enmeshed in such struggles, as in the case of the company formerly known as Blackwater and Xe, their behaviors are regarded as aberrant and troubling, with concerns raised that such violence is being committed independently rather than under sponsorship of a state. The official division of responsibilities between private contractors (security guards) and those officially enrolled in national armies (military combatants) disregards, quite intentionally, the operational fusing of function, personnel and combat roles. Reliance on the private sector to wage war shifts accountability away from the notionally open-access state and into the proprietary corporation, but it does not shift responsibility for violence. Is it any more accurate, therefore, to treat NGOs as being free of sovereignty and the public sphere when they engage in instantiating “good governmentality” in the places where they deliver social and other services?

More to the point, the relative poverty of robust transnational mechanisms and institutions organized for interstate politics, policy
making and service provision—the United Nations and international regimes have proven only marginally able to fill these roles—development and reconstruction projects and programs with ostensibly political objectives are being delivered through markets. Private and civil society actors contract with states to deliver “public goods” and then find themselves subject to considerable government oversight, treated as extensions of state authority rather than independent operators. Private security contractors in Iraq have discovered that their supposed freedom in battle zones does not mean they are free to do whatever they wish; private water providers in Bolivia have found that local governments are not about to give them a free hand in setting rates; non-governmental organizations delivering medical, education, development and other services to rural and urban people are rarely free of government strings and interference. Delivering services privately does not mean that the services are private goods and of no interest to the state.

Indeed, for reasons beyond the scope of this chapter, I argue that the logic of economy has displaced the logic of diplomacy in interstate relations: While the historical practices of diplomacy were in decline long before the 1970s, their basis was nonetheless political, rooted in the mutual recognition of and respect for the dignity and desires of states (mostly Great Powers). Today, rather than engaging in political struggle over ethical values and goals, the representatives of states apply a rationalistic, utilitarian logic to define normative ends and naturalized means; the dances of diplomats have been transformed into the exchanges of economists, and summits turned into salesrooms. The “privatization of authority” has been the mechanism whereby elements of civil society have been enrolled in the exercise of state power, thereby extending government into the private sector through governmentality, but authority has been hybridized, not privatized.

The contrast between economic embargoes and economic sanctions is illustrative. While these are usually addressed in the same breath, they are different in execution. A classical embargo relies on deployment of military force, either by ships or tanks, to block the flow of material goods to target countries: specific actors—states—must make an explicit political decision and enact and enforce it. Economic sanctions, by contrast, are dependent on preventing flows of goods and capital through regulatory and legal restrictions on permitted transactions; the actual targets of such restrictions are consuming countries (e.g. Europe) and not producing countries (e.g. Iran). Sanctions on Iran do not prevent the movement of oil out of that country, they merely forbid its purchase or any other related transactions with Iran or its citizens.
The assumption is that starved of hard currency, the targets of sanctions will find it in their interests to yield to pressure. Here, and in other cases, difficult political work and sensitive political decisions are eschewed in favor of the seemingly easier operation of markets. In the long run, however, patience is likely to wear thin with recourse to military violence becoming the default option.  

Thus, the market has become the means whereby political action is undertaken in the international/global realm. The pushing and hauling that takes place in international summits, gatherings, conferences, conventions and so on thus resembles nothing so much as the bargaining and negotiations that go on in a flea market or souk: buy cheap, sell dear. (For the most part, this is also what goes on in legislatures, such as the US Congress.) Businesses develop programs in “corporate social responsibility” and take on the role of protecting workers’ rights and the environment both within and without their home countries (if they even have one). International agencies use the market to dispense various forms of aid and assistance, and nongovernmental organizations contract with them, as well as states, to dispense social goods and services in otherwise disorganized spaces where governments fear, or are reluctant, to tread. The very same NGOs may also be commissioned to teach locals about democracy, human rights and voter participation, in the hope that these beliefs and practices might take root, thereby instantiating a kind of naturalized market culture in those being taught. The (faint) hope is that introduction to liberal principles and practices will, via self-interest, induce former combatants to kiss, make up and live peacefully forever after.

NSAs, “state building,” and intercommunal violence

The implications of my arguments are none too encouraging, especially because divisions of labor in economically liberal societies can exacerbate, rather than ameliorate, intercommunal tensions. In fact, some have argued that it is the very introduction of liberalization into conflict-ridden societies that serves to trigger the outbreak of violence.  

Intervention by outside actors is generally designed to instantiate liberal structures and practices. According to Roland Paris, writing about this as a “civilizing mission,” peace builders attempt to bring war-shattered states into conformity with the international system’s prevailing standards of domestic governance, or standards that define how states should organize themselves internally. In this respect, the contemporary practice of peace building may be viewed as a modern rendering of the mission civilisatrice—the colonial-era belief that the
European imperial powers had a duty to “civilize” their overseas possessions.\textsuperscript{32}

Paris is, for the most part, uncritical of this “mission,” arguing that it actually serves to construct robust sovereign states which can then participate as members of the international community. However, he also points out that international aid and assistance are not without strings:

To the extent that these [liberal] standards reflect the ideological predilections of the most powerful states in the world—the core of the international system—peacebuilding is not merely a tool of conflict management, but a new phase in the ongoing and evolving relationship between the core and the periphery of the international system, with the core continuing to define the standards of acceptable behaviour.\textsuperscript{33}

This might not seem an unreasonable cost—and it certainly can come with benefits—but there is certainly nothing in this formula that facilitates any kind of national autonomy in the receiving society, which is all too likely to find itself relegated to one of the less powerful tiers of so-called states.

Michael Dillon and Julian Reid\textsuperscript{34} have offered a somewhat different, and more problematic, spin on the “complex emergencies” and peace building. First, they argue that the diffusion of liberalism’s mores and practices into a nonliberal social order almost inevitably generates violence by undermining internal power relations and conflict resolution methods endemic to a particular society (i.e. “pre-liberal” practices of dealing with internal social conflicts). As a result, they argue, “the radical and continuous transformation of [conflicted] societies that global liberal governance so assiduously seeks must constitute a significant contribution to the very violence that it equally also deplores,”\textsuperscript{35} especially in forcing those societies to transform. Second, NGOs themselves foster and instantiate epistemic violence through which liberalism orders and disciplines people and societies: “many NGOs are not mere passive victims of this development” (i.e. becoming identified with the state and international agencies who have commissioned them to offer aid and assistance). “[T]hey, too, pursue a liberal agenda of promoting human rights, accountability, and the formations and practices of civil society.”\textsuperscript{36}

Again, to the extent that the liberal models on which development, conditionality and “peace” are based rely on certain forms of law and practice that entrench social divisions—often along economic and even
intercommunal lines—they also may put in place conditions that generate future intercommunal violence.

The specific triggers to future violence arise through the tensions and contradictions between the individual and the group, which are characteristic of and necessary to liberalism, and intergroup differences in structural power within societies. Liberalism is premised on the capacity of the individual to “make good” under particular regimes of economic regulation, which are contractually based and eschew the role of affective relations (friends, kin, patrons and clients) in both politics and exchange. Two abiding myths are, consequently, that the individual casts her vote as an individual, and that in US-style capitalism anyone can succeed through opportunity and hard work, regardless of their endowments at birth. The roles of social capital and networks of association in fostering the successes of particular individuals are largely ignored, even though they are frequently central to such success. More to the point, however, under economic liberalism, these “capacities” are no longer so tightly linked to shared ascriptive characteristics, such as religion, race and ethnicity (and kind), as they once were. To put the point another way, the divisions of labor in Western liberal societies do not appear to play a significant role in altering societal balances of economic and social power, to the detriment of dominant groups. Although individuals from subordinate groups may experience upward social mobility, there is little chance that Hispanic farmworkers or South Asian cab drivers will acquire sufficient wealth from their occupations to displace upper-class elites and power holders.

The same cannot be said for many of those societies torn by internal violence and war. Such places are very often characterized by historical or forced ethnic and religious divisions of labor, as some groups are restricted, either by law or tradition, from certain more lucrative occupations. Most often, these subaltern groups occupy some sort of merchant or middleman role in heavily regulated economies, such that accumulation opportunities are limited and power relations are static. The liberalization of markets, which is one of the primary objectives of external peace-building interventions, can quite quickly undermine the position of dominant groups, such as landowners, and increase the wealth and prospects of subordinate groups. These are circumstances that may give rise to ethnic and sectarian conflict and war, which interventions and conditionality are intended to address, but can more liberalization repair the damage already wrought by liberalization?

Consequently, those NGOs in global civil society that engage in social reconstruction and reform may, unwittingly and quite unintentionally, fail
to address the underlying power dynamics that loom so large in conflict and war. Moreover, because such societies (often called “failed states”) are, by definition, sites of weak or non-existing state agencies and political mechanisms for institutionalized conflict management, much peace building functions through revived or newly established market relations, on the theory that delivery of the “goods” will temper antagonisms among those at war. This may be a faint hope, since ascriptive relations are not so easily erased.

What is to be done?

Perhaps not all is lost. Almost 20 years ago, Michael Mandelbaum published a searing critique of the Clinton Administration’s interventions in Bosnia, Haiti and Somalia, accusing it of trying and failing to “turn American foreign policy into a branch of social work.” As a more-or-less classical realist, he observed further that “The more traditional standard by which the foreign policy of a great power is evaluated is its relations with the most important members of the international system. Here the Clinton performance could not be judged a success.” Mandelbaum’s attack was intended to dismiss any role for “social work,” yet he unwittingly hit exactly on the problem common to most foreign interventions in war-torn societies: they place too much emphasis on force and bribery and not enough on social relations. Given the broad range of duties that were assigned to North Atlantic Treaty Organization (NATO) ground troops in Afghanistan, which included often-delicate mediation between local kin groups at odds with each other, it would seem that the US military has recognized Mandelbaum’s inadvertent proposition. That such “social work” meets with only limited success under most circumstances may have more to do with the “social workers” than the need for intercession.

To put the point another way, many of the conflicts that merit outside intervention are “intra-familial,” in the sense that they pit members of a common society against each other. The oft-proffered diplomatic solution is “divorce,” rather than reconciliation: creating new states or entities to which the familial fractions can repair, each with its own portion of the family silver. By contrast, the social worker’s therapeutic solution is reconciliation: finding ways to address the roots of conflict within the family and seeking to keep house and silver together. The reconciliation councils and tribunals set up in various countries over the past few decades attempt to approximate the therapist’s approach, albeit in a somewhat bureaucratic, superficial and not always successful fashion. What is clear, however, is that foreign social
workers parachuted into conflict settings, lacking any clear conception of roots or issues, unfamiliar with the social context and, most probably, not speaking the local language(s) will be hard put to implement their interventions. At the same time, anyone who attempts to do localized social work must be recognized as a legitimate and unbiased interlocutor, which adds a further, but not insuperable, complication.

What all of this suggests is that NSAs might be able to make contributions to restoration of war-torn societies by providing resources to both trained and aspiring social workers and therapists native to the places in which they would work—once contending parties have been pacified. Such interventions are certain to be costly and time-consuming, and few funders, whether public or private, are sufficiently interested in long-term commitments to social peace and stability as to be willing to pay for national therapy. I cannot think of any settings in which such an approach has been tried and succeeded, although it would be helpful to find and closely examine cases in which deeply divided societies have been able to reconcile in the absence of a robust and disciplining state (I think here of Josef Broz Tito’s relative success in welding back together the constituent fragments of Yugoslavia after World War II).

Conclusion

Clearly, this chapter is much too short to do justice to two decades of liberal peacemaking or to address in detail the contradictions that arise from NSA involvement in reconstruction, but I might offer a few observations and arguments. First and foremost, civil society and NGOs are not merely external interlocutors that can bring “good behavior and best practices” into a conflict-ridden society; they are also representatives of particular external interests and even ontologies expressed as “true” and “required” but not necessarily conducive to a non-violent future. A liberal peace demands pluralism and individualism, but it does not succeed if too much pluralism is permitted, which is why fear is deployed to constrain the range of permitted pluralism and to ensure that individuals remain sufficiently suspicious of their fellow liberals to desire the presence of a state.

Second, there are never only two sides in the violent social conflicts. The internal fragmentation of the parties to a conflict may be sufficient to prevent consolidation of political positions on one side or both, while internal defections among such fragments can undermine whatever progress toward settlement might have been made. Here, we might compare the activities of renegades in Northern Ireland, who are disruptive but
not destructive since they appear to represent the views of a small minority, with those in opposition on both sides of the Israel–Palestine conflict, who are able to maintain fear within their respective societies and constitute substantial fractions, if not absolute majorities of the people.

Third, although external interlocutors may be able to use monetary and other inducements to entice parties in conflict to the table, it should not be assumed that money will eliminate or even soften internal struggles. Such rewards for “good behavior” are almost always distributed in ways that reinforce the social power of some groups and increase inequalities for others, even in wholly liberal societies. When NSAs step in as intermediaries to provide resources, goods and services, even they are likely to become entwined in internal conflicts and convoluted histories of which they have little knowledge or awareness, with the result that they may serve some parties to the disadvantage of others and find themselves under fire or run out of town.

All of this points to the abiding requirement of peace making: the presence of a strong, authoritative and legitimate agent empowered not only to reconstruct and assist but also to coerce and punish, as necessary. This is undoubtedly why the post-World War II reconstructions of Japan and Germany were so successful: the Western Allies encouraged liberal governments and societies but did so with billy clubs in hand, so to speak (in this respect, the USSR was notably less effective in creating a socially stable East Germany). By contrast, the liberal peace is more reminiscent of Lyndon Johnson’s pre-Habermasian invocation, “come let us reason together” (actually a passage from Isaiah 1.18). Inasmuch as the international community has shown considerable reluctance to commit to peacemaking with force—because of the cost of intervention as well as failure—and has been reluctant to stay the course, it seems unlikely that “issue-specific legitimate non-state authorities” could be very effective in creating peace where little or none is to be found.

As a final point, the effort to construct liberal societies to replace the affective ones that have fallen into violence and war also requires the dilution and even elimination of what, for lack of a better term, can be called the local cultural matrix (or social cartography). Insofar as the complexity of these inter- and intra-group relations is blamed for the tumble into conflict, their defusing or even dissolution is regarded as critical to ending conflict. To put this more bluntly, nationalism, ethnicity, religion must all become attributes of the liberal individual and irrelevant to the disposition of power, wealth and influence within liberal society. This stance constitutes a type of post-colonial orientalism, in that the very social and cultural features that constitute the groups
making up a society must now be diminished or destroyed, in favor of (usually) US-style “rational actor” liberalism. The rising tide of struggle between “Red” and “Blue” societies in the United States indicates how difficult it is to create a truly liberal peace. We might hope that the United States will not need social workers in the future, even if today it does have a surfeit of them.

Notes

1 French and Haywood, Chapter 2 in this volume.
4 Julia Amos, Chapter 9 in this volume.
7 Doris Buss and Didi Herman, Globalizing Family Values: The Christian Right in International Politics (Minneapolis, Minn.: University of Minnesota Press, 2003).
10 From the libretto to HMS Pinafore (1878), by W.S. Gilbert.
12 Jean L. Cohen and Andrew Arato, Civil Society and Political Theory (Cambridge, Mass.: MIT Press, 1997); and Lipschutz, Civil Societies and Social Movements.
13 See Lipschutz and Rowe, *Globalization, Governmentality and Global Politics*.


15 Of course, many argue that corporations should be “good citizens” and behave just as citizens are expected to. While this might be the case if “Corporations are People, Too,” it is not immediately evident that the proposition makes either legal or logical sense: Richard A. Epstein and Kirsten Bedford, “Corporations are People, Too,” *Defining Ideas*, 22 May 2012, www.hoover.org/publications/defining-ideas/article/117911. We should not ignore, either, the emergence of private companies with the purpose to provide formerly public social services and which compete for market share on the basis of “social responsibility.”


18 We see this when members of the anarchist “Black Bloc” break away from oppositional demonstrations and engage in crimes against property. The mainstream is always quick to disavow such activities and to make clear that they will have no part in them.


22 I recall doing fieldwork in Hungary in the early 1990s, and watching Peace Corps volunteers writing grant proposals for the environmental NGOs to which they were posted. This was a practice entirely unfamiliar to Hungarian activists, and they had to be taught the appropriate language in which such grant proposals had to be written: see Ronnie D. Lipschutz and Judith Mayer, *Global Civil Society and Global Environmental Governance: The Politics of Nature from Place to Planet* (Albany, N.Y.: State University of New York Press, 1996).


27 French and Haywood, Chapter 2 in this volume.


30 Thus, “letting sanctions work” appears to relieve states from making politically problematic concessions to target countries, which are attacked as “appeasement.” However, few, if any, sanctions regimes have been allowed to run their course, even when they are having the desired effect: see Paul M. Kennedy, “The Tradition of Appeasement in British Foreign Policy, 1865–1939,” *British Journal of International Studies* 2 (1976): 195–215.


35 Dillon and Reid, “Global Governance, Liberal Peace, and Complex Emergency,” 188.


37 I realize that this statement elides, in particular, the continuing salience of race, class and gender in an individual’s prospects for economic success, especially in the United States.

38 This does not mean that “rising” groups are not perceived as social threats by those whose relative well-being and status are being challenged: see Jack M. Balkin, “The Constitution of Status,” *The Yale Law Journal* 106, no. 8 (1997): 2313–74.


Critical of territorial sovereignty and its negative externalities for manifold social groups, French and Haywood suggest, in Chapter 2, that global organization by state entities obstructs our ability to address pressing transnational issues. They point to important problems that international governmental organizations (IGOs) were created to address but which are yet to be resolved. They also lament how these efforts have fallen short due to decisions by state actors limiting their contributions to prospective solutions in favor of safeguarding their own citizens and state financial resources for domestic use and benefit. In our present conflict-ridden world, the question before us is how and to what extent private authority, particularly nongovernmental organizations (NGOs), can help reduce armed violence.

Prospects for realizing the “long-term roles” French and Haywood discuss necessarily rely on the long-term evolution of contemporary national political identities into transnational identities constituted in accordance with global issue domains. As Hall has argued elsewhere, contemporary predominance of national collective identity deposed territorial sovereignty as the primary “legitimating principle” underpinning public authority, which was in turn preceded by ecclesiastical authority, thus suggesting at least the specter of a further collective identity transmutation in an increasingly global world. Indeed, James Rosenau’s suggestion of micro-politically induced change in world order due to proliferating global identification stands out amid a growing literature addressing the effects of cosmopolitanism on the international
system. However, recent discussion of the collapse of the euro as some European publics are unwilling to sanction a “transfer union” while others fail to abide by the fiscal austerity required to stave off default and eurozone withdrawal, suggests that national fiscal concerns trump “European solidarity” and “supranational” identity. This should serve as a caveat for projects ostensibly to be built upon “transnational identities align[ing] with inherently transnational issues,” as French and Haywood propose. Nonetheless, any discussion of such a transformation a century from now would necessarily be speculative.

The real value-added of French and Haywood’s contribution, as NGO practitioners, is their elaboration of the “short-term roles” that conflict resolution NGOs might perform that can constitute genuine and often authoritative contributions to “reducing armed violence” or to mitigating its effects and consequences. The majority of these are quite useful and sensible suggestions, and we hope that their organization can put its resources to good effect, just as they suggest in this section. In support of these contentions, Hall and Biersteker demonstrated a decade ago how non-state actors may, under certain restrictive conditions, gain the status of private authorities within specific and constrained issue areas. Hence, this chapter further examines how NGO governance, conditioned on private authority and sociological legitimation, can potentially contribute to violence reduction in circumscribed and contextually contingent niches conducive to NGO agency on global and local levels.

To this end, we begin with observations of the differences in which political public authority and private authority are constituted and propose conditions under which private authority may result in authoritative NGO governance. In the context of NGOs, the culmination of this process usually manifests itself as “moral authority.” Subsequently, by delineating sociological from normative legitimacy, we elicit the consequences of social “process legitimacy” on prospects for NGO governance and conflict mitigation. Based on these less stringent empirical criteria for NGO legitimacy and, in turn, authoritative governance, we qualify but do not reject the critical normative views pertaining to NGO governance presented by Jens Bartelson’s development of republican theory (Chapter 3) and Ronnie Lipschutz’s notion of liberal “politics of fear” in global civil society (Chapter 4).

**Private authority and NGO governance**

Consent to authority, as a social construction, can be legitimated with reference to both public and private actors. Barnett and Finnemore
have analytically delineated between the condition of being “an authority” and “in authority.” The constitution of the former may result from specialized knowledge, for example, while the constitution of the latter results from an inherently political process. Political authorities are “in authority.” They have been duly constituted, whether by elections, the promulgation of constitutions, or having gained power in a political revolution or coup. States—including democratic republics—employ coercion to uphold public order. Even those who have come to power through coercive means, to the extent that their governments have been recognized by the United Nations’ (UN) “collective legitimation function,” enjoy international legitimacy as duly constituted governments.

Conversely, NGOs are generally not considered to be “in authority” as executors of plenary governance enforcing laws via the “public sword.” Whether we refer to NGOs, civil society organizations (CSOs), global policy networks (GPNs), international knowledge institutions (IKIs), or public-private partnerships (PPPs), the analytically distinct and difficult issue with which we must grapple is the very different means by which private, issue-specific authority is constituted. As authority is an implicitly social relationship, private actors can conceivably exercise authority in both legitimate and compulsory fashions. Certainly they are attempting to influence political outcomes but they most often seek to be “an” authority rather than be “in” authority. Given the socially constructed nature of authority, its temporal and spatial contingency, and its place as a publicly recognized and publicly expressed “social fact,” we may draw upon two forms of private authority, moral and illicit authority, in the analysis of NGO governance.

NGO authority primarily relies on successful claims to some form of moral authority, which can be acquired through successful claims to expertise, neutrality or normative superiority. The normative dimension of moral authority represents a successful claim to represent a socially progressive or morally transcendent position. The second dimension is understood as the “authority of authorship” or the capacity to provide useful expertise. While frequently accompanied by a claim to neutrality, it often contains appeals to a moral high ground. It may also entail a claim of altruism or, at the very least, an absence of personal and institutional, pecuniary self-interest. NGOs can also acquire moral authority through advancing successful claims of the authority of the referee. This type of authority also claims expert status, but it extends the claim of expertise of a scientific and therefore neutral character. In this context, the workshop sponsor, the One Earth Future Foundation (OEF), can already claim some of the authority of authorship, and of the
referee, for their research work on international piracy, which has been quoted at length in the Financial Times on several occasions.

Social recognition is integral to the functioning of moral authority. It must be demonstrated to justify its claim to the actual exercise of private authority in seeking to influence agendas and offer expertise that bears on global problems in exchange for influence in framing the meanings attending these issues. What authority they might enjoy in these contexts appears to derive from social recognition by states as well as IGOs, as Barnett and Finnemore remind us, though they have been granted autonomous functions, enjoy authority delegated to them by states. As both Eamon Aloyo’s and Vanessa Ullrich’s works in this volume demonstrate so effectively, NGOs and their networks are sometimes effective at aligning themselves with states and groups of states that are receptive to their messages and in tune with their aims. If IGOs or state actors were to regard NGO participation in these discussions to be illegitimate, they would not only decline to invite such participation or to align themselves with NGO positions, but they would move to expel them from the debate.

Via social recognition in public domains, moral authority emerges as a conduit for the diffusion of pluralized norm paradigms in global and local contexts. Given the dispersal of information among a plurality of external epistemic actors provides counterbalance to information asymmetries favoring insiders, allowing for “ongoing, informed, principled contestation” within global governance, serving to promote values that otherwise might not surface. Such values include “equal regard for the fundamental interests of all persons, decision making about the public order through principled collective deliberation, and mutual respect for persons as beings who are guided by reason.” Since rules and norms address recurring problems of conflict and cooperation on national or international levels and “link individual autonomy to sociality,” NGOs’ ability to claim rule authorship and corresponding status as legitimate arbiters of those rules can have profound implications for conflict governance.

NGOs employ their discursive resources and expertise in what amounts to a bargain with states and IGOs, essentially “‘trading expertise and legitimacy for greater political input’ in international institutions.” Their participation has broadened the perspectives represented in global governance forums. NGOs “are commonly seen as the main driving forces behind the creation of international norms and guidelines in the areas of human rights, environmental protection and participatory development in general, and in particular, such fields as child soldiers, HIV/AIDS, indigenous peoples’ interests, or the stigmatisation of
land mines and small weapons.”¹² In a passage that resonates with Aloyo’s contribution to this volume, Anna Holzscheiter reminds us that:

> There have been numerous situations in which NGOs do not merely play a walk-on part but instead have manoeuvred into forceful positions enabling them to exploit their expertise, knowledge and representation of public opinion as power resources. Precisely since they are perceived to act out of other motives than the accumulation of wealth and to pursue power politics by persuasion rather than coercion … they are ascribed legitimacy and influence as “knowledge brokers,” “norm entrepreneurs,” etc.¹³

Further, she argues that scholarly work on NGO contributions to global governance “must counterbalance an emphasis on NGOs’ collaboration in the implementation of internationally agreed rules and norms and move towards the exploration of their role as accepted partners in the very formulation of these regulating mechanisms.”¹⁴ They have things to offer the global governance arena, even in state-dominated settings, including “certain structural arrangements that state actors might be in need of … most prominently, their informal networks.”¹⁵ Hence, private actors can serve important epistemic and legitimation functions in formulating transnational policy decisions, regime rules, principles and decision-making procedures.

Prospects for authoritative NGO governance can also be considered in relation to another form of private authority, namely illicit authority. Transnational criminal organizations, religious extremists, mercenaries, warlords, and other “illicit” private actors violating “domestic and international legal norms” often employ coercive violence to meet their objectives.¹⁶ Such entities often penetrate weak states and supply underprovided public goods, such as security and patronage, thereby gaining social legitimacy among local beneficiaries of these services (see particularly Lilyblad’s contribution to this volume on this topic). It is far from clear that NGOs may not also acquire authoritative governance capacity by these means in areas where public authority is compromised, though in the case of NGOs, the authority acquired through the provision of underprovided public goods in conflict regions is by no means “illicit.”

Moreover, in contrast to French and Haywood’s contentions, private actors can employ “coercive authority” as easily as public actors. A vast literature on the coercive effects of private authorities such as transnational corporations (TNCs), global equities and bond market
participants, credit rating agencies, to name a few, on governmental fiscal and regulatory policies could be cited in evidence. Conflict NGOs usually operate with domestic or international legal sanction and we must not neglect the concerns attending the frequent requirements for NGOs to contract with private military companies (aka “mercenaries”) for provision of security arrangements for their personnel in the process of distributing public goods in conflict regions where no other form of security is available to them. As Aloyo’s contribution here suggests, global peace, security and justice often benefit when coercive measures are constructed to enforce new norms, particularly those attending defense of human rights. Indeed, it would appear as though private entities would similarly rely on coercive means to enforce compliance with rules and we would construct a rather false dichotomy between legitimate private authority and coercive public authority in this context. Hence, we must look at context-specific social processes as sources of NGO authority legitimation.

**Sociological legitimacy**

In Max Weber’s approach, “the legitimacy of a system of authority may be treated sociologically [insofar] as the probability that to a relevant degree the appropriate attitudes will exist, and the corresponding practical conduct ensue[s].” 17 Herein, behavior becomes oriented to an order or institution “even though individuals may not always hold the same norms, values, and beliefs that they presume are accepted by most others … [thus] it seems like a valid, objective social fact … even if they privately disagree.” 18 Importantly, as sociologist Cathryn Johnson and her colleagues have recently explained, legitimacy is both a collective social construct, and as a social construct is a social process. Rather than stipulate a priori conditions for the legitimacy of a social object from normative prescriptions arising from republican theory (as per Bartelson) or critical notions of the Foucauldian “governmentality” of liberal ideas, actors and institutions (as per Lipschutz), recent sociological thought on the topic of legitimacy encourages us to reconsider how the construal of a social object as legitimate comes about. 19 As NGOs are organizations and not individuals, the work of organizational ecologists might prove a useful starting point for a static definition of organizational legitimacy, and then we can proceed to work to construct an adequate answer to the specific question “how does the construal of the social object of an organization as legitimate come about?” This is a necessarily sociological process and requires a sociological explanation.
Johnson and her colleagues pause at several potentially useful definitions of the static (in situ) legitimacy of organizations. Organizational ecologists argue that an organizational form is legitimate when its existence is taken for granted. The existence and prevalence of the organizational form connote sociological legitimacy, particularly when the organizational form “becomes a ‘blueprint for organizing and conducting social action’.20 NGOs are clearly legitimate institutions by this sociological definition. Legitimacy in this context is “a generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions.”21 Output legitimacy is, in this context, sociological legitimacy.

Another important and useful development of organizational legitimacy “locates the source of legitimacy ... in supra-organizational beliefs about social reality that are widely held (or, at least held by powerful actors).”22 In this view, “the construal of an organization or procedure as legitimate comes about through the authorization or endorsement of particular actors in the surrounding environment.”23 NGOs as organizations appear legitimate from this rather non-restrictive definition as well. Invitation by the United Nations and the Rome Conference conveners to participate in international deliberations and negotiations certainly constitutes such endorsement. Similarly, invitations by states to engage in conflict resolution, provide scarce goods, or exert public pressure on militant groups in domestic conflict zones produce similar legitimating effects. Sociological legitimacy is empirically verifiable and, as such, manifests itself in global issue domains and local conflict arenas.

On the global level, NGOs are most often directed at more or less bounded groups of state and IGO decision makers with the sovereign or delegated public authority to devise international treaties that can result in the construction of new international institutions operationalizing new norms. It can be demonstrated empirically that various NGOs and their ideas, positions and expertise enjoy legitimacy with various important international decision-making bodies and constituencies. Aloyo’s work on the Responsibility to Protect (R2P) and Ullrich’s work on the International Criminal Court (ICC) in this volume are effective illustrations that NGOs and their networks direct their ideas, expertise and associated authority claims at quite bounded groups of people in the context of stimulating and steering transnational initiatives and negotiations toward their goals.

When NGO participation results from the deliberations of states and IGOs it has a strongly legitimating effect, empowering NGOs and
amplifying their voices. In the context of Buchanan and Keohane’s development of a “complex standard of legitimacy,” the epistemic virtues of NGOs can be utilized to help to overcome the democratic deficit inherent in private authority. Steffek and Ferretti also argue that through the deliberative model of democracy, public participation via the inclusion of global civil society organizations, including NGOs, can lead to new democratizing functions within the global governance arena, thus correcting the purported democratic deficit. It acts as a “connective tissue” between citizens and international institutions by ensuring input from and accountability towards citizens. It thus represents a “semantic shift” away from “representative democracy [toward] decentralized and participatory governance.” Further, Steffek and Ferretti maintain that democracy “requires that citizens are able to scrutinize political decision making processes and to hold decision makers to account.” They argue that CSOs can fulfill these functions by: i) enhancing the democratic accountability of intergovernmental organizations and regimes; and ii) by increasing the epistemic quality of rules and decisions made. Hence, due to their pluralizing and deliberative effect, Steffek and Ferretti argue CSO participation may facilitate a positive democratic impact. Yet while these arguments do not rise to the normative standard of legitimacy for private authority proposed by Bartelson, especially regarding the adequacy of contestation, they do meet at least the rudimentary criterion for a deliberative form of democratic governance, rather than Bartelson’s republican form of democratic governance, and provide for significant contestation of issue areas.

For NGOs working in local conflict areas, the potential for NGOs’ legitimacy derives from social processes endogenous to a given social context. In this context, private and NGO authority must be understood with reference to its endogenous social construction between specific objects and subjects of authority, and to the socially and historically contingent, and changing “structure of public intersubjective belief.” As Amos’s and Lilyblad’s contributions indicate, in local and sub-state contexts, NGOs act as intermediaries in conflict resolution and service providers within and between communities recovering from conflict. By deeply engaging in these social environments, exogenous NGOs can emerge as localized actors and thereby establish context-specific and contingent constituencies, or bounded social groups. In these sub-state contexts, norms and rules diffused via NGO authority include tacit rules and inter-subjective understandings pertaining to reciprocal duties and obligations based on actors’ deontological commitment to the conflict-mitigating social arrangement. As Kratochwil maintains, “rule-following does not involve blind habit … but
argumentation, it is through analyzing the reasons which are specific to different rule-types that the intersubjective validity of norms and thus their ‘deontic status’ can be established.” Accordingly, sociological legitimacy deriving from these social processes remains conditioned on the subjectivity of the target population.

From this perspective, it is possible to reconstruct the process by which moral authority is sociologically legitimized via tacit consent. Both Rousseau and Hobbes refer to intersubjective tacit consent in authoritative social relations. As Rousseau maintains, “although [conventions] may perhaps never have been formally pronounced, they are … tacitly recognized and accepted, until, should the social pact be violated, each associate thereupon recovers his original rights and takes back his natural freedom, while losing the freedom of convention for which he gave it up.” Similarly, Hobbes states: “For if [man] voluntarily entered into the congregation of [men] that were assembled, he sufficiently declared thereby his will (and therefore tacitly covenanted).” Susan Strange has also argued that to the extent that these governance arrangements, however constituted, are not challenged, power “accepted” becomes equivalent to power “legitimated.” When authority is exercised, there are both “rights claimed by some superior authority and obligations recognized as legitimate on the part of subordinates or subjects to authority.” Legitimacy implies that there is “some form of normative, un-coerced consent of recognition of authority on the part of the regulated or governed.” Therefore authority is intimately connected to notions of trust. As obedience emerges as the “counterpart of power, trust [emerges] as the counterpart of authority.” This relational formulation of authority implies an implicit social relationship. Consent to social facts is required.

Where NGO involvement has produced rule-based arrangements, insistence on a demnos explicitly consenting via democratic processes could prove counterproductive to violence reduction. According to Kratochwil:

“Tacit rules appear … to be dependent for their proper functioning on the back-up of social pressures … Nothing will escalate conflict more quickly than when [a given actor] denies the experience of [a second actor] by arguing that no such tacit understanding existed … By “denying the experience” of the other, one also implies that the other person’s understanding … of the common social world, is faulty or mistaken. Where extant empirical social orders reliant on tacit rules prevail and the deontic status of this relationship persists, insisting on democracy
as the sole basis for legitimacy would entail denying the experience of entities party to these agreements. Moreover, a tacit arrangement may be more conducive to commitments to non-violence precisely because it permits previously hostile factions to “save face” in public realms and cooperate with the perceived “enemy” despite belligerent and hostile societal constituencies. As Weber suggests, “What is important is the fact that in a given case the particular claim to legitimacy is ... treated as ‘valid’; that this fact confirms the position of the persons claiming authority and that it helps to determine the choice of means of its exercise.”\(^ {35}\) From a normative perspective, this may be a sub-optimal arrangement, yet sociologically it nevertheless constitutes a “legitimately” perceived means towards non-violence among the tacitly consenting parties, including NGOs.

**Normative legitimacy, government, and governance**

Drawing upon republican theory, Bartelson applies a highly Lockean standard of legitimacy, arguing that when used in a recognizably modern sense, legitimacy has come to imply the prior existence of a bounded community—that is, bounded and homogenous, and existing independently of political authority.\(^ {36}\) As the sociologist Christopher K. Ansell writes:

> A Lockean would argue, for instance, that consent is the central criterion that makes government authority legitimate ... Without consent, there is no moral compulsion for citizens to obey. In contrast, the empirical approach to legitimacy is not concerned with normative standards per se. Instead, it wants to explain why or when people do obey, respect, or show allegiance to a particular government, regime, state, policy, or institution ... Thus, the empirical approach is more concerned about whether the normative standards people hold are met, than in debating what standards should hold.\(^ {37}\)

Bartelson finds the appeal to the notion of sociological output legitimacy inadequate, and draws upon republican theory to insist that legitimate authority derives only from a political community, and further that protection of political liberty is the standard of legitimacy.

Indeed, Bartelson argues that since authority claims of NGOs “are not directed towards bounded groups of people,”\(^ {38}\) we cannot draw upon consent and acceptance as metrics of legitimacy, and we cannot assess to whom they are to be transparent and accountable. However,
it remains unclear that their authority claims are really not directed at bounded social groups. Environmentalists, for example, constitute a political community bounded by common understandings of the primacy of ecological conservation over economic exploitation or despoliation of natural resources and wildlife habitats. Cannot a coherent explication of their goals and concerns be functionally differentiated? When an individual joins, and sends in financial contributions or dues to, e.g. the Sierra Club or Greenpeace, are they not identifying themselves as members of a common community of concern, bounded by self-ascription, defined by those who claim membership and make a financial sacrifice to obtain it? As discussed above, state/IGO officials and social groups in local conflicts on the sub-state level amount to bounded communities who, under circumscribed conditions, often view NGO private authority as legitimate.

Neither are Bartelson’s normative, Lockean standards of legitimacy met when non-state actors provide public goods that others, especially state actors, cannot provide because “a focus on output legitimacy does not solve the boundary problems that ensue from the very nature of their authority claims.” Yet he provides no evidence that these claims transcend the limits of claims to valuable expertise, to neutrality in disputes among states, the provision of underprovided public goods, social pressure inducing non-violent behavior and, where accepted, claims to act in accordance with universal values. Bartelson appears to dismiss output or sociological legitimacy as NGOs do not enjoy legitimacy with a constituency that he is anxious to remind us does not exist—namely, a global demos—thus, ascertaining a high republican normative threshold of public accountability via explicit “free and unconstrained” democratic consent and recognition “as rightful by those subjected to their authority.”

Bartelson’s insistence that legitimacy must arise within a demos, or a political community, deriving from popular consent among all stakeholders, appears too stringent a standard for the successful exercise of authoritative governance, by either public or private actors. In the issue areas under consideration, namely potential contributions for NGOs to reduce armed violence, it would be difficult to imagine where such a political community might be found as mankind is not in a position to organize a global human demos. Mankind is very often already organized into heavily armed factions (often at the sub-state level) and rather preoccupied with finding temporary relief from threats of violence and insecurity. These actors often operate in regions where public authority has already broken down, and civil strife and violence are rampant, where society is divided into armed camps, or preyed upon
by armed insurgents or warlords. From a Hobbesian perspective, even
the most rudimentary and coercive form of authority protecting indi-
viduals from violent death and establishing social order derives tacit
consent when “stakeholders” are seeking to impose their will upon one
another through armed violence, public authority is under assault,
political community is fragmented or in a state of flux at best, and
thoroughly in abeyance more often. In Lilyblad’s empirical discussion
of illicit authority in this volume, it is precisely such a process resulting
in a sociologically legitimated outcome that perpetuates the deontolo-
gical status of governance by drug traffickers in Brazilian favelas
(shanty towns). Yet Bartelson’s bottom line appears to be that “no
political actor can be described as legitimate if it is not recognized as
rightful … [which] in turn depends on the social norms prevailing
among those subjected [to authority]. From this perspective, it makes
little sense to maintain the distinction between sociological and nor-
mative accounts of legitimacy.”

Hence, governance capacity need not be “democratic” to be author-
itative, or to be legitimate. Indeed, none of Weber’s three ideal types
of authority legitimation (legal-rational, traditional, and charismatic) were
explicitly democratic. Aristotle even viewed “deviated” forms of major-
ity rule as illegitimate, distinguishing between “polity,” or “[p]olitical
control exercised by the mass of the populace in the common interest,”
and “democracy,” where the masses rule for their own interests at the
expense of the politeia, noting that “people are generally bad judges
where their own interests are involved.” The current state of the cli-
mate change debate in democratic European and American capitals
seems to be a relevant example. Moreover, in societies where a minority
is subject to democratic yet repressive majority rule, their voices tend
to be marginalized and their rights and needs neglected. In this sense,
well before the emergence of NGOs as international social entrepre-
neurs, Weber addressed the notion of representation on “a basis of
socially independent grouping” that can “have a representative char-
acter and be recognized as such, so far as the effect of the decisions of
such bodies as estates extends beyond the personal holders of privileges
to the unprivileged groups.” Unlike “free” representation via majority
rule, it is possible that representing a marginalized underprivileged
group or other morally transcendent position contrary to paradigmatic
consensus and thus acting as a bulwark against narrowly conceived
interests by power elites in domestic and international contexts emerges as a powerful sociological legitimation of NGO governance. Bartelson’s claim that “it takes a community of free agents to recognize such an authority as rightful” is unclear in such contexts.

Bartelson, moreover, seems to view NGOs and other private actors as explicitly seeking political authority and appears to conflate political authority with authoritative governance. NGOs, as private actors, though engaged in the political arena are not “political authorities,” and neither is any authoritative governance capacity they enjoy necessarily “democratic” authority. The distinction between “governance” and “government,” introduced by James Rosenau two decades ago, should be acknowledged. Rosenau pointed out long ago that governance is by no means synonymous with government. Both point to systems of rule, but “government suggests activities that are backed by formal authority, by police powers to insure the implementation of duly constituted policies, whereas governance refers to activities backed by shared goals, that may or may not derive from legal and formally prescribed responsibilities, and that do not necessarily rely on police powers” to attain compliance:

Governance is thus a system of rule that is as dependent on intersubjective meanings as on formally sanctioned constitutions and charters … a system of rule that works only if it is accepted by the majority (or, at least, by the most powerful of those it affects), whereas governments can function even in the face of widespread opposition to their policies … Thus it is possible to conceive of governance without government—of regulatory mechanisms in a sphere of activity which function effectively even though they are not endowed with formal authority.

Thus governance is not synonymous with government, as governments are backed by formal authority, whereas governance is backed by shared goals and intersubjective meanings. Rosenau’s conceptualization of global order is critical to our understanding of global governance, in that governance and order are considered to be interactive phenomena. Although an anarchic global order lacks a centralized authority, the study of global governance seeks to determine “the extent to which the functions normally associated with governance are performed in world politics without the institution of government.” Clearly in the global order, actors not derived from governments are performing governance functions. The global order must be conceptualized as a distinct set of arrangements and patterns, all-encompassing, diverse,
organic, ever-changing, “embracing every region, country, international relationship, social movement, and private organization” that engages internationally.48

**Liberalism and civil society**

Anna Holzscheiter agrees that sociological legitimacy of NGO participation in global forums is well established in view of the conduct of state and IGO participants in that process.49 Yet Holzscheiter ends her discussion by suggesting it is not unwarranted to ask whether NGO success in global opinion formation and agenda setting in global governance might not ultimately deprive them of the bases of the legitimacy and respect they enjoy with many, namely their neutrality, to the extent that they are seen acting with states and coalitions of states. This question resonates strongly with Ronnie Lipschutz’s contribution to this volume as he questions the distinctness between liberal states and “global civil society” and instead sees liberal state/NGO cooperation in global governance as a Foucauldian exercise in governmentality.

For Lipschutz, global governance and by extension global civil society is a liberal political project casting “constant threat of incipient disorder as necessary to the maintenance of social order and the need to instill fear and discipline in the polity in order to maintain that order.”50 If there is a global civil society, because it is a liberal order, it simply “shares with the state the task of keeping order through mechanisms of (largely) epistemic … violence … and is less a realm apart from the state than an active handmaid in helping to keep law and order.”51 We might contest Lipschutz’s claim that “missions of peace making tend to reflect interventions by liberal states acting collectively and often through the offices of seemingly autonomous transnational [non-state actors],”52 seeing how the UN Security Council, among whose permanent members are an authoritarian China and Vladimir Putin’s Russia, authorizes these missions.

From a less critical perspective, however, Martha Finnemore similarly identifies how “world cultural norms” associated with Western notions of justice and progress and Weberian rationality drive the institutionalization of social structures, wherein “[o]rganizations exist, proliferate, and have the form they do not because they are efficient but because they are externally legitimate.”53 To the extent that these globalized norms, or what Acharya calls “moral cosmopolitanism,”54 and NGOs serve the liberal purposes of liberal states in conflict regions where liberal solutions have conflictual consequences, we endorse Lipschutz’s caveats while not necessarily sharing his highly critical
perspective. Nonetheless, as Acharya suggests, where context-appropriate norms are diffused via localized norm entrepreneurs, NGO agency is more likely to be subjectively perceived as legitimate among social groups,\textsuperscript{55} including those in conflict zones. Moreover, global norm regimes, as we have seen, often serve as sociological legitimation functions of NGO agency in issue areas like “good governance,” “human trafficking,” and “anti-corruption,” which, despite their liberal inclinations, can have morally transcendent, virtuous outcomes.

Focusing entirely on normative legitimacy as a condition for NGO authority, both Bartelson and Lipschutz see global civil society as a threat to liberty. Bartelson’s Lockean and Lipschutz’s Foucauldian critique both resonate with the work of the liberal political theorist, John Stuart Mill who cautioned democratic societies that they must “beware of the tyranny of the majority!”\textsuperscript{56} This certainly applies to Lipschutz’s formulation as he asserts that the agents of global civil society are overwhelmingly liberal actors espousing (and evidently policing) liberal causes. Echoing Aristotle, Mill indeed warned of the dangers of majoritarian democratic rule for the prospects of individual liberty in his treatise. Elsewhere Lipschutz asks how there could be a global civil society as we do not observe a world state. However, John Locke rather famously spilled a great deal of ink in his \textit{Second Treatise of Government},\textsuperscript{57} explaining why democracy is impossible without a vibrant civil society as a precondition. From the perspective of Locke, Lipschutz inverts cause and effect when he asks how we can identify a global civil society in the absence of a global state. Locke (avowedly a liberal) argued conversely that civil society is the precondition to the founding of a democratic state of any scope. The argument is consistent with de Tocqueville’s analytical and empirical observations of late eighteenth-century US civil society and democratic governance in \textit{Democracy in America}\.\textsuperscript{58} Civil society is difficult to construct in a state-sized polity, as we observe from the dearth of democratic governance institutions in much of the globe, and global democratic governance is not possible without a global civil society as a precondition.

An explicitly liberal civil society is predictably more difficult to construct globally than locally in the face of a much larger number of actors in a culturally heterogeneous world. Indeed, the proliferation of NGOs representing profuse constituencies, including the “global right wing” (see Bob’s contribution to this volume), has a pluralizing effect on norm entrepreneurship and violence-mitigating arrangements apart from state- and IO-driven neoliberal paradigms. This is what Ruggie has argued with his notion of a “global public domain,” which he asserts is being constructed by the proliferation of global civil society
organizations and their deliberatory participation in global policy. For Ruggie, the global public domain comprises “the arena in which expectations regarding legitimate social purposes, including the respective roles of different social sectors and actors, are articulated, contested and take shape as social facts.” In this formulation, it is no longer the case that to the extent that CSOs yield influence, this influence is directed towards, channeled through and implemented by states. Ruggie argues, “civil society actors have helped make possible genuinely political activity at the global level apart from the state system.” Therein, insisting on a normatively desirable telos such as transnational democracy as the standard for measuring the legitimacy and desirability of the phenomenon of global civil society is also counterproductive. While Lipschutz’s caveats regarding the possible negative effects in illiberal societies of a transnational civil society with a liberal social purpose seem apposite, and should be heeded, the emancipatory potential of a global public domain lies more in its process: the contestation of power, norms and ideas.

**Conclusion: sociological approaches to authoritative NGO governance**

Both Lipschutz and Bartelson focus entirely on normative legitimacy as a condition for NGO authority. However, we cannot get at the quite contingent conditions under which private actors can contribute to legitimate, authoritative governance by positing a global human demos and demanding protection of its rights or by positing a global neoliberal NGO network, the interventions of which will invariably perpetrate “epistemic violence.” If the representative model of a democratic global civil society, as per Bartelson’s suggestion, ties us to a requirement to construct a “global demos” for representational legitimacy, perhaps we might search for an alternative form of democratic global governance. Herein, the pluralizing deliberative approach would preliminarily answer Bartelson’s question of how private NGOs can escape his concern about “self-legitimation through usurpation.” It is worth noting that Lipschutz, writing with Cathleen Fogel on the work of the Forest Stewardship Council seemed then to agree. Moreover, the “publics” who are the “subjects” of authority scarcely comprise exclusively republicans, or epistemic pacifists, any more than the private authorities exercising authority, or providing public goods, comprise exclusively “neoliberals.” Hence, we must enquire into the specific socially and historically contingent conditions under which private actors, particularly NGOs hoping to reduce or mitigate armed
violence, can become authoritative and avoid the problem of analyst imputation of interests, motivation and beliefs.

In the context of sociological standards of legitimacy, there are identifiable “bounded communities” in global and local contexts with whom various NGO positions and activities enjoy legitimacy. NGOs are potential sources of private authoritative governance to the extent that they enjoy this status with the international community authorizing their activities in global forums or share deontological commitments to tacitly consensual arrangements with stakeholders in conflicts. Consent to their ideas by a global demos is not what renders NGO participation authoritative. If we settle for a lower sociological standard of legitimacy and relinquish exclusively normative standards perhaps we can at least appreciate NGO governance as a source for the contestation of ideas, norms and power. The extent to which NGOs act “authoritatively” should in this context be guided by study into the question of how effective their contestations are in generating more positive governance outcomes, the definition of which is, no doubt, subject to contestation. As the following chapters in this volume suggest, this is a fundamentally empirical task, and will not only be issue specific but case specific.

Notes
6 Hall and Biersteker, eds, The Emergence of Private Authority in Global Governance.
7 Barnett and Finnemore, Rules for the World.
9 Buchanan and Keohane, “The Legitimacy of Global Governance Institutions.”
16 Hall and Biersteker, eds, *The Emergence of Private Authority in Global Governance*, 16.
25 Steffek and Ferretti, “Accountability or ‘Good Decisions’?” 38.
30 Strange is quoted in Hall and Biersteker, eds, *The Emergence of Private Authority*, 4.
31 Strange, quoted in Hall and Biersteker, eds, *The Emergence of Private Authority*, 5.
33 Hall and Biersteker, eds, *The Emergence of Private Authority*, 5.
34 Kratochwil, *Rules, Norms and Decisions*, 82.
36 Jens Bartelson, Chapter 3, this volume.
38 Bartelson, this volume.
39 Bartelson, this volume.
40 Bartelson, this volume, emphasis added.
50 Ronnie D. Lipschutz, Chapter 4, this volume.
51 Lipschutz, this volume.
52 Lipschutz, this volume.
55 Acharya, “How Ideas Spread.”
Part III

Conflict governance NGOs as norm entrepreneurs and norm diffusion in global governance
6 Transnational civil society as agents of norm diffusion

Amitav Acharya

- Civil society and norm diffusion: a conceptual framework
- The Maoist movement in Odisha
- Case study I: the human rights mechanism in ASEAN
- Case study II: human security in India
- Conclusion

Although the concept of a global civil society has already attracted much debate, one of the unresolved questions about its relevance concerns the divide between transnational actors who operate across continents and time zones and local actors who are situated within single time zones and marginalized locations. This divide, one of the more serious challenges to the concept of transnational (which I prefer to global) civil society, must receive greater recognition in the academic literature and by the policy community. In the campaigns of transnational civil society actors, including those concerning human rights and human security (both highly relevant to the challenge of armed violence), the role of local actors is often ignored and marginalized. However, these actors often resist, redefine, and contextualize the agenda of external actors and even proposed alternatives when asked to follow concepts and agendas that are inconsistent with their prior beliefs and practices. This chapter supports the view that the idea of a global or even transnational civil society is not very meaningful in the absence of an understanding of the ways in which local nongovernmental organizations (NGOs) relate to transnational actors. However, it goes a step further by suggesting ways in which the gap between the two can be narrowed, if not completely overcome. Aspects of the evolving literature on norm diffusion, especially the notions of “localization” and “subsidiarity,” not only offer insights into how one might conceptualize the role of local NGOs in responding to the challenge of violence and insecurity, but also how the transnational and local the above points, the chapter offers two case studies. First, I analyze the
literature on human rights norm diffusion and the role of Southeast Asian NGOs in the creation of a regional human rights mechanism. This illustrates the gap between the marginalized conceptualization of the agency of local actors in the diffusion of transnational norms and the important role they actually play in creation of human rights mechanisms. A second case study regards human security in India and illustrates the role played by local NGOs in redefining a supposedly global norm, or affirming an alternative understanding of a popular global norm in a local context, so as to make it workable and practical in the local context in ways that have broader global relevance.

A good deal of earlier work on the role of the NGO community as agents of norm diffusion was generated within a narrow analytic framework that had evolved during the heydays of the Cold War and the immediate post-Cold War “end of history moment” in international relations. This framework did not sufficiently acknowledge the role of the local civil society and local NGO community (in this paper, I use the two terms interchangeably) as norm makers and norm brokers who contextualize, redefine, and localize transnational ideas, even developing new norms that have appeal in one or multiple local contexts. Moreover, the literature has focused much on the role of a transnational civil society, operating from major Western countries, at the expense of the normative role of local actors, including NGOs and their networks, in the developing world. However the latter are often closely and more directly involved with the targeted impact area of global norms. This chapter argues that the role of local actors in redefining and localizing global norms is crucial to the successful propagation of norms and their expected outcomes for development and security. Local NGOs should not be regarded as passive recipients of transnational norms, but as active agents of norm localization and construction. This is especially true of those norms that are especially contentious, such as those related to human rights, human security and human development. In this paper, I elaborate on this argument and sketch out a conceptual framework with the help of the new and emerging literature on norm diffusion, especially the concepts of “norm localization” and “norm subsidiarity” (which I combine together and term as the L-S perspective), which might help us better to capture and analyze the role of civil society actors in norm diffusion.

Civil society and norm diffusion: a conceptual framework

The literature on norm diffusion has moved through several phases. At the outset, the emphasis of the norm diffusion scholarship in constructivism
was on moral cosmopolitanism. I have identified its main features elsewhere, but briefly, these are an emphasis on cosmopolitan norms, such as the campaign against landmines, a ban on chemical weapons, the protection of whales, the struggle against racism, and intervention against genocide, promoted by transnational agents, be they individual moral entrepreneurs or social movements. This literature focused on proselytism and conversion rather than contestation, and generally viewed resistance to cosmopolitan norms as illegitimate or immoral. It gave causal primacy to transnational actors and their “international prescriptions,” while ignoring the expansive appeal of “norms that are deeply rooted in other types of social entities—regional, national, and subnational groups.” Moreover, this literature tended to view global or universal norms as good, and regional and local norms as “bad.” In other words, norms making a universalistic claim about what is good are considered more desirable and more likely to prevail than norms that are localized or particularistic. A related limitation was its failure to account for the role of local agents, and its tendency to denigrate norms that are rooted in local beliefs and practices. From the moral cosmopolitanist standpoint, norm diffusion is viewed as teaching by transnational agents, thereby downplaying the agency role of local actors and the validity of their local knowledge.

In challenging the moral cosmopolitanism approach, I have proposed the ideas of norm localization, constitutive localization, and norm subsidiarity as agent-centric approaches that highlight the role of local actors. I define “localization” as the active construction, through discourse, framing, grafting, and cultural selection, of emerging universal ideas by local actors, which results in the latter developing significant congruence with local beliefs and practices. The concept of localization places a premium on local agency and legitimation.

The concept of localization describes three types of acts. The first is termed “local initiative.” Ideas are not imposed through force or purchased through commerce or aid; instead, local actors pro-actively seek out foreign ideas that they find morally appealing or politically empowering. In normative change, this perspective would stress the agency role not just of outsider proponents—the standard definition of a norm entrepreneur—pursuing a universal moral agenda, but also of insider proponents seeking to legitimize a local identity. Outside proponents are more likely to advance their cause if they act through local agents, rather than coming independently at it. Successful diffusion of emerging norms depends on the degree to which they can be said to build upon and supplement, rather than supplant, existing ideas and norms.
A second act of localization is the use of foreign ideas as a frame to express local beliefs and practices. The formal shape (name or structure) of the foreign idea may remain intact, but its contents are infused with local beliefs and practices. Norm takers may resort to infusion to validate existing beliefs, demonstrate the broader relevance and appeal of local beliefs and practices, and to sell “homegrown” ideas to a transnational audience. Moreover, in accepting the outsiders’ normative ideas, local actors may see an opportunity to ensure that the former, too, learn from local practices. Such acts of amplifying, signifying and universalizing local beliefs and practices, help us develop an understanding of idea transmission as a two-way dialogue. A third act of localization involves changing the formal shape and content of foreign ideas on the basis of the recipient’s own prior beliefs and practices. This might involve borrowing only those ideas that are, or can be made, congruent with local beliefs and which may enhance the prestige of the borrower. It could also involve pruning outside ideas to get rid of undesirable elements, especially those that challenge established beliefs and practices, while finding a fit between desirable elements and existing local beliefs and practices.

Localization could be a pragmatic response to the demand for new norms, where there is no other way to introduce a new norm into a locale without adjusting it to local circumstances and need. It could also be triggered by the local actors’ belief that new outside norms—which may be initially feared and resisted simply because of their alien quality—could be used to enhance the legitimacy and authority of their extant institutions and practices. Another factor favoring localization is the strength of prior local norms. Some local norms are foundational to a society or group. They may derive from deeply ingrained cultural beliefs and practices or from international legal norms which had, at an earlier stage, been borrowed and enshrined in the constitutional documents of a group. In this case, norm takers, whether states or NGOs, are more likely to localize a transnational norm than adopt it wholesale.

Norm subsidiarity has been defined “as a process whereby local actors create rules with a view to preserve their autonomy from dominance, neglect, violation, or abuse by more powerful central actors.” This process usually comes about when local actors resent the excessive dominance of central actors or authorities, especially when the latter are deemed inadequately representative of, indifferent to, or even subversive of local ideas, interests and identities. This process is related to localization, but has some distinct features compared to the latter. For example, in localization, local actors are always norm takers. In contrast, in subsidiary, local actors can be norm rejecters and/or norm makers. In localization, local agents redefine foreign norms which they
take as generally good and desirable, but not fully consistent with their existing cognitive prior (hence the need for their redefinition). In subsidiarity, local agents reject outside ideas of powerful central actors, but not universal principles, which they do not view as worthy of selection, borrowing and adoption in any form. Hence, localization is generic to all actors, big or small, powerful or weak. Subsidiarity is specific to peripheral, smaller and/or weaker actors, because by definition it’s their autonomy that is more likely to be challenged. Another difference is that in localization, foreign norms are imported for local usage only. In subsidiarity, local actors may export or “universalize” locally constructed norms. This may involve using locally constructed norms to support or amplify existing global norms against the parochial ideas of powerful actors. In other words, subsidiarity stresses local norm creation and its exportation and universalization, including from the regional to global level and on a region-to-region basis.

The localization-subsidiarity (L-S) framework, as I would call a synthesis of the two processes, may thus be recognized by some key features. First, both recognize the agency of local actors, “insider proponents.” Second, norm making and borrowing reflects the norm taker’s quest for legitimation, i.e. the acquisition of greater status and authority by conforming to a universal standard but by infusing it with local characteristics and by making it congruent with the local context. Third, the cognitive priors of the norm taker are not extinguished, but may remain dominant, at least initially, in deciding the shape and content of the modified external norm or in the creation of a new norm. Finally, both processes recognize that normative change in most cases is evolutionary, not a one-step transformation.

The L-S framework can be applied not just to explain the normative behavior of local state actors, governments, or regional intergovernmental organizations like the Association of Southeast Asian Nations (ASEAN), Southern African Development Community (SADC), MERCOSUR (Southern Common Market), etc., but also to locally grounded civil society actors in analyzing their normative purposes and functions. How does the L-S framework help to understand the normative role of NGOs? It is widely believed that local NGO communities are usually likely to accept the definition and content of ideas and norms given to them by transnational civil society and donors. This is because they receive funding from the latter, and hence are dependent on them. They also often lack access to information, including information about new ideas and concepts relevant to their area of activity. Many local NGOs lack in-house research capacity, and do not have access to epistemic communities (or knowledge communities),
which generate new ideas or pass around newly emerging ideas such as about, for example, development. The most influential epistemic communities and think tanks are usually located in the West and in major urban centers of developing countries. Hence, local civil society ends up passively accepting new norms, rather than actively constructing them.

This view can be challenged, however. There are a number of situations in which local civil society actors may act as norm brokers, localizers and developers. Drawing upon the insights of my previous work on localization and subsidiarity, the following situations are noteworthy.

The first situation is when local NGOs feel that the new ideas are primarily intended to serve the political and foreign policy objectives of the major donor countries. A second situation is when local NGOs feel that despite the obvious merit in new ideas, they are too far removed from the local context and need, and hence have to be explained and made more relevant to the needs of the local audience. A third situation is when local NGOs face difficulties in dealing with local government authorities in securing their permission to obtain and utilize external resources because the latter see them as agents of foreign influence. Here, some degree of localization would be necessary to obtain official permission. A fourth situation would be when local NGOs feel they can strengthen and make a norm more relevant and effective by adding new local content or mechanisms to them. Fifth, when local NGOs perceive selectivity, double standards and hypocrisy on the part of the donors in providing information and resources, they may resist foreign ideas or drastically modify them. A final situation is when and where foreign NGOs are reluctant to get involved in a particular area of conflict and underdevelopment due to safety and technical concerns, and thus rely primarily on local agencies, thereby giving them greater autonomy. I will develop this area empirically later in this chapter.

A small but significant illustration of some of these factors can be found in Odisha (formerly known as Orissa), which is one of the poorest states of India. According to one study of the relationship between local development organizations (NGOs) and foreign, mainly Western transnational donors in Odisha:

Most of the [local] organizations surveyed felt donors did not understand the needs of the local people … Additionally, organizations reported they differed with their donors over funding and implementation. [Local o]rganizations do not simply do the bidding of donor organizations; some will reject funding if they feel donor goals do not accurately reflect local needs … If [local] organizations feel too pressured by donors they will reject the
donation … NGOs who reported that donors understood the needs of the local population were more likely to create programming based on donors’ desires and less likely to reject a donation.7

It is in this context that local donors can act as agents of norm diffusion. According to the above study in Odisha:

[Local] NGOs are able to act as mediators between local and international norms. They balance the needs of locals with the desires of donors as well as international norms. They also understand and are able to articulate both local needs and international ideas. [Local] NGOs are able to successfully navigate both local and international norms making them ideal mediators.8

The Maoist movement in Odisha

In Odisha, a Maoist movement called the Naxalites, calling for social and economic justice rather than secession from the Indian state, has been active for nearly a decade now, along with movements in other parts of eastern and central India. Yet, despite the intensity and longevity of the conflict,9 very few foreign donors have supported development projects in this poorer and conflict-prone state of India because of concerns for safety and uncertainty about achieving project goals set earlier at the headquarters level. Foreign donors may not like to support projects in these areas as their visits for monitoring are just not possible. Hence local civil society groups have to bear the primary burden of conceiving and implementing human security projects.10

From the above, one can also get a sense of some of the modalities by which local NGOs may act as agents of norm diffusion. They do so in four main ways: first, by localizing foreign ideas and approaches to development, security and rights; second, by filling gaps by operating in areas where foreign NGOs fear to tread or are banned from operating; and third, by devising and implementing projects that are locally relevant and useful. These motivating factors are interrelated, and all or several of them can be present in a given situation to prompt local NGOs to act as norm localizers and developers. It should be noted that state and non-state actors can localize foreign norms or create new ones when they come to believe that each needs the other for their own success. Governments may localize norms that they like and seem to be in their interest so as to render them congruent with their domestic audience, including a local civil society group, rather than accept the norm wholesale and open themselves to the charge of “selling out” to
foreign powers. Governments also accept a norm that they don’t like in order to satisfy the demand of civil society and the people whom that civil society represents. Civil society actors may come to accept the reformulation of a norm to persuade the governments to accept it and obtain resources to promote it. This mutual accommodation may result in a localization of a foreign norm or the creation of a new norm that can be presented to the transnational civil society or international actors as the basis of cooperation and policy action.

In the sections below, I present two brief case studies which attest to the importance of the role of local NGOs in norm diffusion. First, I examine the role of Southeast Asian NGOs in the creation of a regional human rights mechanism, the ASEAN Intergovernmental Commission on Human Rights, in the context of the dominant extant academic literature on human rights norm diffusion. This illustrates the gap between the marginalized conceptualization of the agency of local actors in the literature and the important role they actually played in the creation of this regional human rights mechanism.

A second case study, human security in India, illustrates the role played by local NGOs in redefining a supposedly global norm peddled by influential donor countries such as Canada and Norway, and affirming an alternative understanding of the norm so as to make it better understood and more workable in the local context, but in ways that have broader global relevance, including in the efforts to define human security at the United Nations. The human security norm is especially relevant to the study of armed conflict. It was pushed by some countries as the key framework for reducing the human costs of armed conflict, through measures to ban landmines and child soldiers, curb the trade in small arms, and to promote the idea of the International Criminal Court and the Responsibility to Protect (R2P) idea. In the case study, I show how local NGOs perceived human security in conflict-affected areas in northeast India and Odisha. They did not privilege freedom from fear over freedom from want, contrary to what some Western norm advocates had insisted. Rather, they stressed the latter and a more synthetic or holistic view of human security, which really bridges the gap between freedom from fear and freedom from want.

Case study I: the human rights mechanism in ASEAN

One of the main examples of the crucial role of local actors that had been neglected in the earlier literature on norm diffusion can be found in the area of human rights. The previous literature was dominated by
two related models: the boomerang model and the spiral model, although the latter is seen as a refinement of the former. These theoretical contributions have been widely studied, and inspired a generation of scholars, and I need not go into detail revisiting their contribution and the debates surrounding them. Briefly put, in the boomerang model, activists link up with transnational human rights groups and use their influence with their own national governments and international organizations to bring pressure to bear on their domestic oppressors. In the spiral model, which subsumes the boomerang, governments initially accept human rights norms for instrumental reasons, but gradually end up internalizing them due to moral pressure and accountability politics.

Underlying both processes are a number of common assumptions. Both are consistent with the moral cosmopolitanism approach. Both present norm creation as a top-down process and give local agents little recognition. As James Ron puts it, the literature on human rights has privileged the role of transnational actors and “paid far less attention to the local embodiments of human rights norms in the developing world.” Although in the boomerang model local groups initiate the process, their location, obscure language, and marginality have limited scholarly inquiry.” Yet, scholars increasingly acknowledge the critical role of local civil society groups: “Transnational NGOs and networks can monitor, inform, and advocate all they want, but without serious investments of time and effort by local human rights champions, nothing much will change on the ground.”

Moreover, these models seem to have been overtaken by recent developments in world politics. They painted a generally adversarial picture between local governments and transnational civil society and donors, rather than an inclusive one. This captured the situation well during the Cold War and early post-Cold War period in the context of Latin American and Eastern Europe, and thus research based on these frameworks on “Africa, Asia, or the Middle East may be barking up the wrong theoretical tree.” Democratization in non-Western societies, e.g. Indonesia, means local actors there have less rationale and need for foreign support. The role of social media empowers local actors and permits a more horizontal mobilization among domestic activists than ever before. Hence there is less need for information boomerangs that travel internationally.

These developments warrant a rethink of the role of local civil society in areas where their role had been little studied. Southeast Asia is one such region. The creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 illustrates the pro-active
role of local civil society in norm diffusion. ASEAN, established in 1967, initially had no mandate for promoting human rights and no intention of creating a human rights body for the region. In the 1990s ASEAN members rejected pressure from Western governments and transnational human rights advocacy groups to improve their human rights record and stop their support for the military regime in Myanmar. Before the Vienna world human rights conference in 1993, ASEAN governments expressed themselves firmly in favor of a relativist position on human rights, insisting that human rights should be defined and promoted with due consideration for the history, culture and economic context of the ASEAN region and the ASEAN members. They continued to support the regime in Myanmar despite the atrocities it committed on its own people.

Since the early 1990s at least, a group of Southeast Asian NGOs have tried to persuade ASEAN to create a regional human rights mechanism, pointing to the fact that Asia is the only continent to lack a regional human rights body. Although weakly organized due to lack of resources, it managed to articulate a clear alternative voice on human rights relative to the ASEAN governments. Groups like Forum Asia, Alternative ASEAN, and Asia Pacific Conference on East Timor and Focus on the Global South rejected cultural relativism and called for human rights universalism. However, instead of the outright confrontational approach, or resorting to the boomerang approach calling for sanctions on ASEAN as a group, they took a more conciliatory stance. The exception was Myanmar, where groups like the Alternative ASEAN called for sanctions against the regime there, but in general, ASEAN NGOs did not call for economic sanctions against ASEAN as a whole.

In the late 1990s and early 2000s, the ASEAN governments began seriously to explore the idea of creating a regional human rights mechanism. This shift was due to several factors, including the democratic transition in Indonesia in 1998. Indonesia’s leadership role in ASEAN helped to reorient ASEAN’s stance on human rights. Another reason was the realization that the doctrine of non-interference in the internal affairs of states, which was a major reason for ASEAN’s previous reluctance to support human rights promotion, had come under stress in the wake of the Asian financial crisis in 1997. That crisis, and other transnational challenges such as the Severe Acute Respiratory Syndrome (SARS) outbreak and the emerging, though somewhat exaggerated, threat of transnational terrorism, led to a growing realization that non-interference must be at least diluted, if not abandoned. In this context and a more general effort in ASEAN to revitalize its
institutions, ASEAN started a process of consultations to create a regional human rights mechanism. What is important about this process was that it involved not only ASEAN government officials, but also NGO groups. In a series of workshops on the idea of a regional human rights mechanism held since 2001, ASEAN invited Southeast Asian NGOs to participate and offer their suggestions.\(^\text{16}\)

Although it has been criticized for having a limited mandate, able to “promote” but not “protect” human rights, the AICHR nonetheless represents a major shift in ASEAN’s position on human rights. Moreover, as one study has argued, its creation shows that “Non-governmental Organizations (NGOs) have been primarily responsible for lobbying for an ASEAN human rights mechanism, as part of the push for political liberalization and respect for human rights.”\(^\text{17}\) The voluntary and active (even enthusiastic) participation of the Southeast Asian NGO networks in its creation also attests to “the importance of a constructive and non-confrontational approach to enhance promotion and protection of human rights. It is then clear that the universality of human rights for ASEAN entails respect for diverse ASEAN backgrounds and the ASEAN values of non-interference.”\(^\text{18}\) The ASEAN experience in AICHR shows that the regional level (which I consider as a subset of the category “local”), including regional organizations and regional civil society groups, matters in norm diffusion: they can work together to develop new institutions that can advance the human rights awareness and agenda. It also shows that human rights promotion can be more inclusive than adversarial, as was assumed under the boomerang model.

It may be plausible to view the AICHR as a partial vindication of the spiral model, in the sense that it was created at least partly for instrumental reasons, to deflect international pressure. However in 2010, a year after the creation of the AICHR, ASEAN launched another human rights body, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). The ACWC is different from the AICHR in important respects. It takes a broad view of human rights, including the rights of women and children that is not simply political, but also social and economic in scope. In that sense, it creates a wider constituency of local stakeholders and “insider proponents” for the human rights norm. Second, its mandate includes promotion and protection, at least going by its very title. Third, the 20 members of the ACWC are drawn both from government agencies and rights groups, thereby attesting to its inclusive nature and its potential to act as a bridge between governments and civil society. The ACWC thus represents what I have called the
banyan tree metaphor for norm diffusion,\textsuperscript{19} as opposed to boomerang and spiral models.

The main characteristics of the banyan tree are: first, they are found in many parts of the world (ubiquitous without being universal); second, they have a large canopy spread out in all directions, representing the breadth of the meaning and scope of human rights; third, they are a shady resting point for travelers, e.g. local-outside interaction; fourth, they serve as a cultural symbol, e.g. as a place for festivals, ceremonies, worship, hence demonstrating a local cultural foundation for human rights; and finally they function as a social institution, e.g. a gathering place of diverse communities, dispute settlement, consensus, which makes human rights an inclusive, two-way process of dialogue rather than a matter of imposition through legalistic means and sanctions. Furthermore, the aerial roots hanging down from the branches and taking root illustrate localization (top-down), while the roots taking hold and supporting the branches and canopy illustrate subsidiarity (bottom-up). Overall, the metaphor calls for a two-way process of human rights norm diffusion, with the following features: first, an inclusive, rather than adversarial approach; second, a broad view of human rights including social and economic rights, e.g. a large canopy for the evolving international human rights regime; third, multiple constituencies rather than specialized advocacy groups, e.g. a banyan has multiple roots that collectively support the tree, just as governments consult and work with domestic and regional groups; finally, local, e.g. domestic, regional ownership and entrepreneurship with a focus on “insider proponents,” rather than relying mainly on transnational advocacy groups. (A banyan tree shelters outside travelers, but they are guests not actors, they bring in new ideas, and new incentives, but it is the locals who buy and use them.) In this connection regional mechanisms are important, as regions could be early adopters and sites of diffusion.

Case study II: human security in India

The L-S framework of norm diffusion involving local NGOs can also be found in the case of the framing of human security as human development. Soon after the concept of human security was first proposed in a United Nations Development Programme (UNDP) report in 1994, based on the work of development economists like Mahbub ul Haq of Pakistan and Amartya Sen of India, there emerged a powerful contestation between those, like Canada and Norway, who viewed it as “freedom from fear,” and those who viewed it as “freedom from
The former stressed issues such as reducing the human suffering in conflict zones, with policies to ban landmines and child soldiers, and prevent and punish genocide and atrocities by creating the International Criminal Court. The latter stressed the developmental aspects of human security, such as reducing poverty, inequality, illiteracy, disease, and environmental degradation. After a great deal of debate, a compromise view emerged, which merged both aspects into a holistic definition of human security.

One common feature of all this debate and synthesis was that they were almost exclusively conducted by the academic community and policy makers of individual countries. Ironically, the voices of common people were hardly heard, even though human security is really about people’s security. What people—especially those who are real victims of human insecurity in their real lives—think of the human security concept was hardly factored in. This bias was partly because these debates took place in academia and in intergovernmental institutions and forums, but not in the field. It was also because human security researchers did not do micro-research or examine case studies in actual conflict areas. Instead, they focused on the broad picture.

However, new research proves the limitations of the academic and policy debate. This can be seen from the findings of a study carried out by the Asian Dialogue Society, an NGO based in Singapore, in partnership with Transnational Challenges and Emerging National Dialogue (TRANSCEND) at the School of International Studies, American University Washington, DC, and the Madhyam Foundation, a local NGO based in Odisha, in two regions of India—northeast India and Odisha. Both these areas suffer lots of human insecurity—poverty, insurgency and conflict. Four of its findings are especially important.

First, poor people live in fear most. In northeast India, the study found that 76.1 percent of the people who have an annual income of 1,000 rupees or less felt they were “compelled to live in anxiety,” compared to 60.4 percent of the people who had an income level of 10,000 rupees or more. The clear implication is that poverty and human insecurity are inextricably linked.

Second, states and state policies are also a source of human insecurity. One cause of fear is operations by the military or security forces. For example, when asked whether they feared the militants or the military (security forces) more, 38.5 percent of respondents in the northeast of India said they were equally afraid of both, a higher percentage than those who said they were more afraid of the militants and those who said they feared the security forces more. Another factor that came out clearly is bad governance, including government
corruption. These findings go to the heart of a very important question about human security, which is security for the people, rather than security for states.

Third, political and socioeconomic factors behind conflict are closely linked. Conflict has a variety of sources. The three most important sources of popular dissatisfaction contributing to conflict (hence sources of threats to human security) that came out in both northeast India and Odisha were: corruption in government, unemployment, and poverty and lack of basic amenities.

Finally, people want dialogue. More than two-thirds of the people interviewed—including people who sympathize with the insurgents—said they prefer dialogue to extreme solutions such as outright suppression or outright secession. They prefer governments to talk to insurgents, rather than strengthen military operations or grant independence to them. Moreover, the people want the dialogue to be inclusive, involving the representatives of the larger civil society. This finding is significant for the efforts to find effective solutions to the problem of internal conflicts leading to state break-ups. The key demand of groups fighting governments may not be to break away, but to have their human security respected and fulfilled. Responding to internal conflicts with this understanding mind would go a long way to addressing the challenge of state failure today.

What is important about these findings and the study overall is that they were conducted with the help of local NGOs and based on interviews with people in the conflict areas. These NGOs enjoyed a proximity to the people that foreign donors and even local government officials often do not have. Hence, they are more representative of “what people want” than academic or official positions. This is the problem with the earlier views of human security that I had highlighted. The above findings show that to an overwhelming extent, people see human security in a holistic way, not in a piecemeal manner. So the lines drawn between “freedom from fear,” “freedom from want,” and “freedom to live a life with dignity,” are easily blurred in people’s perceptions of human security, what it means to them, how it is challenged and how it is to be promoted. This is the finding that we need to bring into our ongoing efforts to reach a common understanding of human security and to correct the bias created in favor of the “freedom from fear” perspective mentioned earlier. While we derive these insights from case studies in India, it is my strong belief that they hold true everywhere. Although presented with both views in carrying out their fieldwork, there is little question that while borrowing and localizing transnational ideas such as human security, the local NGO
community generally accepts a broader view of human security, one that is closer to the people’s understanding of human security and that includes the “freedom from want” as much as, if not more than, anything else.

In my research into the Naxalite movement in Odisha, it was found that without foreign funding, local NGOs tend to work mainly on “freedom from want” issues such as food security, income enhancement, access to education, health care services and avoid working on building people’s organizations, land issues and rights issues, etc., as these are openly discouraged by the Naxalites.

**Conclusion**

Much more research is needed to explore and prove the analytical value of the L-S framework which stresses local agency (translation, localization and subsidiarity) in the diffusion of translation norms, including the role of national governments in different regions, their regional intergovernmental bodies and local networks of NGOs and civil society actors. However, the above discussion presents the outline of a framework that would be useful in advancing this line of thinking about the role of NGOs in norm diffusion. We need to rethink the top-down approach to norm diffusion and stress local construction norms of development, governance and security. Such a framework may not resolve all issues related to global governance and may not eradicate the challenges these norms are meant to address, but they fit the realities of the twenty-first century better and provide useful and testable alternatives to conventional approaches.

**Notes**


Acharya, “Norm Subsidiarity and Regional Orders.”

My initial work on localization and subsidiarity was state-centric, but both concepts can be easily applied to non-state actors, including NGOs. This chapter is an attempt to correct that bias and extend the framework to civil society actors.


Glass, The Role of Non-Government Organizations in Norm Diffusion, 11.


The author is grateful to Subrat Kumar Singhdeo for his help with the research.

On the boomerang model see Margaret E. Keck and Kathryn Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics (Ithaca, NY: Cornell University Press, 1998). On the spiral model and the difference between it and the boomerang model, see Thomas Risse, Steven C. Ropp and Kathryn Sikkink, The Power of Human Rights: International Norms and Domestic Change (New York: Cambridge University Press, 1999). Here I shall only refer to the boomerang, since the spiral model is seen as a refinement and extension of the former.


Ron, “Legitimate or Alien?”

Ron, “Legitimate or Alien?”


An example of this process was that the High Level Panel (HLP) of officials drafting the terms of reference of the AICHR invited “Civil society and human rights organizations in ASEAN Member States that wish to put forth their views about the TOR [terms of reference] for the AHRB [ASEAN Human Rights Body],” to “get in touch with the HLP or meet
with individual HLP Members.” The HLP also held “dialogue with representatives of ASEAN civil society and other relevant stakeholders (the informal Working Group for an ASEAN Human Rights Mechanism (WG AHRM), the Network of Four National Human Rights Institutions (4 NHRIs), the Solidarity for Asian People’s Advocacy (SAPA), and the Women’s Caucus for the ASEAN Human Rights Body) in 2008. Termsak Chalermpalanupap, 10 Facts about ASEAN Human Rights Cooperation, www.aseansec.org/HLP-OtherDoc-1.pdf.


18 Mewengkang, “ASEAN Intergovernmental Commission on Human Rights (AICHR).”


7 The weak persuading the powerful
Norm diffusion and enforcement, without internalization

Eamon Aloyo

- Types of power and authority
- The process of diffusion and enforcement without internalization
- A strategy to realize the enforcement of norms
- The development of the responsibility to protect (R2P)
- Objections
- Conclusion

Actors without coercive powers have been essential in the creation of enforceable international treaties and regimes such as the Landmine Treaty Ban, the International Criminal Court (ICC), and the Responsibility to Protect (R2P). Why, and under what conditions, can actors endowed with ideas but not with coercive powers persuade powerful actors to implement their ideas? How should such influence be conceptualized? How can such influence allow nongovernmental organizations (NGOs) to contribute to peace and accountability for violent wrongs? These are the interrelated questions this chapter addresses. I argue that one set of actors without coercive capabilities, NGOs, can persuade another set of actors that have coercive capabilities to implement policies or to create new institutions or regimes backed by coercive power and in this way achieve their aims. Specifically, I show that if NGOs use ideas that the actors that NGOs target already accept, and if the actors without coercive power target actors sympathetic to their aims, they may be more likely to achieve their goals than by using other strategies.

This chapter complements Amitav Acharya’s contribution to this volume where he emphasizes norm takers. It does so by identifying a new process through which weak actors disseminate norms internationally by convincing norm takers, which are an indispensable part of the equation, to adopt the new norm. Whereas Acharya identifies mechanisms by which local NGOs adopt global norms to fit their
ideas of legitimacy, prior beliefs, goals, and interests, my chapter considers a different aspect of the norm diffusion process, namely how weak organizations can disseminate their ideals globally. Acharya stresses the active process of norm takers. This chapter emphasizes the interactive process of how some norm makers work strategically to target certain powerful norm takers who can enforce the norm entrepreneur’s ideals. The norm takers in this chapter, instead of being local NGOs, are some of the most powerful actors in international relations.

Another feature of the chapter is its recognition that violations of norms are inevitable and for this reason it focuses on enforcement of new norms even if some of those powerful actors do not internalize the new norms. Theorists of norm diffusion define internalization as when the acceptance of norms becomes so commonplace and widespread that there is little divergence from the norm and little contestation of it. That internalization need not occur in order for a norm still to be enforced is important because it provides a mechanism for protecting innocents when violations of norms occur. When actors violate innocents’ human rights, coercively enforcing norms may be the only means available to protect innocents. As Nicholas Wheeler writes, “intervention by force might be the only means of enforcing the global humanitarian norms that have evolved in the wake of the Holocaust.” For this reason, it is vital for state or intergovernmental actors to be able to enforce humanitarian norms, such as the prohibition of genocide, crimes against humanity, and war crimes, precisely because they are not universally followed. As Jeffrey French and Robert Haywood write in this volume, these coercive forms of authority are a “necessary precondition” for noncoercive private authorities “to participate effectively” in global governance. Thus in addition to norm enforcement being important in its own right, it is additionally instrumentally valuable.

Because this mechanism of norm diffusion relies on the persuasive capabilities of the norm maker, and relies on the potential norm taker to accept or reject the new norm, it is not linear or deterministic. This does not make this mechanism unique among types of norm diffusion. Many of the most prominent theories of norm diffusion rely on persuasion and of course not all norms are adopted, as I discuss below.

The chapter is laid out as follows. First, I discuss the leading theories of power and private authority to explain that NGOs lack coercive and other types of power that other actors possess. Second, I explain how the process of norm diffusion I identify in this chapter is different from and complements accounts such as the boomerang, spiral, and banyan tree models. Third, I demonstrate that NGOs can use ideas to convince actors with coercive power that only some uses of violence are legitimate.
and discuss the circumstances under which NGOs may be able to use this mechanism of norm diffusion to achieve their goals by analyzing the role NGOs played in the development of R2P. I finally consider potential objections and conclude.

**Types of power and authority**

In this section, I examine several ways to categorize power in order to make three points. The first point is that NGOs lack important types of power, especially coercive and institutional power. The second point is that even though they lack coercive and institutional power, they can influence actors in other ways. The third point is to provide a means to discuss what type of power other actors possess, namely coercive, structural, and institutional power. The process by which NGOs influence coercively powerful actors to modify how they exercise their power to diffuse and enforce their norms is then discussed in the section that follows.

One popular way of categorizing power is into three “faces.” The first face involves coercion. Dahl’s formulation of the first face of power is perhaps the most well known and widely accepted. He argues that “A has power over B to the extent that he can get B to do something that B would not otherwise do,” and A can sanction B if B does not comply. Barnett and Duvall call this compulsory power. Coercion can also be a factor in what Barnett and Duvall call institutional power, which I discuss below. An example of coercive power is states’ enforcement of laws because if someone violates the law, she can face sanctions including jail time, a fine, or even death. NGOs typically lack the first face of power because they cannot threaten serious consequences to most actors if others fail to comply with their ideals, whereas states and intergovernmental organizations (IGOs) can generally exercise coercive power.

The second face of power is the ability to set the agenda and other methods to shape outcomes that involve deciding on what is discussed or ignored. For instance, news organizations have some second face power because they can influence what average citizens, politicians, and other government officials discuss.

The third face involves shaping background assumptions that many take for granted. This is similar to Barnett and Duvall’s idea of productive power, which is the “socially diffuse production of subjectivity in systems of meaning and signification.” It involves ideas and interests. More specifically, it is a type of power that determines how people formulate their desires and the unexamined assumptions according to
which they make decisions, but it is more diffuse than structural power. Productive power creates “systems of knowledge through which meaning is produced, fixed, lived, experienced, and transformed.”12 It creates meaning “through which they [people] understand their interests and desires.”13 Hayward, makes a similar point by arguing that power is best understood not as a concept of how people control one another, but as setting the boundaries of what we imagine are the limits of social possibility.14

Barnett and Duvall identify two additional types of power that are useful here. They describe institutional power as the “control actors exercise indirectly over others through diffuse relations of interaction.”15 This type of power is exercised through institutional mechanisms. In describing institutional power, Barnett and Duvall write that “A does not ‘possess’ the resources of power, but because A stands in a particular relation to the relevant institutional arrangements, its actions exercise power over B.”16 Structural power is the “constitution of subjects’ capacities in direct structural relation to one another.”17 “Whereas institutional power focuses on differential constraints on action, structural power concerns the determination of social capacities and interests.”18 For instance, the owner of a slave who has convinced the slave to believe she is morally inferior to her master is exercising of structural power.19

Because NGOs are relatively powerless as measured by the compulsive, institutional, and structural powers, they have developed creative ways to magnify their influence. Rodney Hall and Thomas Biersteker have identified three abilities NGOs have as private authorities.20 First, NGOs can help set the agenda. Second, NGOs can build reputations as experts and offer expert advice. Third, NGOs can draw on their moral authority, objectivity, and neutrality to influence people. Notice that each of these types of private authority relies on influencing other actors that have more coercive, structural, or institutional power. Their main point is that although NGOs are not in authority, they can be an authority. Thus although NGOs are generally weak as measured by the leading conceptions of power, they are still able to influence people. The next section considers one process by which NGOs diffuse norms to institutionally, structurally, or coercively powerful actors.

The process of diffusion and enforcement without internalization

In this section, I discuss some of the leading theories of norm diffusion, and show how my argument differs from them. Rather than trying to
supersede these other theories, the pathway identified here by which norms are diffused is an additional mechanism that has been understudied. A number of prominent scholars have identified avenues by which norms affect political outcomes. Acharya usefully classifies theories of norm diffusion into two groups. “Moral cosmopolitan” theories aim at promoting and implementing universal norms such as human rights and are associated with scholars such as Kathryn Sikkink, Martha Finnemore, and Thomas Risse. Moral cosmopolitans generally focus on norm makers—those advocating and pressing for universal adoption of new norms. A second group of theories of norm diffusion focuses on norm takers.21 Acharya is arguably the foremost theorist of the second group. These theories focus on how and why actors adapt norms to fit their local contexts and systems of belief.

First, consider the theories of the moral cosmopolitan norm diffusion. Risse, Ropp, and Sikkink discuss a norm “spiral” whereby actors are socialized into changing their behavior in various ways, first for instrumental reasons and then because they come to believe in the norms.22 Finnemore and Sikkink discuss a three-stage “life cycle” of norms where first, norm entrepreneurs advocate for new norms, second, actors accept them through a “norm cascade” and third, actors “internalize” the norms when they become underlying assumptions that nearly everyone accepts.23 Keck and Sikkink examine the special case of when domestic avenues for reform are blocked.24 They show that when there is domestic policy gridlock, domestic reformers sometimes petition international NGOs (INGOs) to lobby domestic power wielders.25 Keck and Sikkink term this mechanism the “boomerang model” because the impetus for change starts domestically, local actors then utilize international actors, and finally these international actors attempt to convince domestic actors to reform. Like a boomerang returning to the person who threw it, the local actors turn to international actors in order to achieve local policy outcomes. These contemporary arguments echo Max Weber who argues that some norms become customs, conventions, customary laws, and then coercively enforceable laws.26

Many of the most prominent proponents of moral cosmopolitan norm diffusion arguments seem to believe that when successful, all norm diffusion follows a similar path whereby norms eventually become so commonplace that they are rarely questioned. Risse, Ropp, and Sikkink argue that the last stage of the spiral model is when a norm becomes “fully institutionalized domestically and norm compliance becomes a habitual practice of actors.”27 Norms are internalized “when actors comply with them irrespective of individual beliefs about
their validity.”28 Finnemore and Sikkink’s third and final stage in the norm life cycle is similar. In their view, after a norm cascade happens, almost everyone accepts a norm.29 For example, there is no longer a mainstream debate in the USA about whether women should have the right to vote, unlike a century ago. Almost every American has internalized the norm that women should have the right to vote.

Whether these theorists think that coercive enforcement mechanisms are necessary for norm diffusion is unclear. One might reasonably suppose from these views that compulsory power is not needed to enforce norms when they are internalized. For instance, Risse, Ropp, and Sikkink write that when internalization has occurred, not only is no coercive pressure necessary for compliance, but also no external pressure of whatever type is necessary.30 However, they later claim that the fifth and final stage of norm diffusion requires domestic law enforcement.31 It is therefore unclear what their view actually is.

Although there is some evidence that norms not backed by compulsory power can decrease the incidence of human rights violations,32 often norms not backed by coercion cannot adequately protect innocents. There are many reasons why organized violence occurs, and unenforceable norms cannot adequately protect everyone during mass atrocities. Are there second best options for how to enforce norms when they are not internalized?

There are other options that rely on enforcement when internalization has not occurred. I differ from moral cosmopolitan theorists in some of the methods of how norms become accepted and realized. Whereas the above theorists are generally interested in individual level normative change that may or may not be enforceable, my focus is on some form of coercive enforcement powers even when a norm has not been internalized. While the various steps of norm diffusion the above theorists propose accurately describe how some new norms result in concrete changes, they fail to explain how other norms emerge—and how norms that have not been internalized can help prevent some of the worst violence in the world.

The focus on coercive enforcement mechanisms is morally important in some circumstances for three reasons. First, actors who claim that they approve a norm may not act consistently with their stated beliefs. They may make “insincere commitments.”33 Second, often norms should be enforced before they are internalized. Third, as Finnemore and Sikkink note, not all norms reach a tipping point.34 Some norms prohibiting unjust violence will likely never be internalized by a sufficiently large number of individuals and organizations in the sense of Finnemore, Risse, Ropp, and Sikkink not to require some enforcement.
mechanisms. One morally important factor is to what extent people follow a norm, and how well innocents are protected from people who violate the norm—even when many people have not internalized a norm. Internalization is only one way of reaching the goal of having people follow a norm. The type of norm diffusion I identify here is another type.

Of course, coercive and institutional power can be abused, and sometimes prevailing norms cannot adequately protect human rights: consider slavery or apartheid. However, a minority enforcing its norms is not always wrong. In fact, it can save lives. For instance, a humanitarian intervention, which is carried out by a few countries, can prevent a genocide or war crime. There need not be global or local internalization of the idea that genocide is wrong and should be stopped. Coercion is especially important for institutions and norms such as the ICC and R2P that acknowledge that there will be violations of international norms and laws and are designed precisely to respond to these problems. If NGOs are able to convince a few key coercively powerful actors that can then enforce their ideals, they can achieve their aims more rapidly and extensively than if they attempted to have most actors internalize norms. In the next section, I discuss two instances of this.

The second approach to norm diffusion that Acharya identifies emphasizes that for norm global diffusion to work, local actors must adopt norms. He introduces the metaphor of the “banyan tree” to illustrate his point. The central idea of the banyan tree model is that when local actors adopt norms, they are assimilated and modified in diverse ways to fit with local customs, traditions, ideals, and interests. Norms are rarely passively accepted.

My approach bridges the moral cosmopolitan and local acceptance approaches. It is consistent with the moral cosmopolitan view of norm diffusion because it considers a way for norms to be globally enforced, but it also builds on Acharya’s emphasis on norm takers. In fact, norm takers play a vital role in my argument. As Acharya argues, often norm takers and norm makers are different actors. Unlike in Acharya’s argument, however, in the process of norm diffusion I identify, norm takers are international actors rather than local NGOs. The norm adopters are powerful actors including states, IGOs, or international institutions, which can enforce the new norms.

**A strategy to realize the enforcement of norms**

Over the past two and a half centuries, NGOs have convinced other actors to enforce their ideals coercively by challenging the legitimacy of
governance practices and by strategically targeting certain actors. Members of NGOs worked hard to outlaw the slave trade and slavery, codify the laws of war, help develop international criminal law, promulgate human rights, and help develop R2P as a means to prevent and respond to mass atrocities. The idea that it is illegitimate—and indeed now illegal in some instances—for governments and non-state actors to violate individual human rights in certain ways gained popularity over the twentieth century.

NGOs can persuade actors to adopt their ideals in at least three ways, as Hall and Biersteker discuss. These methods are elaborated on in further detail here. First, they helped set the agenda for which issues should be discussed. Second, they use ideas of legitimacy to convince more materially powerful actors to change their policies. Third, they use strategic methods to target certain states that are sympathetic to their goals in order to implement new international laws. I briefly discuss each of these methods, and then demonstrate how these strategies have worked through the invention of R2P.

First, NGOs can help set the agenda by producing reports and commenting to reporters, and lobbying powerful individuals. For instance, Samuel Moyn documents the large increase in the citation of “human rights” in newspapers in the 1970s due to human rights organizations such as Human Rights Watch (and its precursor) and Amnesty International. A similar process occurred, as I show below, with the development of the idea of R2P.

Second, normative legitimacy is an important tool that NGOs and other actors can use. An institution is normatively legitimate “if and only if it is morally justified in wielding political power,” according to a widely accepted definition from Buchanan. By political power Buchanan means compulsory power. Normative legitimacy requires taking or refraining from certain actions or processes. There is a wide range of ways that an institution could be illegitimate. For instance, Wellman argues that an institution could be illegitimate either by procedural or substantive means. A democrat might argue that only if a state allows its citizens to vote is it procedurally legitimate. One substantive view of normative political legitimacy is that only governments that adequately protect the human rights of their citizens have the right to rule. Another is that only governments that adequately respect human rights internally and externally are legitimate. NGOs have drawn on such conceptions of legitimacy to influence what (some) states believe are the legitimate limits of violence. For instance, R2P contains both an outcome-based and a procedural conception of legitimacy. If any democratic or nondemocratic state commits mass atrocities, then steps
can be taken to protect those threatened, but generally certain processes must be taken for certain steps to be legitimate, for instance getting consent from the United Nations (UN) Security Council for the use of nonconsensual military force across state borders.

This raises the question of whether the perception of legitimacy matters. Sociological or empirical legitimacy is the perception of having the right to rule. What interests me in this chapter is precisely how ideas of normative legitimacy become sufficiently sociologically legitimate for actors to decide to enforce coercively constraints on the use of force, and what role NGOs have in this process. Whereas normative political legitimacy can be assessed by moral argumentation, sociological or empirical political legitimacy is measured by empirical research methods such as surveys. As I discuss below, NGOs used ideas of normative legitimacy to persuade states to accept R2P, creating sociological legitimacy of these institutions.

Third, NGOs have targeted specific states that are willing to ratify international treaties for which they are advocating. NGOs have developed specific means to achieve these aims. Because international treaty law relies on states ratifying it, and often the most powerful states such as the USA and China are unwilling to curtail their own power by supporting international treaties, NGOs have focused their lobbying efforts on less powerful states which can collectively be powerful. NGOs have worked to convince states to create binding international treaties, such as the Rome Statute of the ICC. Not only have NGOs worked to codify new laws, but they have also worked to create new norms that are enforceable through existing institutions. In what follows, I focus on an important example of this process: the development of the R2P.

The development of the responsibility to protect (R2P)

R2P is an idea developed in the 1990s and 2000s as a response to the failures of states and international organizations such as the UN and North Atlantic Treaty Organization (NATO) to respond adequately to the mass atrocities in Rwanda and the Balkans in the 1990s. The main official documents that describe R2P are the 2001 report by the International Commission on Intervention and State Sovereignty (ICISS), the 2005 World Summit Outcome Document, and the 2009 report by the UN secretary-general on the three “pillars” of R2P. These documents have two main claims: i) states are legitimate and therefore retain their sovereignty only if they protect their citizens from mass atrocities; and ii) the international community has a right and a
responsibility to intervene in various ways in the domestic affairs of states when states fail to discharge their responsibilities. R2P specifically refers to preventing, ceasing, and rebuilding after genocide, crimes against humanity, war crimes, and ethnic cleansing.

One of the most controversial aspects of R2P is that if states are unable or unwilling to protect their citizens in the ways described in the 2001 and 2005 R2P documents, they temporarily forfeit their rights to territorial integrity and political independence to the extent necessary for the international community to halt ongoing mass atrocities. R2P constrains states internally as well as externally. It imposes on states the negative duty not to commit certain types of mass atrocities and positive responsibilities to aid in protecting individuals within and outside of their state from these atrocities if states are unable or unwilling to do so.

The origins of R2P can be traced to thinkers at NGOs in the 1990s. These individuals helped set the agenda. Roberta Cohen, while at the NGO Refugee Policy Group (RPG), is credited with inventing the idea she called “sovereignty as responsibility” in 1991, which became the foundation for R2P. This idea relied on the premise that in order for states to be legitimate, they must fulfill their responsibility to protect refugees within their borders. NGOs including RPG lobbied the UN Commission on Human Rights to pressure the UN secretary-general to appoint a special representative for internally displaced persons (IDPs). Boutros Boutros-Ghali relented and appointed Francis Deng, who championed the idea of sovereignty as responsibility inside the UN. Deng and Cohen further developed the idea of “sovereignty as responsibility” with others in the mid-1990s, which resulted in a book published by the Brookings Institution. “Sovereignty as responsibility” and R2P share the same basic idea that states have a responsibility to protect their own citizens. Gareth Evans, one of the co-chairs of the ICISS, goes so far as to say that Cohen and Deng’s idea “became, more than any of these other contributions of the 1990s [the right of intervention, human security, individual sovereignty, etc.], a central conceptual underpinning of the responsibility to protect norm as it finally emerged.” Although the Canadian government funded the ICISS, it was an independent commission comprising scholars and politicians from numerous countries. Individuals such as Michael Ignatieff and Ramesh Thakur, both of whom were also aligned with nongovernmental organizations at the time, were leading contributors to the foundational documents of R2P.

R2P is a moral but not a legal doctrine. R2P does, however, rely on certain legal institutions such as the UN Security Council. Additionally, some of the terms on which R2P relies, such as crimes against
humanity, genocide, and war crimes, also have well-established mean-
ings in international criminal law. For instance, the Rome Statute of
the ICC defines in detail what constitutes each of these international
crimes. Thus, although neither the 2001 ICISS report nor the 2005
World Summit Outcome Document defines those terms in detail or
refers to a specific document for definitions, there are already widely
accepted definitions of these terms.

R2P has succeeded in limiting the legitimate use of violence in two
ways. First, it provides widely accepted although not universal criteria
on the limits of the legitimate use of force. Second, it changed what
states are willing to authorize and use resources to enforce. The upris-
ing against Muammar Gaddafi in Libya and the UN Security Council
and NATO’s response illustrates both points. Although the UN
Security Council has authorized other violations of state sovereignty,58
for the first time ever, in 2011 the Security Council authorized a military
humanitarian intervention to protect civilians directly in a state that
did not consent to the use of outside military force.59 Barack Obama
justified NATO’s armed humanitarian intervention by citing R2P.60
The leaders of France and Britain additionally justified the interven-
tion by arguing that they have a “duty” to “protect civilians.”61 Rather than
put troops on the ground, the intervening coalition adopted the third
pillar of R2P to match the political constraints of their constituents’
disapproval of risking their soldiers’ lives. Instead, they carried out an
aerial bombing campaign. Libyan rebel leaders also called for inter-
vention.62 With NATO’s bombs destroying Libya’s heavy armor, the
rebels were able to overrun the government’s forces and likely pre-
vented a massacre of innocent civilians. Just a decade after the ICISS
released its report in 2001, R2P moved from idea to practice by the
military intervention that overrode Libyan state sovereignty.

It did so through individuals at NGOs developing norms that were
then adopted—and enforced—by states. As the case of the Libyan
intervention illustrates, there were multiple actors at multiple levels of
analysis that adopted R2P for their purposes. That the rebels called on
Western powers to intervene raises an interesting point about what
Acharya calls norm subsidiarity. That is “as a process whereby local
actors create rules with a view to preserve their autonomy from dom-
inance, neglect, violation, or abuse by more powerful central actors.”63
The rebels played one set of powerful actors, the intervening Western
powers, against the locally powerful Gaddafi in order to achieve their
aims of preventing domination and abuse. This illustrates the multiple
ways actors promulgate, enforce, adapt, and adopt norms to fit their
own interests.
Objections

Someone might object that it is impossible to know that NGOs’ persuasive capabilities were an important factor in the development of R2P. This is actually two objections masquerading as one. First, it suggests that had NGOs not been present, R2P might have developed identically. Second, it suggests that even though NGOs were present, they did not shape the final content of R2P. In response to this objection, it is useful to consider the types of power that the NGOs lacked so that certain hypotheses about the power of NGOs can be ruled out. None of the NGOs possessed coercive, institutional, or structural power. Nor were any in a position to create law or implement R2P. They could not threaten to withhold aid, invade, or dangle economic benefits in front of countries that did or did not accept their arguments. NGOs could only contribute their moral standing, expertise, and ambition. The evidence that NGO exercises were influential in the creation of R2P is twofold. First, the very commission that wrote the doctrine, the ICISS, was itself a nongovernmental organization. Second, the ICISS co-chair, Evans, openly acknowledges that ideas developed by individuals, including Cohen, in nongovernmental organizations had an influence on R2P.

Another objection is the following: if persuading powerful actors can be so successful, why don’t all NGOs engage in it? There are several responses. First, it seems that in recent years more NGOs have been adopting such strategies, although it is difficult to measure and assess this accurately. Despite these difficulties, Wendy Wong claims that NGOs have in recent years changed strategies “from holding states accountable to existing law to making new law to which states are accountable.”64 Because NGOs cannot make international law, the process by which they achieve international law is by convincing states to adopt their positions. Second, not all NGOs have goals that are achievable by this method. For example, an NGO might want to increase the number of volunteers at local soup kitchens, but they realize that there is no political will to require individuals to do community service and they do not want to require individuals to do this even if there were the political will.

Conclusion

I have argued that NGOs can and have persuaded more coercively or institutionally powerful actors to implement their goals even while some other powerful actors refused to accept these norms. It focuses on
both the norm makers and the norm takers, and in this way bridges the moral cosmopolitan accounts and Acharya’s emphasis on norm takers. This chapter identifies an under-theorized mechanism for how NGOs can contribute to peace and accountability. It explains how NGOs can use their private authority to realize important outcomes. My argument also demonstrates that there are multiple mechanisms of norm diffusion. Rather than attempting to supplant the spiral, boomerang, or banyan tree models, this chapter offers another method by which norms can diffuse.

Finally, the role of NGOs does not cease when they have successfully persuaded coercively powerful actors to adopt their norms. Often institutions with coercive power capabilities have wide discretion as to when and how they use this power. For instance, enforcing R2P can be done in multiple ways, including economic sanctions, no-fly zones, or military invasions, among other options. NGOs can persuade actors with coercive power to use or refrain from using their powers in certain ways. They can also collect and disseminate evidence of atrocities in which states or IGOs need to take action in order to combat mass atrocities. Despite their weaknesses, persuasive NGOs can indirectly help protect innocents in situations of armed conflict and mass atrocities.

Notes

1 For more on the ICC, see Vanessa Ulrich’s chapter in this volume.


14 Barnett and Duvall, “Power in International Politics,” 43, see also 55–57.


17 Ibid., 51–52.

18 Ibid., 53.

19 Ibid.


28 Ibid., 16, emphasis in the original.


41 Hall and Biersteker, *The Emergence of Private Authority in Global Governance*, 14.

42 Moyn, *The Last Utopia*. 
The weak persuading the powerful

50. ICISS, *The Responsibility to Protect*.
52. Evans, *The Responsibility to Protect*, 36.
54. Bellamy, *Responsibility to Protect*, 21; Cohen, “From Sovereign Responsibility to R2P.”

63 Acharya, “Norm Subsidiarity and Regional Orders,” 97.

64 Wong, Internal Affairs, 158.
Part IV

Conflict governance NGOs in action
8 The transnational battle over gun control

Implications for NGO governance

Clifford Bob

- The control network
- The Brazilian control network
- The global gun network
- The Brazilian gun network
- Results internationally
- Results in Brazil
- Conclusion

Since the early 1990s, a network of nongovernmental organizations (NGOs), states, and United Nations (UN) agencies has highlighted small arms and light weapons (SALW) as a major security challenge in numerous countries around the world. The network’s goal has been promulgation of new international agreements and transnational practices that would limit the proliferation of these weapons. The expectation is that this would in turn reduce violence and instability within and across states. As such, small arms control is a good example of the kind of issue that might benefit from greater global governance, and even be the subject of action by some hypothetical non-state actor or actors enjoying “issue-specific authority.”

In this chapter, I use the small arms case to explore the problems and possibilities associated with creating such an authority or even some less institutionalized form of global governance. As I will show, in this as in many other areas seemingly ripe for global governance, those promoting it are frequently not the only players on the field. In the small arms case, the control network was opposed on nearly every front by another powerful international network. This gun network disagrees with the control network on core assumptions and ideas. As a result, many of the goals desired by the control network have gone unachieved, both at the international level and in particular states. The record is not all bleak, however. Some new policies have been
promulgated, although they fall short of the expansive goals sought by the control network. The form of these policies and how they have been won in the face of staunch opposition are the subject of this chapter. As such, the chapter primarily presents a critique of the possibilities for global governance, even in the limited form of a specific small-arms “authority” autonomous of state oversight and control. In the chapter, I first discuss the scope of the small arms problem, as conceived by the control network, both internationally and in a major country on which the network has focused: Brazil. In addition, I examine the main participants in the control network, highlighting connections between the international and Brazilian networks, as well as the goals they sought in both contexts. In the following sections, I describe the opposition the control network has faced. Next I examine the outcomes of the conflict at the different levels. In the conclusion, I discuss implications both for transnational nongovernmental authority in the area of small arms control and for global governance more broadly.

What are “small arms and light weapons”? They include pistols, revolvers, ordinary rifles, semiautomatics, and other weapons carried by individuals (small arms), and automatic rifles, machine guns, mortars, and missile or rocket launchers (light weapons). For my purposes, these distinctions are of secondary import; I use the terms “small arms,” “firearms,” or “guns,” avoiding the deadly UN acronym, SALW. There is disagreement about their number in the world today, but one widely cited estimate from a control NGO, the Small Arms Survey, was 875 million in 2007. Deployed in warfare, such weapons are also involved in crime, accidents, and suicide. In these and other contexts, about 740,000 people per year are killed worldwide by small arms, according to the UN. This firearms statistic, however, like most others, has been challenged by the gun network, not only for its accuracy, but also for its failing to account for lives saved by guns in the hands of police, soldiers, or citizens.³

The control network

Since the early 1990s, a loose transnational advocacy network has promoted both the idea that small arms are a major global problem and various policies to control them. The network began as the Cold War ended. As the threat of nuclear confrontation between the superpowers faded, new and existing internal wars in Africa, Europe, and elsewhere began to gain greater media and public attention. In most of these bloody conflicts—Yugoslavia, Rwanda, East Timor—small arms were the primary weapons used by the combatants. With these facts as
backdrop, scholars, NGOs, and UN agencies concerned with security issues became interested in small arms.

Through a series of nongovernmental and UN meetings in the mid-1990s, a network promoting control began to form. In the late 1990s, nongovernmental members formed the International Action Network on Small Arms (IANSA), the major advocacy wing of the network, which includes hundreds of national-level gun control, development, and rights organizations. Another key member of the network is the Small Arms Survey, an NGO that claims to provide objective scientific information about small arms. The UN, too, became heavily involved, centralizing most of its small arms work in the Department of Disarmament Affairs (DDA) and promoting a variety of control measures.

In January 1995, UN Secretary-General Boutros Boutros-Ghali specifically targeted small arms as a major global concern: “The world is awash with them,” requiring “micro-disarmament” of the weapons “that are actually killing people in the hundreds of thousands.” Later that year, the UN General Assembly established the Panel of Governmental Experts on Small Arms to study and propose solutions to the problem. Playing a key role as well were a number of governments. This included those directly affected by civil unrest, such as Colombia. It also included other states such as Canada, Britain, and Japan in which gun crime, even if relatively small in scale, had prompted formation of domestic control movements.

Although different members of this network disagree on specific matters, as a whole they hold that “gun proliferation is a global problem” and therefore requires a “global solution,” as IANSA states. “Excessive and destabilizing accumulations” of small arms “exacerbate[e] conflicts by increasing the lethality and duration of violence.” They are a major contributor to a wide variety of human rights violations and crimes, both within developed and developing countries. They also foster instability and underdevelopment in many countries. Given all this, IANSA has depicted small arms as a major public health emergency with “1000 Killed Every Day.”

To counter the problems posed by small arms, the control network has since the early 1990s sought a number of goals. For one thing, the network urges that proliferation of small arms should be fought by disposal and destruction of excess arms in post-conflict sites. More fundamentally, the international community should curb the weapons trade with war-torn countries and especially with insurgent groups, terrorists, and other violent non-state actors. Some activists have called for restrictions on both legal and illegal commerce, but most, including the UN panel, proposed only policies directly covering “illicit”
manufacturing and trafficking. Some of these measures potentially had broader applications, but the primary target was illegal trade in conflict zones. To achieve these goals, the UN began a number of processes, the most important of which through the mid-2000s was the Program of Action (PoA) on small arms. More recently, the UN has also promoted an Arms Trade Treaty (ATT) as a solution to the problems of the small arms trade.

The Brazilian control network

In seeking these goals, the control network has worked closely with domestic gun control groups, often promoting them in particular countries through monetary and strategic support. Brazil is a primary example of this. In the 1980s, as the country slowly democratized and social controls loosened, crime skyrocketed. The firearms death rate tripled from 1979 to 1990, and then doubled again in the 1990s, giving Brazil one of the worst rates among countries at peace, according to the UN Educational, Scientific and Cultural Organization (UNESCO). By 1997, São Paulo’s murder rate was about 13 people per day, 90 percent from guns—more than double New York City’s on a per capita basis. Early in the transition period, the government unleashed lethal firepower against the criminal gangs blamed for much of the killing. Abusive police had little effect, however.

With this situation as backdrop, a domestic control network formed in the early 1990s, linking nongovernmental and state agencies. In 1993, an NGO, Viva Rio, began promoting stronger public security in Rio de Janeiro and Brazil—including a reduction in both criminal and state violence. In 1997, another NGO, São Paulo-based Sou da Paz (I’m for Peace), started promoting civilian gun control as a key means of reducing violence. In this, they learned directly from the nascent international network and UN agencies. Just as important, in 1997 Brazilian President Fernando Henrique Cardoso began taking an interest in gun control. He employed members of the control network, including the leader of Sou da Paz, in key government ministries. In addition, the Brazilian network quickly became integrated into the larger international control network, becoming a founding member of IANSA. The Brazilian government supported the PoA and later the ATT. In the late 1990s, the government and larger control network pushed for a set of domestic measures to reduce gun violence. Most important, in 1998 Cardoso proposed the Statute of Disarmament, a measure aimed at sharply restricting firearms ownership in Brazil. According to government ministers at the time, the statute would
“offer an example to the entire world[,] … a radical measure that shows we are serious about confronting the issue” of gun violence.¹⁰

The global gun network

Even as the control network rose internationally and in countries such as Brazil, it sparked vehement opposition. At the international level, the primary actor is America’s National Rifle Association (NRA). Perhaps surprisingly to those who see the NRA as a parochial national group, the NRA has participated actively at the UN since the rise of the control network in the mid-1990s. The NRA saw the control groups’ ideas as threatening to its domestic interests and sought to challenge them at every turn. In addition to doing so itself, the NRA also catalyzed formation of a transnational gun network, the World Forum on the Future of Sport Shooting Activities (WFSA), based in Brussels. WFSA includes among its international membership dozens of domestic hunting and sport shooting organizations, as well as trade organizations for gun manufacturers. In addition to advocacy, WFSA also claims to provide objective information about the small arms issue.

Although not formal members of the network, a number of states have supported WFSA’s goals at the UN and elsewhere. Most important, under the influence of a strong domestic gun movement, the United States has played a key role, particularly under the administration of Republican President George W. Bush.

The gun network refutes virtually all aspects of the control network’s claims about small arms. Most broadly, its members deny the existence of a “global gun crisis,” instead warning that the control network’s proposed solutions would constitute a “global gun ban.” At the UN, for instance, Germany’s Forum Waffenrecht and other gun groups have used statistical evidence to reject any asserted relationship “between the number of firearms and the misuse of firearms, legal or illegal.” Other gun groups have challenged such basic “facts” as the number of firearms deaths worldwide.¹¹

To fight the control groups’ human rights appeal, the gun network retorted that lack of arms is the real violation. As the NRA’s Executive Director Wayne LaPierre has argued, Rwanda’s Tutsis, Indonesia’s East Timorese, and Papua-New Guinea’s Bougainvilleans suffered butchery in the 1990s because they did not have guns to protect themselves. The best preventative? Arm vulnerable populations! LaPierre put it baldly: “If every family on this planet owned a good-quality rifle, genocide would be on the path to extinction.”¹²
More generally, the gun network has charged that the control side has twisted the entire concept of human rights. Witness “the UN Plan to Destroy the Bill of Rights,” NRA shorthand for the UN small arms control process. Nor is this simply a matter of individual rights under attack. As WFSA has warned, the UN also threatens the “cherished heritage” of vulnerable “hunting cultures.” Those cultures should have the right to determine gun regulations grounded in their own histories and democratic processes. Seizing the offensive, firearms groups such as the Brazilian Coalition for Self Defense (PLD) also claim at the UN that the control network seeks to destroy another basic human right—to self-defense. Similarly, according to the NRA’s LaPierre, the control network promotes the “barbaric principle” that “self defense is a privilege that the government can and should take away” by restricting the individual right to own firearms.

The Brazilian gun network

In Brazil, too, the rise of a control network and especially President Fernando Cardoso’s disarmament proposals prompted formation of a new movement promoting contrary aims. Strikingly, Brazil had never had a gun rights movement before. Instead, it had a number of hunting, sport-shooting, and collectors’ groups which were largely nonpolitical, with small memberships. However, with the threat of disarmament, they transformed themselves into a movement for gun rights and individual self-defense. Initially, this occurred separately, among particular groups of individual gun owners. In late 2000, they formed the Pro Legítima Defesa (For Legitimate Defense) coalition (after 2006, Pela Legítima Defesa—Legitimate Defense Group, or PLD), a loose coalition that worked together in fighting the disarmament statute.

Just as in the case of the Brazilian control movement, this transformation in the character and goals of the Brazilian gun movement was nurtured by international actors. Core members of the PLD travelled to the United States in the early 2000s for discussions and training from the NRA and other conservative activists on how to fight domestic gun control. In turn, NRA leaders visited Brazil to speak to large numbers of gun owners and to suggest strategies and fund-raising appeals for the Brazilian firearms movements. Other WFSA members similarly provided support to the Brazilians, in person at international conferences or electronically.

With foreign tutelage, the PLD’s member organizations mobilized against the growing Brazilian alarm about a gun crisis and especially against the sweeping disarmament proposed to solve it. They acknowledged
that Brazil suffered a public security problem but denied that the country had a gun crisis. Indeed, they believed that more guns in the right hands were the answer—and that disarmament would itself create a crisis of rights and security. Like their foes, they reached out to experienced foreigners, strengthening their unity, sharpening their arguments, and raising their capacity to defend their interests. None of this is to say that Brazil’s contest over guns is an overseas transplant. Its primary sources are national. However, key players on both sides are coached, aided, and cheered by rival transnational networks.

**Results internationally**

At the UN, control proposals were mooted continuously from the late 1990s onward. Most important in this process were two international conferences, held in New York in 2001 and 2006. At the first, the control network hoped that states would adopt a strong PoA. Such a document, adopted by consensus, might establish a single set of international standards. The draft PoA urged that states bind themselves to reduce small arms stocks, restrict manufacture and trade, record transfers, and bar sales to non-state actors. On the conference’s opening day, UN Secretary-General Kofi Annan stressed, “[t]hese weapons may be small, but they cause mass destruction.” At the UN, hundreds of control activists joined delegates from numerous states in promoting the PoA as a first step to creating a “culture of peace.”

However, the gun network dashed these hopes. Its own set of seasoned activists at the conference countered the control representatives. Constituents of the network, unable to attend the meeting, peppered UN agencies and leaders with letters and messages decrying the UN’s attack on firearms. More important, in the months before the conference, the gun network and particularly the NRA had lobbied key state delegations against the PoA proposal. Showing the efficacy of this groundwork, on the 2001 conference’s opening day, US Undersecretary of State John Bolton lay down a series of “redlines.” These were points the United States would not accept in any conference document: a legally binding agreement; restrictions on legal trade and manufacture; restrictions on sales to non-state actors; and promotion of international advocacy. These were also planks basic to the NRA and WFSA positions. Indeed, Bolton was later quoted as stating that firearms groups had played a decisive role in the United States’ formulation of its position: “NRA representatives keeping close watch on international gun-ban groups sounded the alarm that brought outrageous gun-ban proposals to the attention of the Bush administration.”
IANSA attacked the redlines and the gun groups behind them, but the gun network had played its trump card. In a UN conference setting ruled by consensus procedures, one powerful state’s adamant stand forced the UN to trim its sails, although other governments privately cheered. In the end, the 2001 PoA included only nonbinding agreements on substantive matters the US delegation approved. The only give in the United States’ redlines was allowing a follow-up conference in 2006.19

The follow-up conference, however, played out in much the same contentious fashion—and with a similar conclusion, effectively ending the PoA as a means of controlling small arms. As IANSA’s director lamented, “It is to their lasting shame that governments let … a small number of states … hold them all hostage and to derail any plans [to improve] this global crisis.”20 Other control NGOs ended their work for the PoA after the 2001 debacle. Most notably, Human Rights Watch, a prominent and powerful supporter of the PoA, halted its activism then, denouncing the PoA as a “program of inaction.”21

With the demise of the PoA, the UN and the control network are now promoting an alternative, the Arms Trade Treaty (ATT). This is specifically designed to avoid being stymied by the gun network and states opposed to stronger controls. If agreed, the ATT would implement some of the measures against illicit trade promoted in the draft PoA, but any ATT would also be limited in effect, covering only those states that signed it. Debate about this measure continues, with the gun network maintaining its monitoring—and staunch opposition. At minimum, any global governance mechanisms that develop around small arms will therefore be belated and foreshortened in their scope and effects.

**Results in Brazil**

In Brazil, the outcome was more positive for the control network, primarily because it had the power of the Brazilian state on its side. Beginning in 1998, the network squared off against the newly formed gun network in the National Congress, the courts, and the media, battling over the proposed disarmament law. The fight lasted years, until Luiz Inácio Lula da Silva swept to the presidency in 2003 with majority support for his party in the legislature. Although gun control had not been a priority in Lula’s campaign, he quickly signed the bill into law. Restricting civilian gun ownership, the Statute of Disarmament required registration of all firearms, increased fees sharply, raised the purchase age from 21 to 25, and banned civilians from carrying weapons. In addition, the law called for a national referendum to be held at a later date. This would ask Brazil’s adult population, whose
vote is legally required in all elections and referendums, whether the sale of firearms and ammunition should be prohibited in Brazil.

The Disarmament Statute was clearly a victory for the internationally supported gun control groups in Brazil. Its passage converted the country from one in which guns were readily available to one in which they were sharply restricted, although whether this has affected levels of gun violence since 2003 is hotly debated. Nonetheless, seizing the advantage after the statute’s passage, NGOs such as Viva Rio and Sou da Paz pushed for the national referendum to be held as soon as possible. The domestic gun groups fought back, however. For one thing, since 2003 they have opposed implementation of the Statute, seeking a raft of amendments to weaken it, challenging it in the courts, and denouncing it in the media. More important, they sought to delay the referendum, succeeding for two years. Then when the referendum was finally scheduled, they mounted a powerful campaign against it, backed by strategic support from WFSA and the NRA.

For the international control network, passage of the Disarmament Statute in 2003 had made Brazil a leader in domestic gun control efforts. The prospect of a referendum in which the citizens of a major democracy would freely vote to ban all private arms sales elevated Brazil further. IANSA, the UN, and other members of the network provided extensive support in the months before the October 2005 referendum. In addition to providing funding to Viva Rio, Sou da Paz and other control NGOs, international forces held conferences on control in Brazil, published books and articles supporting it, and lent personnel to the “Yes” on disarmament campaign.

Many of the same arguments raised at the international level were used in Brazil. Disarmament activists portrayed Brazil as suffering from a gun violence “epidemic” leading to untold heartache. Throughout, advocates backed their views with wrenching advertisements about the risks of guns in the home, the perils of self-defense, and the dangers of an armed society. In this view, disarmament and peace building were the best cures. To certify these beliefs, campaigners turned to scientific authorities, many international, such as the Small Arms Survey. Of course, campaigners knew that Brazilians cared most about Brazil. Even here, overseas supporters played a key role, generating and publicizing studies such as a June 2005 UNESCO report asserting that Brazil has “too many” guns and urging that “now, more than ever, the country needs disarmament.”

The Brazilian gun groups, however, derided the disease analogy and smashed the medical frame using their own foreign-laced data and arguments. They severed the purported link between firearms ownership
and crime rates using scientific and legal articles published in the United States, Canada, and other countries. These simultaneously certified the gun groups’ scientific arguments—and decertified the control groups’ epistemic community.\textsuperscript{24} As for peace building, here the “No” appeared in rare agreement with the “Yes.” Then again, who is not for peace? The sticking point is how to achieve it, and the self-defense network could not have disagreed more on method. For them, an armed citizenry was the best means of promoting peace and reducing criminality.

More pointedly, the Brazilian gun networks stressed the referendum’s threat to law-abiding Brazilians—a view strongly influenced by WFSA and the NRA. Gun groups portrayed themselves as upholding fundamental freedoms. Conversely, they vilified disarmament advocates for depriving the people of the “democratically conquered right” to self-defense.\textsuperscript{25} Campaign commercials featured ordinary Brazilians acknowledging that they did not possess a firearm but expressing concern about the referendum’s prohibition. The ads raised a troubling question: even for non-owners, was it wise to deprive themselves and others forever of the right to purchase a weapon? Just as potent and internationally influenced was a second way of framing the issues: guns as the ultimate protector of personal security in a country where the police were notorious for arriving late at crime scenes, being in cahoots with felons, or displaying general ineptitude.

In the end, the anti-disarmament campaign won the referendum’s battle for public opinion. Brazil voted overwhelmingly against the referendum, preserving the right to buy guns, albeit with the strict controls implemented by the Statute of Disarmament. Although the precise reasons for this vote are uncertain, Brazilians appear to have rejected the idea that disarmament could bring peace—and to have preferred the possibility of owning firearms in the future.

Conclusion

The two linked case studies discussed in this chapter have important implications for those who promote various forms of global governance, including the development of issue-specific authority by non-state actors. First, they indicate the difficulty NGOs face in defining issues over which they would like to exert governance authority. For one thing, there are multiple NGOs and networks, often with diametrically opposed goals and worldviews. Few problems are obvious and uncontested. Rather, in most cases, particularly with regard to provision of basic public goods like security, the very existence and definition of the problem are hotly contested. As one network proposes “solutions” to a
“problem,” new groups may enter the process believing that their interests will be hurt by the proposal. This is precisely the case with the small arms case. Almost as soon as the control network formed, the gun network took shape as well. They differed from one another on the identity of the problem and the aptness of a solution. Indeed, in many ways, each network saw the other’s proposed solution as itself a major problem.

Second, there are multiple forums in which efforts to deal with global problems might occur—and their legitimacy is often contested. Absent authoritative delegation from states, whether expressly or implicitly, the solutions proposed by these forums are unlikely to be accepted (except by groups whose interests are advanced by them), but not by those whose interests will inevitably be hurt. In the Brazilian case, for instance, transnationally linked local actors jumped from institution to institution within Brazilian society in attempts to advance their goals—or to oppose those of their foes. Developments exemplifying this are the defeat of the disarmament referendum and the continuing battles over implementation of the disarmament statute in the legislature, courts, and media.

Third, even if some form of global governance is established in this area, it will remain contested and will be enforceable only with aid from or at sufferance by states. This does not mean that a resolution to the problem will never be reached, but it does suggest limits to the ability of would-be NGO authorities to establish and enforce binding rules. In cases of deep value disputes over key public goods, even international organizations, which bring states together to solve problems, have great difficulty reaching compromises and enforcing agreements.

Notably, the conflictual nature of the small arms issue is hardly unique. On most important global topics, from population to global warming to genetically modified foods to humanitarian interventions, there are disagreements. These run deep, even to the existence of the supposed problems. Any efforts to deal with them, whether within democratic states, international institutions, or even global civil society will attract strong opposition.

This is not necessarily inevitable stalemate. Decisions do get made, and policy does get promulgated, but the case of small arms control, both internationally and in Brazil, suggests some of the limits to NGO governance.

Notes

1 Empirical sections of this chapter draw from Clifford Bob, The Global Right Wing and the Clash of World Politics (Cambridge: Cambridge
University Press, 2012), which should be consulted for a fuller account of the issues discussed here.

2 Jeffrey French and Robert Haywood, Chapter 2 in this volume.


6 Edward Laurance, Dean, Graduate School of International Policy Studies, Monterey Institute of International Studies, Monterey; former consultant, UN Department of Disarmament Affairs, telephone interview, 8 June 2007 (audiotape); *Report of the Panel of Governmental Experts on Small Arms* (A/52/298), August 1997, paras 1, 17, 20, 24, 28.


10 Rohter, “Brazil, High in Shootings, is Proposing to Ban Guns.”


19 Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (A/CONF.192/15), 2001.
26 Bob, The Global Right Wing and the Clash of World Politics.
9 The non-profits of peace
Conflict resolution NGOs

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- The history and context of conflict resolution NGOs
- The lessons of CRO work
- Conclusion: implications for security and development going forward

This chapter examines the potential of non-state governance to reduce armed violence directly by looking at attempts by nongovernmental organizations (NGOs) specialized in conflict resolution (CROs)\(^1\) to bring about mediated solutions in ongoing civil wars. It also examines how the space for CROs and NGO peace-building activities emerged and how it has fluctuated in recent history. I argue that a mid-1990s wave of this type of organization contained within it the seeds of the more recent upsurge in activity and a new emerging paradigm that has served both to further and constrain CRO interests. This history helps us understand the practical and theoretical implications of non-state actors taking on conflict resolution roles. Combined with the lessons of two case studies of CRO intervention, and a broader look at studies into CRO effectiveness (or perhaps rather effects), we are then able to consider their potential going forward.

The history and context of conflict resolution NGOs

The NGO surge

Peace building by NGOs is high on the agenda right now, both in terms of specialized CROs and as an area of work or integrated concern of development NGOs, and it is only likely to become more prominent in the next few years. The reason for this is the current move towards merging the fields of development and security, both theoretically and practically. In terms of development studies theory, conceptions of peace as a process of making a society more just and harmonious\(^2\) overlap with holistic conceptions of development, such as human
development, which seek to expand people’s meaningful choices and freedom. Meanwhile in their practice, donors are integrating their security agendas with their development support with NGOs and CROs as partners. Headings such as the 3D approach, which combines defense, diplomacy and development, seek to maximize the efficiency of aid and security budgets and to leverage the former to increase international stability and win hearts and minds in aid-recipient countries where the donors also pursue military objectives.

Here in the United Kingdom the Department for International Development (DfID) announced the results of its review into UK aid funding on 1 March 2011. It heralded a reorientation away from poverty as the exclusive focus (with India, the country with the world’s largest absolute number of poor people, as the main recipient), towards “fragile states” suffering from internal conflict. This new priority area of assistance will now receive at least 30 percent of UK support. Pakistan, with its complex security issues, followed by Ethiopia, a repressive regime perceived as a crucial ally in the fight against organized Islamist terrorism, are the new largest recipients of UK development assistance.

Such a shift in priorities creates a real need for good research, as interventions can easily be counter-productive. The danger is the simple assumption that positive goals are harmonious and mutually reinforcing. For example, there is no academic consensus over if and how elections should be carried out during a conflict. As Sisk argues, peace and democratization can result in conflicting priorities, the pursuit of one negatively impacting the quality of the other (see also Paris on the specific cases of negative interaction in Rwanda and Angola). The need for donor governments to be seen to cooperate with legitimate counterparts can lead to the initiation and support of political developments that are destabilizing for local peace processes. Problems issuing from the exclusion of non-state militants and allied groups from political participation that were observed in the 1996 elections in Sierra Leone were replicated again in Afghanistan.

Similarly, Bano argues that aid channeled through NGOs in Pakistan erodes local collective action and altruistic traditions, the association with outside funding undermining people’s trust and motivation to contribute. A shift in aid policy and funding from an emphasis on poverty reduction to direct budget support of conflict-afflicted governments, and security initiatives that rely on developmental staff and organizations, risks representing poor value for money for aid donors if it crowds out local initiatives. It may also have less chance of improving the life chances of the world’s most vulnerable
than projects that support livelihoods in less controversial environments or seek to redress systemic obstacles to their economic advancement.\textsuperscript{10}

While the merging of development and security agendas is a process resulting from the terrorist attacks on the United States on 11 September 2001 (9/11), it has built upon previous moves towards greater coordination or “coherence” of the international donor response to conflict. CROs and the new paradigm share a history, as well as a future, as responses to post-Cold War challenges. CROs grew out of the general surge of enthusiasm for NGOs in the 1980s and 1990s, which witnessed exponential growth in their activities and number.\textsuperscript{11} NGOs, as non-profit civil society organizations independent from government, were expected to be more flexible than other types of organization, with more deeply committed staff, local knowledge and connections with the grassroots level of a society and other local civil society actors.\textsuperscript{12}

The sudden prominence of NGOs as the preferred vehicle of donor aid delivery led to studies of their effectiveness, and an accompanying debate about their relationship with states and other more traditional organizations with which they competed for funding. The only comparative advantage of NGOs that was able to be quantified lay in raising resources from the international aid system, as shown by Fowler.\textsuperscript{13} This allowed critics to argue convincingly that the NGO sector advantages were deliberately politically constructed (see for example Hearn’s investigation of Kenyan health care\textsuperscript{14}). However, indiscriminate dismissals of the NGO sector\textsuperscript{15} ignore qualitative advantages, often idiosyncratic and based on methodological innovation and local and personal commitment of NGOs. It has long been argued that the institutional advantages of NGOs lie in this area.

The impossibility of living up to the wide range of expectations embodied in the idea of NGO comparative advantages, as well as inter-NGO competition for funding, led to explicit NGO specialization so as to demarcate an area of expertise and develop specific brands.\textsuperscript{16} The prospect of sector translation of perceived NGO comparative advantages which could harness or support the peace-building potential of civil society articulated with competitive pressures, and the opportunities and demand for NGO peace-building services created by changes in the geopolitical climate, give rise to specific conflict resolution NGOs (although more general peace-oriented NGOs of course date back to the late nineteenth century\textsuperscript{17}).

As often noted the immediate post-Cold War period also saw a surge in developing country conflicts.\textsuperscript{18} The removal of overarching strategic objectives led to a retraction of superpower support for developing
country allies, some of which had been abusive regimes, and an increase in the ability of the permanent members of the United Nations (UN) Security Council to cooperate.\textsuperscript{19} The result was the erosion of strict ideas of national sovereignty in favor of the rights of the individual, leading to UN interventionism, the development and adoption of the Responsibility to Protect (R2P) doctrine, and international legal responses.\textsuperscript{20} This was not a linear process, however. Initial enthusiasm for intervention was dampened by the failures and US casualties of the UN intervention in Somalia,\textsuperscript{21} leading to much subsequent institutional soul searching after the Rwandan genocide.

\textit{New Humanitarianism and the coherence agenda}

The Rwandan genocide occasioned important changes in international policy towards large-scale local political violence, summarized as New Humanitarianism. The mood of introspection amongst the relief community led to a concerted attempt to learn the lessons from what went wrong. The 1996 Joint Evaluation of the International Response to the Genocide in Rwanda warned that humanitarian aid cannot be a substitute for political action and called for political and humanitarian policy coherence as well as greater accountability for humanitarian interventions.\textsuperscript{22} The widespread realization that relief aid could contribute to and sustain conflict\textsuperscript{23} also strengthened the inverse proposition that the double-edged sword of aid could be used as an instrument to counter it.\textsuperscript{24} New Humanitarianism articulated with other up-and-coming approaches such as Human Security, which blurred the line between security and development by portraying food and environmental insecurity, inequality, economic and political problems, and disease as both the sources and consequences of conflict.\textsuperscript{25} Hence the popularity of the term complex humanitarian emergency (or CHE) to describe the crises brought on by civil war.

This new agenda of coordination and coherence held the seeds of a paradigm shift towards less tolerance of improvisation in the pursuit of peace, a countervailing force that was on the rise even as CRO actors that considered such informal actions their comparative advantage proliferated. After Somalia, the partial retraction of the UN from attempts to make and keep the peace in developing countries created more space for other actors in the field to pursue this mission. Could they provide a cost effective and more locally grounded alternative, circumventing slow UN bureaucracies, without putting the soldiers of rich nations at risk? Much was made of the potential of regional organizations and CROs, the profile of which was raised.
CROs presented themselves as politically neutral actors, available to provide a flexible voluntary sector response to poor country conflict. Kumar Rupesinghe, the then secretary-general of the prominent CRO International Alert, was one of the chief advocates of high-profile CRO roles. He argued that such organizations could act to bridge systemic failures or gaps in the slow-moving and bureaucratic international institutional response to conflict. Such a position assumes both the existence of NGO comparative advantages in the field of peace building and of an unintentional, unregulated lacuna in peace building. I would argue instead that while CROs may possess some advantages, at times created through the process of NGO service-provision expansion in areas where they operate, what look like gaps in a non-rationalized international system result from historical processes and remain for reasons of political expedience. This gainsays easy returns to increasing the role of CROs in peace building.

As French and Haywood point out in Chapter 2 of this volume, “all states retain the right to use coercive force against non-consenting domestic rivals.” They are not likely to support ideas and NGO forms that seek to undermine this right by advocating negotiation with such rivals as the primary response. Instead, governments afflicted by violent internal rivals invoke analogies of policing to reassert control of their territory and their monopoly on violence, the hallmarks of the sovereignty being disputed both by rebels and the reinterpretation of international norms. When International Alert sought to translate their conceptual alternative into practice and operate as a small and flexible initiator of peace negotiations in Sierra Leone, separate from the UN and other traditional actors, they ran into existing realities that they had not in fact replaced. The organization found itself ultimately unable to operate in a political terrain shaped by large organizations with important internal political dynamics that tied into the international foreign policy concerns of powerful nations.

The UN is the intergovernmental organization (IGO) mandated by states to end war, its Charter setting out the organization’s responsibility “to maintain or restore international peace and security” (Chapter 7, article 39). When assessing the potential of civil society, NGOs and CROs to play positive roles in peacemaking it is important to remember that the maintenance of the unwieldy international organizations and legal frameworks that have developed over time represents an ongoing political compromise. The reason the resulting institutions are not stronger is the unwillingness of states to delegate sovereignty and power (including sufficient funds) to police international peace-building norms that could be used against them or put their citizens at risk.
Portrayals of the status quo as a gap in the international security governance system can distract from the difficulties of overcoming this political reality. This is a fundamental problem with theories that posit a global or internationalized form of civil society as a form of governance that holds the answer to war; just like state government, it needs an enforcement arm to be effective.\footnote{Kaldor
\footnote{Kaldor} sees civil society as providing an alternative, deliberative approach to resolving war through the negotiation of social contracts between individuals and centers of power, possibly leading to the development of a global legal framework, which can then be enforced through more robust forms of policing or peace keeping. Without the latter we do not have an alternative approach so much as one important arena of politics, and an arena for which development funding has paradoxical consequences (beyond those that Bano points out). This vision has roots in the Hegelian idea of civil society as a political forum for compromise where all the relevant constituencies may compete non-violently.

The organizations and individuals that constitute civil society for the purposes of development aid funding (such as professional bodies and unions, women’s movements, and local NGOs) represent educated and vocal constituencies whose support is needed to develop lasting peace in war-torn societies. However, even when such organizations seek to engage with the violent and the marginalized, they are not represented in their membership. Hence civil society in countries affected by war does not function as an arena of adjudication that can resolve the issues over which fighting was taking place.\footnote{The inability of local civil society to speak for combatants in any sense that is democratically meaningful raises serious questions about the potential of a global civil society made up of organizations even further removed to represent their interests in ways that would bring about the radical and yet pervasive local changes to make violence redundant.\footnote{This is not to say that pressure from civil society actors on companies and governments to act more ethically cannot lessen the tensions that bring about internal conflicts, but rather it is a cautionary note as to the scale and impact of the sort of roles they can be realistically expected to fulfill.}}

**CROs and the delegitimization of violence**

NGO-UN relations as envisioned by the UN Charter\footnote{NGO-UN relations as envisioned by the UN Charter do not sit well with CRO activities, or with the role that CROs were promoting for themselves in the mid-1990s. Yet the political climate granted these organizations operational legitimacy, if not a clear mandate. They were} do not sit well with CRO activities, or with the role that CROs were promoting for themselves in the mid-1990s. Yet the political climate granted these organizations operational legitimacy, if not a clear mandate. They were
able to raise funds and operationalize mediation and other related activities in internal conflicts to an extent that would have been unthinkable only a decade earlier. A high-point in terms of UN support for CRO activities can be discerned during Boutros Boutros-Ghali’s secretary-generalship. In a speech to the 1994 UN Development Programme (UNDP) NGO conference on the theme of “We the Peoples: Building Peace,” he outlined an expansive list of possible NGO peace-building and conflict resolution roles:

to paraphrase an old saying: peace is too important to be entrusted to States alone … Indeed, the vast enterprise of building peace pre-supposes that nongovernmental organisations will be involved at every stage. In the field of preventive diplomacy, non-governmental organisations, because of their familiarity with the situation on the ground, are well placed to play a part in early warning machinery by drawing the attention of Governments to nascent crises and emerging conflicts. With regard to peacemaking, there is wide recognition of the humanitarian and social work done by NGOs, generally under perilous and difficult conditions. Lastly, with regard to post-conflict peace-building, non-governmental organisations can do a good deal to help fragile Governments and destitute populations, find the confidence and resources to make peace last.33

However, the secretary-general was careful to exclude from this expansive list any reference to direct negotiating roles which could be seen to delegate UN authority. While the mid-1990s witnessed the first era of CRO expansion and experimentation, critiques and problems had also begun to emerge. Responses to the question of how to approach the new complex humanitarian emergencies engendered by civil wars shared the tendency to identify violence as the primary problem. Practice was influenced by the translation of medical ethics into the aid and emergency response sectors, the so-called “do no harm” approach as developed by Anderson.34 Theory meanwhile was dominated by the interpretation of these civil conflicts as “new wars,”35 understood as undertaken in the pursuit of crude self-interest rather than ideological reasons, despite obvious local historical continuities with previous wars that had been portrayed as liberation struggles or struggles against communism.

CROs participate in this delegitimizing critique of violence, portraying negotiated peace as the preferred way to end conflict. Their lobbying has contributed to the rise of this agenda and associated human
security and legal human rights doctrines at the UN level and amongst the public. However, this critique also came to constrain CRO activities. Duffield\textsuperscript{36} goes as far as arguing that the attempts of the UN’s current integrated mission approach adopted in the late 1990s to set the peace agenda deliberately delegitimize parties to a conflict who refuse to cooperate as self-interested and terroristic, a highly dichotomizing aspect of the merging of security and development.

There is an important inherent contradiction in CRO work which stems from these organizations seeking to work with violent actors while simultaneously working to delegitimize violence as a response to political differences. This contradiction can undermine their credibility when they take on a direct role in facilitating negotiations that raises the profiles of the perpetrators of warfare, arguably rewarding their resort to arms. As small independent organizations, CROs lack the clout of an organization like the UN to impose their will on peace process participants and if things go wrong they may also be more likely to be blamed than more powerful actors. The failure of the CRO-initiated Sierra Leonean peace process in 1996 led to precisely this kind of backlash.\textsuperscript{37} The result was a noticeable scaling back of the ambitions and rhetoric of CROs, which became less likely to take on high-profile mediating roles. The coherence approach where the NGO sector was envisaged as part of a coordinated external response to conflict appeared to trump the comparative advantage of operating as independent, flexible actors outside the existing institutional conflict resolution system.

Resulting constraints on CRO activities compel them to do the possible rather than the best, not always working to their strengths. The effectiveness of uncontroversial CRO activities such as awareness-raising workshops and conflict resolution training aimed at civil society members is at best uncertain.\textsuperscript{38} Moreover, by associating more closely with other external actors CROs risk being seen to support policies that are counter-productive. This latter tendency has become more problematic in the wake of the political polarization and controversial military interventions by important aid donors post-9/11.

After the attack on New York’s World Trade Center towers and the Pentagon the US State Department added a number of non-state combatant groups, such as the Sierra Leonean rebel group, to the 2001 US Patriot Act Terrorist Exclusion List, thereby prohibiting association with them.\textsuperscript{39} This came on top of an increased unwillingness of donors to support direct mediation attempts following the failure of a CRO-initiated peace process in Sierra Leone in 1996. More comprehensive approaches and discourses that equate non-state combatants
with terrorists have restricted what CROs can do and with whom they can engage. Despite this, an increased focus on violence and continued enthusiasm for NGOs as an aid delivery form has raised the profile of CROs. Such organizations remain very active, not just in international institutional contexts, but in conflict zones like the Sudans, the Horn of Africa and the Great Lakes region.

The lessons of CRO work

CRO re-narration of violence

So what are the lessons of studies of CRO work? Do they possess, as theorized by their proponents, a comparative advantage vis-à-vis other types of organizations and states? There are a number of reasons why the development studies and international relations literature is so inconclusive as to whether CROs possess some kind of comparative advantage. There are few documented cases of clear CRO success. A lack of sustained research is compounded by the difficulty of measuring the outcomes sought, in terms of greater peacefulness, and the impossibility of proving the counter-factual. What would have happened had a CRO intervention not taken place in what are invariably complex situations with multiple actors? Nevertheless, specific comparisons can be made: from my own research it is clear that there are some things that CROs can do which state actors cannot, and that they also have other advantages.

A larger research project that allowed me to examine in detail two CRO-initiated peace processes (in northern Ghana and Sierra Leone) yielded a number of interesting findings. CRO practice was found to be path dependent, the successful intervention influencing outcomes by influencing starting points and steering talks, through choices of which actors to portray as the relevant participants, and through the language and goals chosen in the mediation process. This contradicts more cyclical theories, such as ripeness theory, which proposes that there are specific generalizable points in a conflict situation when external actors would do best to intervene.

The elaboration of antagonistic narratives of historical grievances, present disputes or future conspiracies between specific groups is crucial in mobilizing for war. Lines must be imagined before they are drawn, and the importance of such divisions become popularized as significant enough to fight over. Developing a term originally conceived by Varshney, I have argued that leaders can be understood to construct “conflict narratives” in which rumors and seemingly minor
incidents between members of opposing groups are re-interpreted in
the language of group animosity and used in provocative speeches, and
written material leading to retaliatory violence. These conflict narra-
tives not only structure conflicts but contribute to them, through actual
and potential mobilization and the generalization and maintenance of
inter-group grievances and suspicion that threaten stability.

CROs lack coercive power and are dependent for the success of their
mediation attempts on establishing a strong peace constituency, whether
through the cooperation of leaders with effective command over
violence, or through the build-up of a wider peace constituency which
may influence the strategies of military leaders and fighters towards
peace. CROs need to counter popular conflict narratives, aiding the
reconstruction of histories of conflict in ways that make peaceful solu-
tions acceptable, both to communities who have to live with each other
again and to leaders who have to believe that it is in their interest to
change strategy and be able to explain such changes in ways that do
not delegitimize them. CRO discourse is therefore part of their practice.
Hence, much criticism against CROs as private peace actors is mis-
guided in its focus on the misrepresentative nature of their discourse
which they assume to be descriptive.

An example of successful CRO mediation that I have traced in detail
took place in 1994–95 in the northern region of Ghana, in response to
large-scale communal violence perpetrated by ethnic militias. The
CRO-led peace negotiations gradually drew in the leaders of the vio-
ence through an iterative process geared towards the finding of
common ground that otherwise threatened to marginalize them. The
issues at stake were re-framed in ways that emphasized communal his-
tories of interdependence and co-existence and the losses occasioned by
war, countering the dynamics of mobilization created by circulating
conflict narratives and empowering leaders who were against inter-
group hostilities. What I call “peace narratives” emphasized the best
intentions of leaders and the suffering of the people, creating an
attractive and respectable path out of conflict for the leaders willing to
advocate peace even if this entailed a change in their position, and
their dissemination impeded mass mobilization.

It is not possible to influence understandings of what has taken place
and what is achievable if these are not seriously engaged with. Spiritual
discourses were fundamental to the actually existing local political
economy as a consequence of widely held beliefs. The CRO was able to
draw on locally strong sources of religious and traditional authority to
find pathways out of violence, unconstrained by the secular institu-
tional format of the competing state mediation process. This highlights
the comparative advantage of the flexible NGO form. The process also pointed to something else the CRO was able to do that a government commission could not: separate local issues from state and patronage politics. This was a surprising benefit to the lack of official backing. While the lack of resources and power described by Albin as disadvantages of CRO peace building had negative effects on the institutionalization of the outcome of the process, they were also operational advantages.

I would argue that the power of the CRO lay in their ability to affect the peace process participants’ understanding what was in their interest. Power in this context is understood in the Foucauldian sense as the exertion of influence, a dispersed and pervasive feature of social relations, intimately linked with knowledge, where the two produce each other. This can take place through discourses: ways of talking about things that have consequences in terms of power. Following the tradition of Bachrach and Baratz, Lukes, and Gaventa, I see influencing agendas and preferences as an equally important aspect of the exercise of power as direct decisions. In other words, what was off the agenda of the negotiations was as important as what was on it.

Through its nongovernmental format and lack of connections the CRO was able to avoid the negotiations becoming a channel through which leaders could pose demands to government on behalf of their group. The mediation process could focus on the local conflict between ethnic groups rather than becoming a forum for vertical power struggles involving state laws and patronage politics. Of course, this was a communal conflict rather than a challenge by rebels to a state. A state party to conflict is unlikely to subjugate itself to a CRO-controlled mediation process, making it both more difficult for a CRO to be seen as neutral in the activities it undertakes and also more important. The advantages of CROs, states and other peace-building actors cannot be compared as like-for-like alternative interventions, as they represent imbricated institutional forms. Such relationships do not start at the point of mediation or conflict but are shaped by preceding patterns of interaction.

The downsides of NGO-ization and CRO peace building

The shift in donor funding from states to NGOs, what Hearn has called the process of “NGO-ization,” has complex consequences for peace building. An NGO, unlike a state, has no obligation to provide equal and national coverage and its beneficiaries cannot make demands on them as citizens. This form of service delivery orient
recipients away from the state towards relationships with the provider that are inherently unequal as there is no legitimate claim. The Ghanaian CRO-led peace process benefitted from the trust held by the community in local participating NGOs that had been providing basic social services for a long period, such as schooling and medical care. By being content to accept this type of development aid the Ghanaian government neglected to build such relations of trust with its citizens.

Donors that channel funds for service provision through NGOs in areas with the potential for widespread political violence may not be aware that in comparison with providing the same support through national channels, they may be undermining the peace-building capacities of the state. The importance of welfare provisions to the maintenance of capacity in other fields is also an important lesson to the governments of conflict-prone developing countries. Furthermore, the interviews I undertook with those affected by the Ghanaian conflict consistently showed their perceptions of different types of state provisions being conflated, so that the actions of its repressive arms like the army affected the credibility of its attempt at mediation.

A consistent finding of evaluation and research into CRO work is that there is no CRO best practice model, even though these organizations share important traits in terms of motivation, organizational structures, funding patterns, and repertoires of tactics. Because of the contingent nature of conflict resolution practice an approach that has worked well in one situation can fail in a different conflict and with different staff, with personal relationship between the representatives of CROs and other institutional actors often playing a crucial part. Like that of many other categories of NGOs examples of really good CRO practice is often innovative and relies on spotting and taking advantage of opportunities. Lessons from successful CRO work are often connected to addressing issues of structural violence even if the intervention does not use that language: using holistic development-oriented approaches that transcend a short-term concern for stabilization.

There are also important risks to consider when NGOs take on conflict resolution and peace-building work. As Dolan has shown in the context of the cycles of violence of the war in northern Uganda, a failed peace-building process does not mean a reversion of the situation to the status quo ante, but rather there is a real risk of an increase in violence and a backlash against civilians from disappointed fighting parties. While a CRO based in a stable donor country can retract its staff when an intervention goes wrong local civil society partners may be endangered. Animosity against CROs engendered amongst a population can also easily spread to encompass other types of NGO and
humanitarian relief organization, making it very hard for them to operate. This was the case in Sri Lanka, where local organizations have had to try to distance themselves from the NGO label.\textsuperscript{54} In Sierra Leone, where the International Committee of the Red Cross had provided helicopter transport for the rebel leaders to the peace talks as well as relief aid to large sections of the displaced population, popular and government suspicion led to the temporary suspension of their activities, endangering the lives of civilians who depended on their support.\textsuperscript{55}

I consider it an open and important question how to deal with these risks, something that CROs have a duty to engage with. My own work would indicate the need for a case-by-case assessment of the match between the staff, knowledge and other resources available, and the proposed intervention. Such a policy may sound obvious but can be difficult for an organization to maintain given the imperatives of being seen to operate in well-publicized hot spots and the vagaries of the available funding. CRO mediation suffers from problems of coordination intrinsic to the NGO sector. They base their choice on where to intervene on subjective criteria rather than formal principles. These range from the understandings of their staff as to where the organization would be likely to make a positive difference, to a need to be seen in areas high on the agenda of funders so as not to appear irrelevant. As there is no mechanism to ensure that the appropriate CRO is enabled to participate they sometimes complement but often compete amongst themselves and with the work of other NGOs, IGOs and states. Such competition leads to the risk, as Lund\textsuperscript{56} points out, not just of “forum shopping” by potential participants in a process seeking a setting most suited to their own agenda, but also of “shopping forums”—institutions and organizations looking to increase their authority by being seen to have sanctioned a process.

Other analysts have suggested alternative approaches to the dangers of CRO work. Goodhand\textsuperscript{57} advocates a portfolio-based response from donors modeled on the financial sector that spreads aid funding between low-risk, low-return activities such as workshops and higher-risk ventures. In my view such a recommendation is deeply inappropriate. It assigns too much weight to the financial interest of donors and not enough consideration to the real risks of the failure of CRO interventions to lead to increased violence against local populations who have little input or control. The moral dilemmas raised by donor-funded peace building remain unresolved. This critique ties into another consistent finding of CRO evaluations: the need to build up a relationship of trust between donors and CROs. One way of doing this
is through the modality of funding: program funding allows the donor to get to know the CRO and its ongoing activities well and is conducive to the build-up of expertise, as opposed to support for individual short-term projects that undermine institutional continuity.

Most donor project support to NGOs in war-affected countries is of a short-term nature, with three- to six-month contracts the norm, and there are considerable operating and start-up costs involved in such an environment. This makes the risks to an NGO of a competitor appropriating a funding stream or project high, and coordination correspondingly difficult even if the will and organizational ability are there. Cooley and Ron point out that the incentives to maintain contracts and a stable environment discourage NGOs from drawing attention to and addressing ethical problems that might jeopardize working relationships and public and donor support. Incentives for self-promotion also encourage competition for recognition of a role that is best played quietly, a serious problem for the application of the NGO model to conflict resolution, especially in terms of direct mediation.

**Conclusion: implications for security and development going forward**

As civil society actors using NGO forms and development techniques to further peace, CROs embody the merger of development and security agendas—what is sometimes called the development-security nexus. The strengths and weaknesses of CRO work point to the opportunities and risks associated with this nexus in practice, with important implications for our current historical juncture. Enthusiasts and critics of the potential for non-state actors share a tendency to overplay their direct role, either in terms of their potential to overcome problematic hierarchal power differentials between people in poor and rich nations, or to stabilize a global economic system that is structurally violent while socioeconomic rights are localized. CROs can effect positive change through incremental normative adjustments of the framing of specific issue areas, whether in direct peace-building roles with local actors or through higher-level advocacy. Will the shift in aid funding towards conflict resolution activities undermine their independence, creativity and local legitimacy? The competition for funding could bring CROs even closer to donors and disincentivize cooperation with other non-state actors. However, CRO staff, who often move between different providers of conflict resolution expertise and are attracted to their work in the hope of making a positive difference, are likely to resist such trends by...
delegitimizing CROs that lose their way. Previously the NGO community has responded to concerns over state co-option by coining the word QUANGO, or quasi nongovernmental organization. This delegitimizing discourse aimed at depriving an organization of the associations of a voluntary and independent ethic, is an example of how inter-NGO legitimacy functions as a disciplining mechanism through rejection.

The obscuring quality of professionalized and technocratic NGO discourse is at the heart of critiques of the merging of development and security. It can encourage the othering of war suggestive of objective best solutions that can be arrived at independently, rather than putting the focus on processes of negotiation and developing widely acceptable outcomes through political engagement. However, the development-security nexus can also be seen as a space for such engagement. From successful CRO practice we can learn how the conciliatory ethic of development-oriented mediation, which is fundamentally inclusive, can be instrumentalized.

I would argue that the use of conceptualizations of conflict in development terms as an arena of engagement is an important aspect to the merging of development and security agendas that critics of it underplay. By conceptualizing conflict in terms of holistic conceptions of development strategies for ending war that emphasize the value of human life are given purchase in a different way than if conflict is conceptualized in purely military terms, providing leverage for actors seeking to humanize its pursuit. How difficult it is to imagine a return to purely strategic discourses of war where security is divorced from development concerns is in part a measure of the success of CROs and other civil society actors in delegitimizing violence and disseminating norms in favor of negotiations and civilian protection as a response to conflict.

Just as the delegitimizing critique of violence contained a new limiting and dichotomizing paradigm, it also contains other strands, particularly through its emphasis on inclusiveness, addressing structural violence and its rejection of polarizing discourses. To overcome present conflicts there is a need to break out of the totalizing and polarizing logic of discourses of terrorism and to some extent coherence. We have seen how CROs use discursive practices to re-imagine communal histories to be more inclusive. It is in the translation to the national and international level of this ability that the transformative potential of their work going forward lies. Although the impact of CROs and NGO peace building is easily exaggerated, rather than being realistic and addressing technical organizational challenges there is now a need to be visionary and engage with the political dynamics and context of political violence.
Notes

10 For example, both UN HABITAT (the United Nations Human Settlements Programme), which works on slums, and the International Labour Organization (ILO), which attempts to improve working conditions, had their funding removed in the 2011 DFID review.
20 The Security Council in 1993 and its Rwandan counterpart in 1994. Subsequently, the Rome Statute established the International Criminal Court (ICC) in 1998, as an independent institution from the UN and binding on the states that are parties to its Statute, which entered into force in 2002.
25 This argument has been criticized as circular, and therefore impossible to verify, by Lars Buur, Steffen Jensen and Finn Stepputat, The Security-Development Nexus: Expressions of Sovereignty and Securitization in Southern Africa (Uppsala: Nordiska Afrikainstitutet, 2007).
27 Amos, “Non-Profits of Peace.”
29 Kaldor, Global Civil Society.
30 Amos, “Non-Profits of Peace.”
31 Which is the hope of, for example, Cynthia H. Enloe, Bananas, Beaches and Bases: Making Feminist Sense of International Politics, revised edn (Berkeley, Calif. and London: University of California Press, 2000).
32 The Charter intended NGOs with UN consultative status to be part of the diplomatic process through consultation on economic and social matters, rather than initiating their own projects in the state security field. See


37 Amos, “Non-Profits of Peace.”


40 Amos, “Non-Profits of Peace.”


45 Amos (née Jönsson), “Voices of Reason.”


49 Hearn, “The ‘NGO-isation’ of Kenyan Society.”

50 Goodhand and International Peace Academy, *Aiding Peace?*


55 Amos, “Non-Profits of Peace.”


57 Goodhand and International Peace Academy, *Aiding Peace?*


59 Cooley and Ron, “The NGO Scramble.”

60 Buur *et al.*, *The Security-Development Nexus.*

61 For example Enloe, *Bananas, Beaches and Bases.*


10 Micropolitics, NGOs, and global governance

Brent J. Steele

- “Global” governance, NGOs and security: two spectral dilemmas
- A “micropolitics” of security
- Human security and conflict resolution: Heifer International as an acupunctural formation
- Conclusion: “glocal” governance and normative purpose

This chapter illustrates what it titles the “micropolitical” possibilities via the work of Heifer International, a non-profit nongovernmental organization (NGO) that provides training, assistance, livestock, and sustainable practices to areas around the world. Heifer develops “long-term” solutions to problems—such as food insecurity—that can lead to conflict. Yet Heifer’s approach is inherently localized, representing what I term an “acupunctural formation” that demonstrates the promise of micropolitical insights such as the building of a relational context and the basis of solutions in technical “expertise.”

The chapter fills one of the themes of the current volume by confronting the role NGOs may play in filling “capacity gaps” of security and governance that may otherwise be provided by IGOs and nation-states. Phil Williams has termed this role of NGOs like transnational criminal organizations as highlighting the “vulnerabilities of weak states and states-in-transition,” by engaging these capacity gaps as well as filling in the “functional holes” left behind. While I somewhat sympathize with this situating of the role of NGOs in global governance, some areas of the world are perhaps more properly captured by an inverse metaphor—one I develop in this chapter as “acupunctural formations.” Williams sees these gaps and holes as opportunities exploitable by transnational actors (including NGOs) and in great tension with the nation-states claiming (but not enforcing) the authority over those areas. The proposal here rearranges this understanding. Instead, I suggest that the temporal, spatial, and cultural landscapes
which are otherwise regularly defined by their instability and insecurity can be punctured by what I title “acupunctural formations.” NGOs like Heifer International foster such formations, emerging onto a scene in ways that make their relationship with states and other sub-state or transnational actors more low key, and even consensual. The argument I push here overlaps with many of the themes of the Christopher Lilyblad chapter in this volume. As an “acupuntural formation” at the core of micropolitics, Heifer’s work can be seen as that which “treats” conflict rather than work which might “cure” an area of violence and armed conflict. As pragmatic, but also timid, as this approach to the reduction of conflict sounds, it may have the advantage of being a more nimble method to confronting armed conflict in areas which “the state,” and even international organizations (IOs), cannot easily access.

Thus, the conclusion of the chapter reflects on the possibility that long-term “global governance” solutions to systemic problems, including those that bedevil societies attempting to rebuild in post-conflict settings, may result from more local spatial settings of technical expertise by NGOs such as Heifer, as much as they will be resolved by comprehensive solutions by international organizations.

“Global” governance, NGOs and security: two spectral dilemmas

Before I begin, a bit of brush-clearing is in order, especially to disclose in detail the positions I take regarding global governance and NGOs, and specifically how this topic relates to the overall issue of reducing armed conflict. Other contributions to the workshop will develop, with more analytical precision, the relationships between NGOs, global governance, and the reduction (or not) of armed conflict in contemporary global politics. Although by no means a comprehensive blueprint for global governance, the micropolitical approach to security that I outline in this chapter has the potential to reconfigure and speak to two particular quandaries of the relationship between NGOs and armed conflict. I call these “spectral dilemmas,” pictured best coming through along spectrums.

The first of these we might title the “interdependence autonomy” dilemma. Much of the effectiveness of NGOs rests on their “non-ness,” their independence from national and international actors and their ability to cast themselves as particularly functional rather than ideological or political. This effectiveness rests on access to conflict-prone spaces, access that may be denied the more these organizations appear to threaten the authoritative agents deemed responsible for, or
negligent in allowing the particular security deficits prevailing in a space or area. Yet, to be effective, NGOs rely not only upon funds and materials provided in part by donors, but also upon a complexly interdependent network of actors, including states and international organizations, which help publicize, politicize, and at a minimum act to confront the insecurity problems uncovered by the NGO.

This characterization of a dilemma faced by NGOs idealizes or abstracts from a likely even more complex process: many NGOs have been able to balance if not resolve this dilemma by placing themselves at different points along this spectrum. Certain NGOs seeking to “stop” human rights abuses by monitoring them through surveillance or creating dossiers may be deemed more of a threat because they seem connected to a larger set of forces which might impact the legitimacy, if not the rule, of the authorities implicated by the charges of human rights abuse. How this comes about is a matter for some debate. In a previous study, Jack Amoureux and I suggested that governments that ignore, oversee, or even support the abuse of human rights recognize in the surveillance function of NGOs a particular threat, one which may provide a “panoptic”-like regime of human rights discipline. Thus, the expulsion of human rights NGOs in areas such as Darfur by Sudan in 2009, a type of move by particular regimes that has at its core a variety of causes, can also be configured as a reaction by a regime to the disciplinary network of human rights within which NGOs are a key component.

A second spectral dilemma is the more central one considered throughout the chapter, crudely and simplistically titled the “micro-macro” dilemma of global governance. The basis for this concern is scope: effective functional arrangements that arise in spatially and temporally specific settings to transform or ameliorate conflict have only limited ability outside of those settings. The problem here is extrapolation: how do we take functional solutions meant for one setting and apply them outside their scope? This is not a fatal impasse—much of the “spill-over” assumptions embedded in neofunctionalism point to the real impact of institutional arrangements in one setting forming the basis for interdependent linkages to other settings for other problems. Yet the micro-macro dilemma is a real one, and it occurs for a variety of reasons, due to some of the problems with larger organizations like organized hypocrisy, organizational cultures, or principal-agent “slippage”—problems that typically envelop IOs, for instance. There is also the related risk that NGOs can become “iron cages” of bureaucratic rationality which imprison, rather than empower, the individuals they serve. I entertain these issues below, but the micro-macro

Micropolitics, NGOs, global governance

167
dilemma both makes possible the import of micropolitical security, as well as delineating the limits of its application and potential as an enduring approach to confronting conflict—armed or otherwise—in global politics.

A “micropolitics” of security

What exactly is “micropolitical security”? This is an approach to security that I first intimated at the end of a relatively recent study, where I discussed the purchase in a “move from seeking out transcendent panaceas toward the temporary, localized, but nevertheless attainable possibilities that contain opportunities for productive human relations.”

Micropolitical security is derived, first, from the functional approach to politics as articulated by early twentieth-century theorist David Mitrany. It also, as I discuss later in this section, remains indebted to some of the stylistic aspects of what Bill Connolly also has termed in work spanning almost two decades, “micropolitics.” I begin with how it can be extracted from the former. The core notion of the functional approach of David Mitrany can be summarized as “giv[ing] people what they need in the form of life’s necessities, and they will keep the peace.”

For Mitrany, its “cardinal virtue” was “technical self-determination.” The nature of the need shaped which dimensions, organs and powers would be chosen to fulfill it. Individuals working on a project would then become allegiant to the tasks that they are performing and, furthermore, become invested in the efficiency of those tasks. The outcome of this activity is an institutional arrangement that serves a particular societal purpose. One of the primary causes of conflict—salient, nationalist identity and the loyalties derived from it—can be ameliorated by the creation of cross-cutting forms of allegiance manifested through a web-like system of interdependencies. Functional arrangements, rather than being “planned” a priori to fit into an intricate system, would instead be “piecemeal,” responding to “the needs and requirements of the specific issue area[s]” around which individuals and groups organized daily activities.

One might note here how others have developed an understanding of the role of NGOs along what is termed “functional” lines, and sought to distinguish that understanding with Mitrany’s functional approach. Ronnie Lipschutz and Cathleen Fogel distinguish their multilayered approach to “global governance” from Mitrany’s earlier work, which they collapse with Ernst Haas’s neofunctionalism as having “envisioned political integration as the outcome of international functional
coordination.” In doing so, Lipschutz and Fogel provide a comprehensive version of the “reconstructed” and “restored” form of the functional approach that I am pushing toward here, one which “sees the transfer of functional responsibility and authority downward to the regional and local levels [micropolitics] as well as upward to the global level.”

This work suggests that Mitrany’s arguments can be better reconstructed for contemporary politics, and Justin Cooper’s proposal for a more “rounded view of the ‘political’” compared to Mitrany’s work provides further instruction. Mitrany’s faith in scientific “experts” is instead, in Cooper’s reformulation, “dependent on an underlying value consensus, which may shift either situationally or as part of a general historical trend.” Additionally, instead of looking, as Mitrany does, at the nation-state, nationalist identity, and the nation-state system as a whole as an intractable cross-current to functionalism that needs to dissolve for conflict to cease, a contemporary reconstruction of Mitrany’s views, while recognizing the problems the national form of political organization provides individuals, remains on the whole largely agnostic to its “elimination” over time. Instead, micropolitics calls for what is now being termed a “multi-perspectival” polity, or “hetero-sovereign” world order.

Further reconstruction of Mitrany’s approach can be fostered via a shift in metaphors which can serve to help shift expectations from transcendental to more contextually specific success. Mitrany used the following metaphor to outline his hopes for the functional approach in his earlier work, where cooperative attempts would be “the seeds of a new sense of international community and international responsibility.” As Hammarlund observes, “it is only Mitrany’s choice of a concept [I would again say ‘metaphor’] such as ‘seeds’ that ultimately lures his reader into believing that feelings of world community will grow,” and lead to, in the term used by Lipschutz and Fogel, integration. Indeed, we might instead reconstruct functionalism by dispensing with the probability of a solidarity of feeling branching out into an international community or world organization. Instead, as I discuss later in the chapter, we can better capture a micropolitics through the metaphor of “acupuncture”—a particularly sharp but small point that relieves pain in a particular space, a relief that may ripple outward for some time, but one that never ultimately removes (or cures) the underlying “causes” of such discomfort.

This helps us to dispense with the “ideological commitment” that Cooper titles as the “transformative baggage” of Mitrany’s more transcendent vision for functional arrangements. Thus, any linear
movement generated from a functional arrangement can be better thought of as “temporary stabilizations of various processes ... [where] change is the normal,”¹⁹ and the spontaneity of a functional arrangement, and especially its temporary ability to stabilize a problematic process, is engaged because it will most likely fade away. Maybe more likely is the possibility that (again) Lipschutz and Fogel proffer, that a functionalism that “operate[s] at multiple levels [will contribute] perhaps to political fragmentation” rather than integration.²⁰

This reduction of expectations flows from the limited spatial and temporal parameters of a micropolitical functional arrangement. Spatially, the emphasis is on a minute formation where human social contact is made possible. Kimberly Hutchings’s recent work helpfully distinguishes between time as chronos—time broken down “as a medium which can be represented and subdivided in a range of ways ... a linear, infinite succession”—and time as kairos—exceptional, disruptive, creative, arresting and transgressive.²¹ Temporally, this distinction helps us think of micropolitical functionalities as a “kairotic” challenge to chronic time. I will return to this theme a bit more in the case illustrations, but for now the import of a micropolitics that rests upon limited spatial and temporal parameters comes not from what it needs to be in the future, but how it makes possible something that previously seemed unthinkable—peace where conflict once existed, security where chaos once reigned, a recognition that even if cooperative arrangements are fleeting the fact that they existed here at some point means they can exist again.

Mitrany repeatedly invoked the phrase “a relation to things,” calling it the “central philosophical idea behind the whole functional theory.”²² A relationalism in this restored and contemporarily reconstructed form of functionalism is twofold. First, it provides instruction on how individuals, when working on the functional solution, relate to one another, and how this relationship relates (as redundant as that sounds) to the functional solution or process that they have created. This connection that they all share is to this product. Second, relationships are founded and reinforced as an outcome of that functional solution. To the extent that the solution provides basic services and depends upon the labor of several otherwise unconnected communities to keep going, we can say that these communities relate to one another on at least this second, and more limited, dimension.

While the substantive “work” of micropolitical security is inspired by the restored and reconstructed vision of Mitrany’s functional approach, some stylistic insights can also be gleaned from what political theorist William Connolly, in a series of studies, has titled
“micropolitics.” These insights can be understood as analytical and discursive. Connolly renders micropolitics in the analytical sense as a form of interpretation that is:

shallower and more modest about itself because the interpreter doubts that the world possesses a structure amenable to deep, authoritative interpretation, whether that depth is conveyed through a logic of coherence or one of paradox.  

Analytically, we would focus then on the limited, immediate spaces within which we observe and then interpret the effects and relations of functional arrangements. The discursive component of the style of micropolitics, for Connolly, is this interplay between the macropolitical debates and contestations and the way in which these play out in these micro-settings. The role of micropolitics is a technical one which helps bring about relations “below the threshold of large legislative acts and executive initiatives, even as it ranges widely and sets conditions of possibility for these more visible actions. Technique and micropolitics form connective links joining practices of memory, perception, thinking, judgment, institutional design and political ethos.”

The purchase of such an approach puts the function back into the older functional approach without the expectation that such micropolitics will ultimately lead to, for instance, a “world unit” or sense of world unity, or even a larger bureaucratic arrangement. We look at the functional arrangement right now and in this space as an achievement worthy of study, regardless of whether it can or even should be expanded to other contexts. Thus, utilizing Connolly’s micropolitics chastens some of Mitrany’s later views on functional possibilities, views that became more prosaic and ambitious. Mitrany saw the nuclear age precluding humans from any other “arrangement below the global scale.” This more organic position, one that could be awkwardly termed “glocal governance,” will be elucidated further with reference to one NGO’s work in developing food sustainability in conflict-ridden areas in a following section. To set up the promise of that work, it is necessary briefly to engage the limits of a micropolitical approach to security.

**Human security and conflict resolution: Heifer International as an acupunctural formation**

Both the possibilities and the limitations to micropolitical security can be illustrated via the aforementioned metaphor of “acupuncture,” which I title “acupunctural formations.” These are developments that
unfold or erupt within, or even around, temporal, spatial, and cultural landscapes otherwise defined by deprivation and conflict. These are a version of what Francois Debrix once titled in a study “events-as-surprise” that in a “global media spectacle … do not last long [and] go unnoticed by many.” Debrix notes that these events “have no guarantee of political or democratic success. They may be captured, co-opted or forcefully erased,” and yet “their happening, their presence, and their surprise may nonetheless actualize a critique of ideology and politics and, as such, force an opening for a freedom or democracy to come.”

This surprise, which I am again titling the “acupunctural formation,” is perhaps captured by the aforementioned understanding of time-as-kairos, where such a “moment” is not part of some grand course correction in chronos. These formations are spontaneous and, like the medical treatment used as its metaphor, heal (but never “cure”). Such an attitude does not ignore the macro-forces that produce common problems, but it also doesn’t seek to formulate counter-macro arrangements either. Instead, it works within these macro-institutions. Such an approach forever surrenders the determination that micro-formations can be extrapolated into comprehensive solutions. Maybe such extrapolation is possible, but it is not likely. Nevertheless, micropolitics celebrates these formations as eclectic, individual and unique achievements on their own.

Considered to have been formalized and launched via the 1994 Human Development Report, the approach was based upon four assumptions about human security: that such security was universal, interdependent, people-centered, and preventive rather than interventionist. The interdependent assumption, the one on which I focus for the remainder of the chapter, rested on the logic that people’s security was ensured through seven overlapping and mutually reinforcing categories, including economic, health, environmental, personal, community, political and food. Human security was derived from the broader approach known as “human development,” which sought to “expand people’s choices or capabilities not only in terms of income, but also in areas such as health, education, the environment and employment.” Human security advocates assert that a notion of security that is broadened to include these seven domains is necessary precisely because military and non-military threats to security are linked.

Work on the last of these—food security—has brought forth both the interdependent nature of human security as well as the tensions with, and even political resistance to, more macro-sized solutions to conflict. Much of the concern here is colored by the same degree, if not type, of contention at the heart of the debates over expansive notions
of rights (like expansive notions of security). One of the first comprehensive studies on food security by Eide, Orshaug and Eide provided the changing approaches to food insecurity through time, and provided an impressive inventory of the different organizations engaged in securing food. The authors define food security via the World Food Council’s 1982 definition as encompassing three elements: “Adequate food production ... increasing stability in the flow of supplies; and ... securing access to the existing supplies of food.” In their cataloguing of the different approaches and agencies seeking to ameliorate food insecurity, Eide et al. note the challenges faced historically by larger organizations, such as the World Food Programme and the Food Aid Organization of the UN. Many of these challenges derived from the tension between food security as a “right” and the extent to which nation-states did (or, more precisely, did not) agree with that assessment in terms of their own obligations in providing that right. The authors thus revised the definition of food security as “a development framework for the further elaboration of the right to food,” and asserted in light of contemporary developments that the food security concept should be amended so that one would focus on the household or community, “rather than global or national food security” to “guide development bodies.”

**Heifer International as an acupunctural formation**

In January of 2005, the US news program *60 Minutes* chronicled a story that perhaps exemplified this household or community approach to food security. Titled “Beatrice’s Goat,” the feel-good story detailed how Beatrice went from her Ugandan village of Kisinga to a local school, then to a New England prep school, and eventually to Connecticut College, all because of a goat that was part of a project begun in 1991 by Heifer International. Heifer goats, as the program detailed, are bred to produce “prodigious amounts of milk,” and in Beatrice’s case her family’s goat produced enough surplus milk to sell to members of her community. The proceeds from this were used to send Beatrice to the local school, and then on to high school and college in New England. Inspired by a children’s book published four years prior, CBS’s story used Beatrice (and her goat) as a prism to highlight the work of Heifer and the processes such work made possible. While it focused on the outcome for Beatrice, the story also detailed the effects upon the village community, including the increased food security and economic empowerment that the training and materials shared by Heifer contributed to.
Heifer International is a non-profit group started in 1944. It provides training, assistance, livestock, and sustainable practices to areas around the world. Centrally located in Arkansas, the organization has centers in three other areas of the United States, in Michigan, Massachusetts, and Maryland. The idea behind what would become Heifer’s mission and work began when founder Dan West was doing relief work in Spain during that country’s civil war. Frustrated by the rationing such relief work involved, West supposedly exclaimed: “These children [in Spain] don’t need a cup, they need a cow.” West started Heifers for Relief, and the first shipment of cows was delivered to Puerto Rico in 1944. Heifer went “international” following World War II, sending heifers and pigs to post-war Europe and Japan. Heifers were chosen because they are “young cows that haven’t yet given birth—making them perfect not only for supplying a continued source of milk, but also for supplying a continued source of support.” These heifers can then be bred and “passed on” to other families who are also in need, part of the “passing on the gift” element of the Heifer experience. Oftentimes, as in the aforementioned Beatrice’s case, this is even an intercommunity ceremony, where several livestock offspring are passed from one village to another.

Over the years, Heifer found it more feasible to expand and revise their approach: expanding by providing not only livestock but agricultural training and materials; revising by no longer “shipping” livestock but to “purchase and distribute indigenous animals already acclimated to the local area.” The variety of livestock provided by Heifer and its associates centralizes the importance of contextualization—the environment treated determines the type of livestock and agricultural materials provided. A typical Heifer project consists of three essential components. First, there is the preparation for receiving livestock and other material goods. Second, each community aided is, through Heifer’s network of experts, provided with key training in animal husbandry and sustainability. These two components are usually based on a five-year project timeline, the first year of which is the preparation by the community to receive the materials and training for the project. The third component—organizational development—includes planning, management, record keeping, reporting and evaluation. This also includes community engagement where bred livestock are then distributed to neighbors, a practice known as “passing on the gift.” In each of these stages, Heifer has attempted to extend its model into other networks, “partnering with governments, private sector organizations, other non-profits, coalitions and networks to aid in delivering programs and services to the marginalized.” One recent project in...
Zambia, for instance, included support from the government for veterinary assistance, but this complemented the training of local groups by Heifer personnel. More broadly, Heifer is known to partner with a variety of governmental, intergovernmental, and non-governmental organizations to seek out second-order influences from its more immediate food security purposes.

Let me attempt to confront two questions relevant to this volume as I conclude the penultimate section of this chapter. The first, and perhaps easier question to answer is how Heifer represents an “acupuncture formation” within the broader “micropolitical” approach to security. To begin, the organization is actually an assemblage of some 315 “active projects” or individual acupuncture formations, as visually represented via a search at ngoaidmap.org spanning across five continents. These projects rest upon the core functional component of providing the basic needs of individuals, but extend beyond that core purpose to illustrate the interdependent aspects of human security. Second, the organization represents a collection of the types of specialized experts that Mitrany found so central to functional solutions, including those with expertise on agricultural, health, livestock, environmental, political and economic development. Third, Heifer projects create several relationships that can serve to bind communities together. Fourth, Heifer’s approach, while global, is also inherently micro. As one review of its work in 2005 noted:

One key to keeping aid efforts manageable and low-impact seems to be Heifer’s penchant for small projects … These range from small projects such as the Voces Libres Poultry Project in Bolivia, with a budget of $8,983 for 700 families over two years; to the Bees on Wheels Project in Armenia, with a budget of $15,725 spread over two years; to the Livestock for Sustainable Farming and Income Generation in Nepal’s Terai Region with $501,846 over five years, with 862 families receiving livestock, training in sustainable practices and soil conservation, and small biogas fuel plants.

A second and more difficult question is how Heifer International confronts or relates to armed conflict. Although it is by no means its primary purpose, Heifer has a number of “peace projects” throughout the world, including several in Rwanda promoting livestock cooperatives between Hutu and Tutsi, a “Heifer Kosovo” project that has worked with ethnic Albanians as well as Serbians across the border following the 1999 conflict, and a “guns for cows” swap conducted in Albania in
the early to mid-2000s with one pregnant heifer traded for “two or three guns.” Heifer also promotes a “model of conflict resolution,” which centralizes “group decision-making.” Further, even though Heifer seems to be confronting only one of the seven domains of human security (food), its purpose and practice actually demonstrate the interdependent nature of that concept, touching upon a variety of these domains of security. While the model of Heifer seems to be the household, its more recent approach punctures a needy area via the community, providing up to 1,000 families with both the materials and the training and management models to build a sustainable network. Its emphasis on agro-ecology, to “maintain healthy ecosystems while simultaneously supporting sustainable and successful agricultural productivity,” brings forth the importance of the local environment for Heifer-aided areas.

Thus, while its ability to reduce armed conflict is difficult to quantify considering its more local and micro approach to food security, what is perhaps most noteworthy about Heifer is that its example contains the possibility of breathing life back into the battered paradigm of “human security,” one which has come under criticism from a variety of scholars. One of these is an interpretive critique, as exemplified by Roland Paris, namely that human security is something that “everyone” is “for,” but “few people have a clear idea of what it means.” This interpretive critique flows into a broader policy problem, for if no clear understanding of the concept emerges, little policy guidance can be ascertained from using it to investigate security issues. Thus, the very interdisciplinary, interdependent nature of human security means that it is ripe to be “securitized” by authoritative actors via discourses that could fail to “lead to any significant improvement” in people’s lives, or, worse, could prove to be counterproductive, securitizing domains in ways that could reinforce conflict (as with securitizing environment), and stigmatize those afflicted with particular diseases (as in the securitizing of “health”).

What Heifer demonstrates is that one can promote an interdependent notion of human security that is interdisciplinary and meaningful without having to be distributed in a hierarchical fashion from distant bureaucracies or organizations. Instead, it seeks to organize communities organically and laterally. It is most likely an “apples-to-oranges” comparison, but in some ways this is also an approach to populations that seems very similar to the 2000s reinvigorated US approach to “counterinsurgency”: making the “people” the “prize.” As Mary Kaldor discussed in a recent interview, “The new COIN [counter-insurgency] manual talks about population security, which is very close
to human security in my view.” Indeed, some of the first successes in the US “counterinsurgency” strategy in Iraq instituted by General David Petraeus in Iraq in early 2007 were interdisciplinary teams of NGO personnel, locals, and (of course) US soldiers and Marines, all of whom were to engage with the populace first and foremost to provide them with their basic needs.

Far from being ignorant of the gender differences and power differentials existing within local contexts, Heifer foregrounds gender equality by bringing women and men together in village contexts to work on projects. Often Heifer provides livestock directly to women, and in this way, “By becoming the owners of livestock and the businesses that come from those livestock, women are able to earn an income for their family.” Further, Heifer attends to the typical concern regarding NGOs, namely that no one is “watching the watchers,” by being transparent both to its donors and to those benefiting from the projects and the organizations with which it partners. One recent evaluation of the “top 100 NGOs” placed Heifer twelfth in the world out of all NGOs, including on the criterion of transparency and accountability, and another gave it a top score of 70 for “accountability and transparency.” This allows Heifer to avoid some of the problems of accountability that seem to bedevil the levels of trust engendered by private sources of authority in global governance, as well as other public and even democratic forms of accountability.

One other possible benefit that may develop from Heifer’s approach, albeit a set of second order ones, which deserves attention in the future, is the way in which its functional arrangements help provide routines, order, and predictability—factors vital to the structuration of both group and self-identities in communities. If such networks unfold in ways in which these communities (again returning to some of the relational insights noted above) develop fluid but temporarily stabilizing “yoked” entities, they may provide sources of pride that extend past the functional provisions created by the “acupunctural formations” of the projects begun by Heifer but “kept going” by the community itself. A final issue—what this all means for global governance and the dilemmas noted earlier—I confront in my work-in-progress conclusion below.

**Conclusion: “glocal” governance and normative purpose**

The micropolitical approach outlined in this chapter provides some value-added possibilities with regard to global governance, but also some unanswered questions. First, it has the potential to attend to the
micro-to-macro concern regarding the “iron cage” of bureaucracy, that the expertization of bureaucracies will allow them to “dominate and control.” While “experts” play a vital role in functional designs, a micropolitical approach helps alleviate this concern of domination or control in two ways. First, the interdisciplinary nature of functional treatments like Heifer International helps prevent the dominance of any one disciplinary approach calcifying. The sometimes radically contextual nature of micropolitics takes limited lessons from one area or time of the world to apply to others.

What emerges is an admittedly awkwardly termed “glocal” form of governance that again accepts the macro problems that lead to armed conflict being a possibility at any time and in many insecure spaces, but attempts to resolve them without full recourse to the “global” forms of authority and organization that remain a part of our international political landscape. Yet to the extent that we buy the notion of such a thing as “global public goods,” including those served by the provision of human security in various parts of the globe that have known little of it for decades, micropolitical organizations like Heifer International “address issues having to do with a global common good.” They are thus not only part of an “emerging structure of global governance,” but depend upon that structure to help formulate a language that is more properly transmitted at the local level in a variety of contexts.

Questions regarding micropolitical formations remain unanswered, however, especially regarding organizations like Heifer International—organizations that may be providing a global public good, but nevertheless represent at least a particular value system and set of normative commitments that may both empower but also uproot the very populations being served by their model of conflict resolution. Because Heifer has to acquire access to these areas, and gain a certain freedom of movement and intervention into existing practices, it must maintain that balancing act between a government that may welcome its services but not its eyes and ears and reports, and a fidelity to a local population that it hopes to empower. At what point do authorities no longer see this empowerment in solely economic, food, or environmental terms and begin to view it as culturally, socially, and even politically threatening? How does Heifer protect its personnel in these areas? What does it do if its personnel—or the populations it empowers—become endangered? I hope to find answers to these questions eventually, but for now Heifer’s website and those reporting on it are quite silent in this regard.

One final obvious observation is that no systematic resolution of conflict can occur when “structural” violence prevails, regardless of the
“intentions” of particular actors. This is “violence built into the structure, and shows up as unequal power and consequently unequal life chances.” Again, acupunctural formations are important achievements in breaking through such structural regimes of violence, yet their efficacy and duration is dependent on those macro forces and organizations which can best, and most comprehensively, address such overarching issues that remain endemic to global politics.

Notes
4 See Associated Press, “Sudan Expels Humanitarian Groups,” 4 March 2009. The proximate cause for this was a Khartoum reaction to the indictment of Sudanese President Omar al-Bashir for crimes against humanity by the International Criminal Court.
10 Hammarlund, Liberal Internationalism and the Decline of the State, 72.
11 Hammarlund, Liberal Internationalism and the Decline of the State, 21.
16 David Mitray, The Progress of International Government (New Haven, Conn.: Yale University Press, 1933), 87, emphasis added.
17 Hammarlind, Liberal Internationalism and the Decline of the State, 155.
20 Lipschutz and Fogel, “Regulation for the Rest of Us,” 5.
21 Kimberly Hutchings, Time and World Politics (Manchester: Manchester University Press, 2008), 5.
24 William Connolly, Neuropolitics: Thinking, Culture and Speed (Minneapolis, Minn.: University of Minnesota Press, 2002), 20.
25 Quoted in Hammarlind, Liberal Internationalism and the Decline of the State, 65.
32 Eide et al. noted five issues or weaknesses with food security as a concept at that time, 450–52.
33 Eide et al., “Food Security and the Right to Food in International Law and Development,” 416, see also 453–59.
35 Lori Lohstoeter and Page McBrier, Beatrice’s Goat (New York: Simon & Schuster, 2001). The book even names the goat, Musiga, and provides more detail than the 60 Minutes program in a variety of ways.
38 Smith, *Give a Little*, 62.
39 Smith, *Give a Little*, 64.
42 Examples abound. One comes from Cambodia, where Heifer has pursued projects that seek to bring together those disabled from war and the many landmines that remain in the country, partnering, “Brothers in Peace,” www.heifer.org/media/world-ark/archives/2011/fall/brothers-in-peace.
43 foodsecurity.ngoaidmap.org/organizations/34.
46 www.heifer.org/blog/tag/armenia.
47 Smith, in *Give a Little*, 70–74, details the story of the Akha people of northern Thailand, a nomadic group found throughout Southeast Asia that was forcibly relocated by the Thai government into one area of northern Thailand. With it fixed and located to one area, the group’s methods of farming depleted the surrounding environment too quickly for it to regenerate. Beginning in 1999, Heifer’s work helped to educate and train the group, via agro-ecology, on more environmentally friendly and sustainable agricultural practices.


11 Violence, authority and governance in territories of limited statehood

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- The three governance contexts
- Constructing illicit authority: Rio de Janeiro’s favelas
- Reintegration: public and private governance
- Hybrid structures
- Conclusion

Since the end of the Cold War, global security concerns have shifted from wars between states to armed violence arising within states. This transition stems in part from increased prevalence of intra-state wars, state failure, organized crime and terrorism originating in the developing world. Here, pathological institutional structures and ineffectual enforcement mechanisms—incapable of mitigating violence and containing insecurity—impair the global governance fabric. While international governmental organizations (IGOs) have established institutions to govern “failed” or “collapsed” states, significantly less policy and scholarly analysis addresses territorial “stateless” areas within the sovereign jurisdiction of otherwise viable and functional states. These geographic zones, variably labeled “black spots,” “ungoverned spaces” or “territorial areas of limited statehood,” are sub-state areas where state institutional and enforcement structures remain ineffective.

Though perhaps “stateless” and violent, these territories are not anarchic or ungoverned. Territories of limited statehood (TOLS) emerge in spaces where state authority cannot assert its dominance vis-à-vis violent non-state actors (VNSAs), entailing ipso facto challenges to states’ jurisdictional sovereignty. TOLS exhibit “illicit authority,” or “the nature of private authority associated with forms of organized violence,” through which violent non-state actors govern communities and establish environments conducive to unchecked violence and behavior that threatens human, state and international security. As many developing countries are unable to consolidate effective statehood throughout their territorial
jurisdiction and the international community is yet to formulate operational responses to address these challenges, TOLS constitute an issue area where nongovernmental organization (NGO) governance could potentially reduce violence. Hence, this chapter analyzes how and by whom TOLS can be governed.

Accordingly, the first section of this chapter proposes a co-constitutive framework for analyzing how an indeterminate actor type assumes authority and produces institutional constructs that sustain governance. The framework stipulates that networks of public or private actors institutionalize authoritative governance by asserting concomitant primacy within three governance contexts—namely, social legitimation, socioeconomic security and coercive violence. Second, Rio de Janeiro’s favelas—shanty towns featuring a higher mortality rate from armed violence than most “war” zones—provide an empirical basis for investigating authority in TOLS. The case demonstrates that illicit non-state actors’ authority derives from their relative preeminence within the three contexts, enabling the institutionalization of endogenous social order while engendering violent interaction with competing exogenous actors. Drawing empirically from ongoing “pacification” efforts to contest illicit authority in Rio’s favelas, the third section evaluates the feasibility of establishing NGO governance in TOLS. Based on observed NGO capacities, the pursuant analysis within the contours of the three governance contexts exposes NGOs’ comparative disadvantage in the context of coercive violence. The final section therefore proposes three “hybrid structures” enabling NGOs to overcome this violence deficit, which remains indispensable for contesting illicit authority’s entrenched institutional constructs and, paradoxically, inducing social commitments to non-violence through governance.

The culmination of the following analysis reveals that authoritative governance necessitates concomitant primacy within the three governance contexts. Accordingly, within TOLS, authoritative illicit non-state actors transform from mere rule breakers to full-fledged rule makers; NGOs, meanwhile, must first overcome their violence deficit to enact competing institutional arrangements, reduce violence and enhance human and international security. The implications for NGO governance in TOLS without public or private assistance in the context of coercive violence are sobering.

The three governance contexts

As Weber proclaimed, the state is the “human community that (successfully) claims the monopoly of the legitimate use of physical force
within a given territory.” Moreover, “the state is a relation of men dominating men, a relation supported by means of legitimate … violence. If the state is to exist, the dominated must obey the authority claimed by the powers that be.” State authority, according to Weber, rests on “inner justifications” that comprise “legitimations of domination” through which the state exerts its domination and coercive force over society within its territorial domain. Hence, “[t]he concept of the state … [is] held together by an idea, a belief in actual or normatively prevailing norms and relations of rule of man by man.”

TOLS emerge in those areas where the state fails to establish these requisites, resulting in territories where the state maintains de jure sovereignty but no longer owns the means or the legitimacy for superimposing de facto control. The devolution of state authority renders these territories vulnerable to exploitation by VNSAs. According to Hall and Biersteker, non-state actors emerge as an illicit authority when they engage in “forms of organized violence … [that] violate domestic and international legal norms,” through which they can take “control of means of violence” and have the “capacity to provide public goods underprovided by public authority,” allowing them to emerge as legitimate alternative “centers of social organization.” As such, illicit authority substitutes for state-perpetrated governance by occupying niches where the state is absent or deficient. This inversely proportional relationship suggests that illicit authority reflects the constitutive elements of state authority, consistent with Tilly’s claim that “state making [and] … [b]anditry, piracy, gangland rivalry, policing, and war making all belong on the same continuum.” Pointing to fundamental similarities like the use of force to institute protection rackets, Tilly asserts that states merely “qualify as our largest examples of organised crime.” Given that illicit authority subsumes governance functions in areas of devolved state authority, it is possible to outline three mutually constituting contexts requisite for the institutionalization of authoritative governance.

The first context is coercive violence. As Machiavelli noted, “it is far better to be feared than loved … because men love as they please but fear when the prince pleases.” Much has been written about coercive violence in relation to the establishment of political authority and social order. Accordingly, it is sufficient to note that violence can be employed exogenously against encroaching and competing groups in order to protect or expand one’s territory (i.e. military function) and endogenously to influence processes within society (i.e. police function), including the extraction of resources (taxation) to sustain operational functions. In the latter case, coercive violence can be employed to alter
norms of conduct and restructure social behavior (to compel) or enforce existing norms, rules, and institutions that preserve established forms of behavior (to deter).

Private actors attaining authority through violence is certainly nothing new as Machiavelli devotes an entire section of *The Prince* to “Those who come to power by crime.” As Machiavelli states, “having put to death all who, because they would resent his rule, might injure him, [the criminal] strengthened his position by founding new civil and military institutions,” thus foreshadowing contemporary usurpations of territorial governance by illicit authorities.

The second context comprises public goods, including protection, patronage systems, rent-seeking arrangements and other provisions of *socioeconomic security* that both licit and illicit ruling elites control and employ to their own ends. Coercive power allows actors to change or enforce rules, carving a niche to structure social relations and institutionalize protection for markets and sources of rents. As North et al. maintain, “By limiting access to these privileges to members of the dominant coalition, elites create credible incentives to cooperate … In this way, the political system … manipulates the economic system to produce rents that secure political order.” Since elites can establish control over rents and secure access to them using coercive violence, this arrangement entrenches their rule because non-elites become dependent on their patronage. If used strategically, this further entrenches the actor’s authoritative position as a primary provider of socioeconomic security.

The final context comprises principles of *social legitimation* that underpin the authoritative status of ruling elites as perceived by those subjected to their rule. Weber’s treatment of authority in terms of inner "legitimations" underscores the indispensable role of inter-subjective social relations in the construction of *authoritative* governance. This legitimation is conditioned on actor identification, whereby the collective identity of a given populace must be socially compatible with the would-be authority in order to establish a sense of communal “self.” Notions of “common purpose” can derive materially from the protection and "social" security that the ruling elites—as a result of their dominance in the other contexts—can provide vis-à-vis “others” but also from ideational constructs like religious, class, ethnic, communal or national self-identification. Collective social identification creates an impetus for casting “self” as ideationally distinct and separate from “socially distant others,” thereby further differentiating itself from
external actors and establishing a social basis for the legitimation of internal social dynamics. Via this socially syndicated legitimacy, a social “contract” can be devised to structure relations between “rulers” and “subjects,” which can be institutionalized formally as a constitution or informally in the sense of lei do morro (law of the hill) in favelas.

The notion of socially legitimate criminal organizations is perhaps the most counterintuitive of the three contexts. Hobsbawm’s concept of “social bandits,” defined as “those who are not regarded as simple criminals by public opinion … [but rather an] individual or minority rebellion within … society,” may help mitigate concerns in this regard. More specifically, social bandits are “outlaws whom the lord and state regard as criminals, but … are considered by their people as champions, avengers, fighters for justice, perhaps even leaders of liberation, and in any case as meant to be admired, helped and supported.”

Social banditry illuminates how illicit authorities can establish a common purpose with underprivileged segments of society, resulting in a common identity vis-à-vis the state or mainstream society. Hobsbawm thus describes a social process whereby crime is teleologically legitimated and, as a result, authority is appropriated to the bandit by the immediate social environment. Comprising a very apt metaphor for the favelas, the illicit actor emerges as “a social bandit on his native mountains, a mere robber on the plains.”

Authority—state, private or illicit—is therefore co-constitutively produced when actors concomitantly assert their predominance in all three contexts, converging in a triangulating fashion (meaning a given actor falls within the shaded triangular section at the center of Figure 11.1). As Kratochwil maintains, “The strength of a regime … [results] from the deference to authoritative decisions that establishes what ‘the law’ is, or from the acceptance of norm-regulated practices. In other words, the crucial variable here is institutionalization, i.e., the acceptance of decisions as authoritative.” This framework therefore indicates how authoritative social bandits can institutionalize autonomous rule within TOLS by reconfiguring social norms, rules and institutions. Hence, illicit authority gives rise to institutional constructs that competing actors must alter to wrest governance authority from criminal hands.

**Constructing illicit authority: Rio de Janeiro’s favelas**

Fraught by armed violence, narcotics trafficking and transnational criminal networks, Rio de Janeiro’s favelas threaten human, state and international security. Between 2004 and 2007, Rio de Janeiro’s homicide rate (49.0 per 100,000) was nearly double the mean of combat-related
death rates of the three deadliest conflict zones worldwide: Afghanistan, Sudan and Iraq (27.9 per 100,000). This violence predominantly emanates from the favelas where authoritative private actors rely on violence to protect their territory and entrench governance structures contravening state authority.

Trafficker rule can be traced to the 1950s when associacoes-de-moradores (AMs, or residents’ associations) were formed in the favelas as a substitute governance arrangement in light of state neglect. The absence of state institutions and enforcement rendered these territories conducive to storing, processing and distributing illegal drugs. During the narcotics trade expansion of the 1980s, traffickers began incorporating marginalized favela residents in their operations and entrenched themselves in the social fabric by occupying niches left by state neglect. Realizing that political power resided with the AMs, the Comando Vermelho (CV, or Red Command) acted to control them, which “took the form of an explicit takeover: the leader of the local gang openly nominated a candidate, successfully intimidating prospective opponents or their supporters.” In 2009, the commandant of Rio de
Janeiro State’s police forces stated: “Rio de Janeiro has been a sad spectator of the rise of traffic dictatorship, which imposes itself on the economically challenged strata of society, ruling people’s lives and subjugating them to their will.”

Subsequently, with the emergence of Amigos dos Amigos (ADA, Friends of Friends) and the Terceiro Comando (TC, Third Command), criminal factions began competing with each other, and with the state, for territorial control. Criminal organizations henceforth consolidated their political roles, ripening the conditions for illicit authority and governance in the favelas. As McCann asserts, “With few exceptions, they constitute separate city-states within the city. An accurate political map of Rio would show a quasi-medieval patchwork of overlapping and conflicting zones of authority.” As detailed below, governance in Rio’s favelas reflects how these criminal factions institutionalized their authority by assuming concomitant primacy in the three governance contexts.

**Coercive violence**

The emergence of Rio’s TOLS can be traced to transient power vacuums in the favelas where “the Brazilian state does not exercise an effective monopoly on the means of organized violence.” While the civilian and military police are the state’s primary agent for monopolizing violence within its jurisdictional bounds, according to former National Secretary for Public Security Luiz Eduardo Soares, policing within the favelas is often inadequate, counterproductive and suffers from inept or indifferent civilian oversight. This inability to monopolize violence neutralizes the state’s deterrent role and provides a territorial niche conducive to organized crime and militias. Until recently, the police were content with creating a perimeter around the favelas in order to contain violence and prevent further sprawl. In 2009, Rio de Janeiro’s government even resorted to walling-in these areas, rendering the territorial demarcation at once more perceptible, while inadvertently acquiescing to an internal despotic rule.

Police aversion to penetrate the favelas stems from several factors. First, due to the topographic composition of the favelas, most of which are located on hillsides, the territory gives traffickers a strategic military advantage vis-à-vis police, i.e. high ground. Second, the lack of urban planning and makeshift infrastructure resulted in narrow, labyrinth-like streets, rendering most police vehicles ineffective, regular patrols impossible and entry tactically onerous. Hence, the civilian and military police only entered the favelas intermittently, primarily...
relying on their respective special forces, CORE (Coordenadoria de Recursos Especiais, or Special Resources Coordination Bureau) and BOPE (Batalhão de Operações Policiais Especiais, or Special Police Operations Battalion), reinforced by helicopters and a semi-tank named the *Caveirão* (big skull). The militarized nature of these operations conjured perceptions of state repression and illegal retribution. Once a vicious cycle of increasing violence becomes entrenched, re-implementing and maintaining control over territory and society requires tremendous resources and social capital, which became nearly impossible considering the police’s record of organizational dysfunction, systemic corruption and lax political oversight.

This social environment is conducive to illicit authority because it relies on the perpetration of violence for maintaining social order. In the 1980s, the narcotics and small arms trade first attended violence because trafficker networks sought protection for their illicit markets and goods. This fostered an initial demand for weapons, which required modes of protection for the transfer of arms themselves. However, perpetuated violence has transgressed from a mere mechanism of protecting illicit trade and markets into a coercive apparatus employed for the physical manifestation of criminal authority.

Trafficker violence as it pertains to the establishment of authority in the *favelas* can be conceptually bifurcated, similar to the respective internal and external functions of police and military forces. The first is exogenous, closely corresponding to traditional modes of geopolitical warfare with the objective of establishing territorial and strategic pre-eminence. In Rio’s *favelas*, this phenomenon manifests itself as urban warfare between criminal factions and state forces competing for territorial control. Paul Sneed elaborates: “It is not uncommon for battles involving machine guns and even hand grenades to take place in Rocinha, sometimes involving police helicopters and the BOPE’s semi-tank, the *Caveirão*.” With the emergence of additional criminal organizations in Rio, this bi-directional war between the state and traffickers has been supplanted by multi-faction warfare. As Sneed illustrates, “One of the most dramatic instances of this violence occurred in 2004 when, in a now infamous turf war … Rocinha switched criminal factions from the CV to the ADA. The change has caused the intensification of violent conflicts.” The Brazilian state’s occasional reliance on its military forces—its external branch—to help reassert control over the *favelas* further underscores the reality of how trafficker violence subtracts socio-spatial zones of authority from the state.

In the endogenous dimension, once gangs have claimed territorial control, violence is channeled internally to instill a quasi-sovereign
regime of fear. Similar to domestic roles of the modern state, traffickers employ coercive means to construct social orders by instituting a crude pseudo-police apparatus. According to Arias, “things have gotten so bad that … parallel ‘powers,’ ‘authorities,’ or states have emerged in the city’s favelas, where criminals act as judge, jury, and executioner.”

Traffickers thus construct a social environment that constrains the spectrum of agency and freedoms of favelados. The systematic use of coercive violence therefore emerges as the corporeal element for implementing lei do morro (law of the hillside). Hence, according to Fernandes, “by imposing … a regime of unchecked violence … parallel power and tyrannical rule [became] impossible to contain,” leading to the institutionalization of an encompassing social order predicated on violence and sustained by the other two contexts, socioeconomic security and social legitimation.

Socioeconomic security

Rio’s criminal organizations attain vast amounts of funds from the illicit and informal sectors, primarily through narcotics and weapons trafficking. As the second largest consumer of cocaine worldwide, Brazil is an important market for these ostentatious narcotics industries. In recent decades Rio has also become an “export node” for drugs, and favelas were particularly convenient sites for handling and distribution. The substantial revenue generated from these illicit economic structures is supplemented by other criminal activities such as theft, robbery, kidnapping for ransom, and murder for hire. Relying on this revenue stream, criminal organizations reinforce their influence in the favelas through corruption, clientelism and rent-seeking networks. As Arias suggests, “Many bureaucrats, police, and politicians take kickbacks or otherwise work with traffickers to accomplish personal objectives. These actions strengthen drug traffickers, who, as a result, operate with relative freedom inside favelas.” Criminals can substantially enhance law enforcement salaries in return for desisting from interference or even providing outright protection.

In addition to securing their territorial market niches by co-opting state officials, illicit authority is derived from, and perpetuated by, the provision of goods and services to local communities. Traffickers set up rent-seeking and clientelist networks with civic leaders and members of the general population by providing monetary aid to lower societal strata. Traffickers thereby embed themselves in “traditional patron-client relationships … [demonstrating] the complex ways that criminal organisations, linked to the international black market, have affected
governance in Rio.” 64  Gangs have arrogated functions that include providing cable TV, electricity, public transportation systems, and informal licenses and property guarantees for favela residents who pay “taxes” or tributes to the drug lords. 65  Criminal organizations “also provide some assistance to those in need of food, medicine, or clothing, and may even pave roads, maintain soccer courts, and fund day-care centers.” 66  Hence, these illicit authorities’ influence in the favelas also derives from public co-option via the delivery of socioeconomic goods. Nonetheless, the pertinacity of their authority within the favelas exceeds sheer coercion or socioeconomic security.

**Social legitimation**

Rather, illicit authority rests on its social legitimation, relative to the state, within TOLS. In Rio’s favelas, the state’s inability to monopolize violence has led to the perception that it has failed as the guarantor of security governance. In the Hobbesian tradition, as French and Haywood acknowledge, the quest for security drives state institutionalization and failure to accomplish this in the favelas seriously threatens the state’s legitimacy and the degree to which it can implement authoritative governance.

The state’s policies of containment and repression undermine its legitimacy for two reasons. First, the police’s engagement in open warfare with criminal gangs cultivates despair among the populace and reduces societal perception of the state from a supposedly “higher authority” to just one faction amongst equals. 67  The police thus “empowers criminals and legitimizes existing parallel power by responding to criminals in a reciprocally barbaric way.” 68  From a societal perspective, this renders trafficker violence more legitimate since they are now “on equal footing” with the police in terms of indiscriminate perpetration of violence. 69  Second, the police’s failure to use force discriminately—by distinguishing between residents and criminals—has aggravated the perception that the police are unable to provide protection. As Amnesty International reports, for innocent favela residents lethal police violence “is an inescapable part of life,” 70  often resulting in “excessive use of force or extrajudicial execution.” 71  Hinton corroborates this, stating: “those who could not afford private protection were gripped by panic and helplessness, fueled by the perception that the police could not or would not protect them.” 72

This public security void is filled by indigenous criminal organizations that provide local order and protection to favelados from hostile exogenous elements of Brazilian society. In these social environments
dominated by marginalization and exclusion, drug traffickers seek to legitimize their control over the *favelas* by *re-presenting* themselves as guarantors of security.\(^{73}\) *Favelados* thus turned to powerful drug lords for security as they “effectively build links into … society to gain a degree of localized power that is able to fend off state agents.”\(^{74}\) This presented an opportunity for criminal organizations to “use violence to impose order and work with civic leaders to establish their legitimacy.”\(^{75}\) The provision of security and protection to societal strata that perceive state forces as predatory and repressive results in a consensus within *favela* society that gangs constitute an alternative center for social organization.

The dynamic between *favela* society and the traffickers further entrenches the “ruling elite” in the social fabric and strengthens collective identity. The resultant collective “self” serves as a discursive tool to recast the “predatory” outside world as a socially distant “other.” This imagined identity is further reified through local discourses and terminology concerning the tension between the “hill” (*favelas*) and officially recognized neighborhoods known as the “asphalt.”\(^{76}\) As Sneed points out, large dance parties organized by the gangs, lyrics glorifying gang violence and power in funk music, as well as graffiti, further serve as discursive means of traffickers’ social legitimation.\(^{77}\) When common struggle accentuates common identity vis-à-vis “others,” this forges a comparative legitimacy advantage. The reinforcement of non-state actors’ coercive capabilities and provision of socioeconomic security with a degree of social legitimation enhances the authoritative status of the traffickers and entrenches their despotic rule.

**Institutionalized governance**

Collectively, the drug traffickers possess the necessary socioeconomic means, coercive violence and social legitimacy to institute informal governance structures that shield both their illicit networks and *favela* society from state interference within those territories. The *institutionalization* of illicit *authoritative* governance within these TOLS is therefore premised on the ability of the gangs concomitantly to assume predominance within the three governance contexts. As a result, “factions typically impose a strict martial law, prohibiting street crime and brutally punishing those who commit offenses,”\(^{78}\) rendering *favela* territories “a state within the state.”\(^{79}\) This analysis concurs with McCann: “Within the *favelas*, the gangs have arrogated many of the rights and duties of the state: they control the use of violence, they levy taxes and regulate movement, and they provide sporadic public assistance.”\(^{80}\) Hence, the social dynamics beholden to Rio’s *favelas* empirically
corroborate how authority, derived from the ability to establish primacy within the three contexts, can empower non-state actors to contest state-perpetrated territorial governance and institutionalize authoritative governance.

Reintegration: public and private governance

Since 2008, in an effort to reincorporate the favelas into the state’s hierarchy, the Governo do Rio de Janeiro’s Secretariat for Security modified its hitherto dysfunctional approach through the Pacification Police Unit (UPP) program. Through the UPP program, the state’s objective is “To re-establish control over territories long lost to militias and factions, freeing their residents from the murderous and despotic claws of traffic dealers [sic].” Figure 11.2 demonstrates favela territories where UPPs have reclaimed territory and reestablished state control (22 percent) and where the initial stages of pacification have commenced (15 percent). Fully consolidating state control remains a surmounting task because a combined 46 percent of dispersed terrain remains under trafficker control. Nonetheless, the UPP model serves as a template for “pacifying” and reintegrating TOLS

Figure 11.2 Map of favelas
and can be employed to analyze whether NGOs could replicate such an approach.

A template for “pacification”

According to Dr Roberto Alzir, Superintendent for Operational Planning at the Governo do Rio de Janeiro’s Secretaria de Segurança, UPP aims to “guarantee round-the-clock state presence … execute special actions related to pacification and ensure preservation of the public order.”82 Since its implementation, the homicide rate in Rio de Janeiro has decreased from 41.9 per 100,000 in 2007 to 26.7 per 100,000 in 2010,83 a 36 percent decrease in just three years. This “pacification” approach has met its objectives by reestablishing control over some favelas in four phases:

1 Territorial rescue: consortium of state civil police, state military police, federal police and military units in Joint Special Operation Task Forces reassert state control over territory;
2 Stabilization: territorial gains secured by apprehending criminals, removing trafficker fortifications and confiscating weapons and drugs;
3 Implementation: insertion of police stations and establishment of a permanent police presence; and
4 Post-implementation: complementary social programs consolidating territorial gains by reasserting state legitimacy and undermining narcotics trafficking.84

Without drawing premature conclusions because the UPP strategy has only been adopted recently, the successes of the UPP program are indicative of the operational capacity, resources and political will necessary to wrest control from traffickers and supplant illicit authority with legal institutions.

In corroboration of the analytical framework, the UPP operational sequences to contest illicit authority can be appropriated to the three governance contexts. First, in phase one, UPP reasserts territorial control and controls the means of coercive violence by mounting an aggressive campaign against the drug traffickers and removing them from their fortifications, usually in the center and near the top of the favela.85 Figure 11.3, which illustrates the operations in phase one of the pacification process in Complexo do Alemão (German’s Complex), is indicative of the sheer force and organizational capacity necessary to remove gangs that are not only territorially entrenched and materially fortified but also deeply embedded in the social, economic and political
Figure 11.3 Phase one operations in Complexo do Alemão (2010)
fabric. In phases two and three, UPP makes these gains in coercive violence sustainable by maintaining a constant presence in the *favelas*.

Second, UPP replaces traffickers as a source for socioeconomic security in two complementary ways. On the one hand, UPP curbs the informal sector and combats trafficking through community-based law enforcement in phase three. The UPP headquarters in Cidade de Deus (see Figure 11.4), for example, now provides permanent policing services, dispatches regular patrols and conscientiously establishes relations with community leaders and residents. This emphasis on community-based policing is in stark contrast to the previous intermittent and repressive approaches used by the police’s special forces. Moreover, UPP enforces property rights and issues official titles of ownership for properties and businesses in the *favelas*, thus replacing informal rules established by traffickers with formal legal institutions.

On the other hand, UPP not only undermines the informal sector but, in phase four, promotes socioeconomic security through a public-private partnership between UPP Social and the Serviço Social da Indústria (SESI, or Social Service of Industry), a nongovernmental organization established by the Federação das Indústrias do Estado do Rio de Janeiro (FIRJAN, or Federation of Industries of Rio de Janeiro State), a private syndicate representing the interests of Rio’s industrial
companies. Through cooperation, UPP Social and the SESI Cidadania (citizenship) program establish services in health, literacy, employment, workforce retraining, languages and community leisure. In 2011, for example, SESI Cidadania opened a computer lab and library in Cidade de Deus (see Figure 11.5), to promote literacy, education, after-school programs and training. Having expensive hardware located in the center of this favela was inconceivable before UPP, but now due to public security and NGO assistance, community members have free access to these learning facilities. According to the commanding officer of UPP Cidade de Deus, the combined programs have dispelled local ideas that the state does not exist to help them and that they are better off with the gangs in charge.

The socioeconomic programs rendered through this state-NGO partnership serve further to consolidate the gains made in the context of coercive violence and territorial governance by enhancing the legitimacy of the state. After riding along on a patrol in Cidade de Deus, I witnessed how the UPP presence was altering the social dynamics in the favelas. At noon and after school, officers would go to the local schools and interact with children—previously prime targets for drug traffickers seeking innocent-looking interlocutors and recruits—who now stated that they wanted to be police officers. Moreover, SESI’s Cidadania program promotes civic identity and full societal reintegration.

Figure 11.5 A SESI computer lab in Cidade de Deus
through educational and social programs like the Seminário de Integração Favela-Cidade (Seminar for Favela-City Integration). UPP Social and SESI Cidadania thus act as agents for diminishing self-perceptions of “hill” and “asphalt” and reducing identity divergence within the city by collapsing the “favela-self” into the “other.”

Ostensibly, with help from SESI, the state has adopted a new strategy combining discriminate use of violence with societal empowerment, thereby consolidating “territorial rescue” in a sustainable fashion by re-establishing the state’s social legitimacy and honing its image as the guarantor of socioeconomic security. By re-establishing the state as the primary actor within the three governance contexts, UPP has so far successfully contested favela governance.

**NGO governance**

The emergent question is whether NGOs could replicate this model in TOLS located in countries where the state does not have the resources, organizational capacity or political will necessary to implement a similar program. To determine this, empirical NGO capacities can be examined within the three governance contexts that, as demonstrated, are integral for both state and illicit authority in the favelas.

Beginning with the context of socioeconomic security and the provision of public goods, this context constitutes the traditional sphere of many NGOs’ raison d’être. NGOs “such as Oxfam or CARE,” according to Ottaway, “are vital in distributing humanitarian assistance in … high-risk, lawless regions where international agencies and bilateral donors are unwilling to operate.” NGOs can mobilize donor networks and access emergency relief funds to gain access to and provide services in conflict areas. In Rio’s favelas, established NGOs like AfroReggae and Viva Favela are recognized for their commitment to social programs. As we have seen, SESI Cidadania provides community services and infrastructure that make state control more sustainable and foster societal reintegration through socioeconomic development. In TOLS, therefore, NGOs can become foundations for socioeconomic organization in lieu of illicit authorities’ rent-seeking and patronage networks. Accordingly, NGOs may in fact enjoy a comparative advantage in the context of socioeconomic security relative to illicit authorities and states that lack the institutional or resource capacities to deliver such services.

In terms of legitimacy, however, the position of an NGO relative to a local illicit authority or the state is not quite as straightforward. As Bartelson maintains in his contribution to this volume, concerns persist
regarding the normative legitimacy of NGOs as both functional and territorial authoritative actors, especially considering their democratic deficit and self-appointed nature. Moreover, as Lipschutz suggests in his contribution, the imposition of “liberal” Western normativity, epistemic securitization discourses and subjective notions of “good governance” within non-Western social structures renders NGO legitimacy problematic. In post-colonial areas, where TOLS are most common, the arrival of Western NGOs to “plug governance gaps” could arouse eerie recollections of past experiences with exogenously imposed governance. Normatively, NGO legitimacy could be compromised by accusations of intrusive Western liberalism, undemocratic neo-imperialism and breaches of sovereignty.

Despite these normative concerns, empirical evidence suggests that a licit non-state actor could gather sufficient social legitimacy to challenge illicit actors in this context. Provision of material goods can confer legitimacy, meaning NGOs may be able to capitalize on their competitive advantage in the context of socioeconomic security. According to Weiss and Gordenker, “Agencies such as CARE and Oxfam have enough prestige not to be easily or silently dismissed with the wave of an authoritative hand. Some have programs that, once begun, burrow deep into the social fabric … NGOs have impressive bases of popular support.” Moreover, Hall and Biersteker’s concept of “moral authority” suggests that NGOs associated with global social and religious movements can rely on ideational sources of legitimation. As French and Haywood suggest in their contribution to this book, non-coercive bases of legitimacy, such as the epistemic or regulatory functions of NGOs, resonate in international, national and local forums. Finally, NGOs founded and operated by local community members within TOLS can perhaps best capitalize on communal ambivalence with the status quo and entice social identification because they are not perceived as socially distant “others.” This was certainly the case with AfroReggae, an NGO founded by an ex-trafficker to foster social inclusion and dissuade gang membership through cultural media. Another example is SESI, which had ties to labor movements and was attentive to the needs of industrial workers in Rio de Janeiro prior to UPP.

Insofar as governance is concerned, NGOs constructing social legitimacy may be problematic but certainly not inconceivable. As the existence of illicit authority reveals, governance does not require absolute normative legitimacy; rather, NGOs’ social legitimation relative to alternative governance actors suffices. Hence, in TOLS the question of legitimacy certainly does not negate the possibility of NGOs governing authoritatively.

However, illicit authority’s systematic reliance on coercive violence to govern TOLS entails that episteme, public opinion, socioeconomic
goods or legitimacy are insufficient for NGOs to be “in” authority. As
the UPP program has shown, rooting out traffickers and their authoritative
structures required three stages of violent intervention and stabilization
by state security forces. Accordingly, this context appears much bleaker
for NGOs since these organizations refrain from and actively dis-
courage violence. Moreover, persistently buying access or co-opting illicit
authorities with financial means only serves to entrench their authority
further. As Ottaway acknowledges, “protection money paid by inter-
national NGOs to gain safe passage for food and medical supplies
financed the purchase of weapons by warlords and contribute[s] to the
escalation of violence.” While NGOs’ ability to provide the type of
services rendered by UPP Social and SESI Cidadania in the favelas
may well eclipse those of many states, it is doubtful whether NGOs
alone can establish alternative governance structures without the
application of coercive violence by different actor types to accomplish
operations equivalent to phases one to three of the UPP template.

Hybrid structures

As long as illicit actors are able to employ violence to intimidate local
populations and protect their territories without significant consequence
as a result of a general absence of legal enforcement mechanisms,
NGOs are unlikely to be “in” authority and implement sustainable
governance. Hence, NGOs must cooperate with other actors that can
employ violence in accordance with prevailing domestic and/or interna-
tional legal norms to establish governance. This section considers three
hybrid models whereby NGOs overcome their comparative violence
deficit and contribute to governance within TOLS.

First, the “private option” would allow NGOs to contract with a private
military/security company (PMSC) to control territory and establish a
permanent security presence. Herein, NGOs can maintain authoritative
control and flexibility because they are not constrained by a state or
international bureaucracy. NGOs contracting PMSCs in conflict zones
enjoys significant precedent and privatized security is increasingly
emerging as a norm. Pattison maintains that the use of PMSCs could
be normatively sanctioned if two, perhaps objectively dubious, conditions
are met: i) if the desired end is feasible; and ii) that it be a response to a
genuine humanitarian crisis. However, this practice is not unproblematic.
The use of PMSCs for humanitarian interventions has been criticized
for being unrealistic, morally questionable, undemocratic, and/or challenges
legal accountability according to principles of jus in bello. Moreover,
the legal ambiguity of mercenaries risks the emergence of yet another form
of illicit authority. Perhaps NGOs should heed Jörg Friedrichs’s warning that “[s]ecurity is unlikely to be truly for the common good unless it is viewed as a public good,” and that privatization of force can have predictable, negative consequences for security, markets and society.

Second, public-private partnerships present another means for NGOs to overcome the violence deficit. In this scenario, a state fraught by TOLS but lacking the resources of a country like Brazil can cooperate with a specialized NGO to coordinate reintegration efforts. Herein, states with territorial jurisdiction would execute the functional equivalent of UPP phases one to three while relying on financing and training from NGOs with relevant issue-specific epistemic and functional expertise (i.e. “advise and assist”) to help states overcome resource and operational difficulties. NGOs could then directly provide the services associated with phase four. This arrangement allows the state to “save face” because it is not ceding sovereignty over the security realm to a private or international actor, while “outsourcing” socioeconomic functions to NGOs, which is increasingly becoming standard practice amid widespread liberalization. The UPP-SESI partnership validates this approach. Unlike in “failed” or “collapsed” states, such an approach is possible because state governance is only impaired in circumscribed territories and state institutions remain intact. Hence, territorial governance would remain functionally differentiated between “public” and “private” roles. Nonetheless, problems persist regarding the resources, resolve and institutional capacities, given that pathological institutional structures help create and sustain TOLS. Moreover, NGO-state relations can be contentious, if not outright hostile, and it remains questionable whether cooperation between NGOs and states with partially overlapping functional areas can persist, especially with despotic and corrupt regimes.

The final model approximates more closely to existing reconstruction efforts that are now common after intrastate conflict or state failure but are yet to be employed for TOLS. Citing the Responsibility to Protect as a legitimating pretext, herein an international actor (United Nations (UN), African Union (AU), North Atlantic Treaty Organization (NATO), etc.) partners with a specialized NGO to consolidate a comparative advantage in all three governance contexts. NGO-IGO cooperation enjoys significant precedent given that IGOs outsource local development projects to NGOs and rely on their humanitarian services during military interventions. As part of the UN Mission in East Timor, for example, the International Committee of the Red Cross played an essential part in providing socioeconomic services and goods to suffering populations and militants in East Timor while International Forces East Timor (INTERFET) provided security
governance.\textsuperscript{108} International responses to governance failures such as transitional administrations and/or international territorial administrations have been adopted in Bosnia, Kosovo, Sierra Leone and East Timor, with varying degrees of success.\textsuperscript{109}

Conclusion

The preceding analysis demonstrated how, in the favelas, drug traffickers derive authority via concomitant predominance within the three governance contexts, thus establishing authority and institutionalizing governance. The repressive and violent disposition of illicit non-state governance serves as a strong reminder for why human communities surrender unabated natural liberty to institutionalize a coercive, yet legitimate apparatus that instills public order and bestows rights and privileges on its subjects.

Subsequent analysis of illicit authorities, states and NGOs within the analytical framework exposed NGOs’ comparative disadvantage in the context of coercive violence, thus casting aspersion on the notion of plenary NGO governance within TOLS. While NGOs are able to employ their resources and organizational capacity to establish predominance in the provision of socioeconomic security (where NGOs perhaps maintain a comparative advantage) and produce social legitimation for their operations, this remains insufficient to persuade illicit authorities to forego their arms, give up their lucrative rent-seeking networks and subject themselves to NGO authority. However, this assessment does not preclude NGOs from contributing vital issue-specific functions within TOLS via NGO-led hybrid governance structures and thereby reduce armed violence. Therein, international forces, PMSCs, and/or the state provide the requisite security parameter, while NGOs institutionalize governance by using their resources for organizational, socioeconomic and legitimacy aspects of operations diminishing illicit authority’s grasp on TOLS.

Among the hybrid structures considered, the NGO-state partnership may be the most feasible and least controversial governance solution for TOLS because it circumvents the issue of sovereignty. The successes of the UPP and SESI partnership in Rio de Janeiro provide a functional template for how this mutually reinforcing cooperative model can be implemented. Such public-private partnerships provide the requisite epistemic, resource, organizational and institutional capacities concomitantly to establish primacy within the coercive, socioeconomic and legitimate elements of authoritative governance and reintegrate these territories into the prevailing normative framework of global juridical statehood. A comprehensive global effort to supplant illicit
authority and eliminate TOLS via NGO-enabled governance would reduce violence and enhance human, state and international security.

Notes

12 Weber, “Politics as a Vocation,” 78.
13 Weber, “Politics as a Vocation,” 78–79.
15 Hall and Biersteker, *The Emergence of Private Authority in Global Governance*, 16.
16 Hall and Biersteker, *The Emergence of Private Authority in Global Governance*, 16.
17 Hall and Biersteker, *The Emergence of Private Authority in Global Governance*, 16–17.
25 North et al., Violence and Social Orders, 18.
26 Weber, “Politics as a Vocation,” 78–79.
28 Neumann, Uses of the Other.
30 Hobsbawm, Bandits, 17.
31 Hobsbawm, Bandits, 18.
34 Waiselisz, Mapa da Violência 2012, 22.
38 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.
41 Luis Eduardo Soares, Segurança tem Saída (Rio de Janeiro, Brazil: Sextante, 2006).
43 Major [indicates rank; granted anonymity], commanding officer of UPP Cidade de Deus, interview with author, Rio de Janeiro, Brazil, 7 April 2011.
44 Major [indicates rank; granted anonymity], commanding officer of UPP Cidade de Deus, interview with author, Rio de Janeiro, Brazil, 7 April 2011.
46 Amnesty International Brazil, “They Come in Shooting.”

49 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.

50 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.

51 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.


53 Sneed, “Bandidos de Cristo,” 228.

54 Arias, “The Dynamics of Criminal Governance,” 299.


60 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.


64 Arias, “The Dynamics of Criminal Governance,” 297.

65 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.


70 Amnesty International Brazil, “They Come in Shooting.”

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75 Arias, “The Dynamics of Criminal Governance,” 300.

76 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.


82 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.


84 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.

85 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.

86 Major [indicates rank; granted anonymity], commanding officer of UPP Cidade de Deus, interview with author, Rio de Janeiro, Brazil, 7 April 2011.

87 Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.

88 Major [indicates rank; granted anonymity], commanding officer of UPP Cidade de Deus, interview with author, Rio de Janeiro, Brazil, 7 April 2011; and Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.


90 Sistema FIRJAN, *SESI*.

91 Major [indicates rank; granted anonymity], commanding officer of UPP Cidade de Deus, interview with author, Rio de Janeiro, Brazil, 7 April 2011; and Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.

92 Major [indicates rank; granted anonymity], commanding officer of UPP Cidade de Deus, interview with author, Rio de Janeiro, Brazil, 7 April 2011; and Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.

93 Major [indicates rank; granted anonymity], commanding officer of UPP Cidade de Deus, interview with author, Rio de Janeiro, Brazil, 7 April 2011; and Roberto Alzir Dias Chaves, Superintendent for Operational Planning at the Secretaria de Segurança do Rio de Janeiro, interview by author, Rio de Janeiro, Brazil, 6 April 2011.

96 Thomas G. Weiss and Leon Gordenker, eds, NGOs, the UN, and Global Governance (Boulder, Col.: Lynne Rienner, 1996), 31.
97 Hall and Biersteker, The Emergence of Private Authority in Global Governance, 13.
102 Pattison, “Outsourcing the Responsibility to Protect.”
103 Hall and Biersteker, The Emergence of Private Authority in Global Governance, 16–18.
105 Weiss and Gordenker, NGOs, the UN, and Global Governance, 30.
106 Weiss and Gordenker, NGOs, the UN, and Global Governance, 28–30.
109 Caplan, International Governance of War-torn Territories.
12 Casting law over power?

Understanding the NGOs’ contribution to the independent prosecutor and universal jurisdiction negotiations on the International Criminal Court

Vanessa Ullrich

- Addressing the rationalist challenge: a “logic of arguing” perspective
- Rome negotiations: setting the stage
- Conclusion

The alarming record of heinous crimes occurring in the twenty-first century raises the question of whether the contemporary state-centric system can effectively prevent crimes against humanity, mass atrocities, and genocide. Prima facie encouraging in this regard is the evolution of international criminal law norms, which is perhaps best exemplified by the creation of a permanent International Criminal Court (ICC). The ICC is part of a broader trajectory towards international conflict governance and peace-building efforts, the formation of which has considerably drawn on the engagement of non-state actors and has even been designated a “global civil society achievement.” In fact, non-state actors have in the past decades earned themselves an important place in international relations and nongovernmental organizations (NGOs) emerged as critical actors at the Rome Conference in 1998, which laid the legal foundation for the ICC to prosecute the perpetrators of war crimes, crimes against humanity, genocide and the crime of aggression.

I argue that NGOs may positively contribute to the development of international criminal law norms and provide an important corrective to state preferences via the exertion of private authority based on legal arguing. I will aim to show that private authority opens up a channel allowing NGOs to increase their pull over more traditional forms of state power. The authority of NGOs will be captured in a two-dimensional model of legal arguing that is bifurcated into speaker and argument. By analyzing why NGOs succeeded in their pursuit of an independent prosecutor but failed in their pursuit of universal jurisdiction at the
Rome Conference, I aim to show that the authority that could be forged by NGOs on the speaker and argument dimension greatly contributed to the receptiveness of states to their positions and agendas, and reveals a channel of potential NGO contribution to state negotiation outcomes. Both an independent prosecutor and universal jurisdiction were important for ensuring the widest possible jurisdiction of the court. An independent prosecutor stipulates the prosecutor’s authority to launch investigations *proprio motu* (on his or her own initiative). Universal jurisdiction involves establishing jurisdiction over heinous crimes irrespective of where and by whom these crimes have been committed. Given that both the adoption of an independent prosecutor and universal jurisdiction were strongly opposed by many powerful states at the start of the conference, it is puzzling that any one of the two measures was adopted. That the independent prosecutor was adopted over universal jurisdiction thus provides a useful empirical puzzle to explore the analytical value of a private authority perspective in explicating the outcome. The empirical analysis finds that legal arguing contributes significantly to our understanding of why NGOs succeeded in their pursuit of an independent prosecutor but failed in their pursuit of universal jurisdiction.

In this way, the relevance of this chapter is twofold. First, in practical terms, it helps to understand the possibilities and limits of the ability of NGOs to shape discursively the legal texture of issues such as combating impunity. Second, in theoretical terms, this chapter integrates two largely autonomous constructivist literatures: the study of NGO influence and constructivist legal scholarship. This chapter will synthesize these strands of constructivist thinking into the concept of legal arguing and therefore fill an important theoretical niche in constructivist literature.

Turning first to previous work on NGO influence in international negotiations, I will demonstrate shortcomings of the existing literature in explaining international negotiation outcomes and subsequently map out a two-dimensional theoretical model of legal arguing. The theoretical model informs the ensuing empirical analysis of the independent prosecutor and universal jurisdiction cases. Finally, I will conclude and highlight avenues for future research.

**Addressing the rationalist challenge: a “logic of arguing” perspective**

Any account that seeks to explain the contribution that NGOs can make to the development of international criminal law norms vis-à-vis
state actors first have to deal with realist and rationalist counter-explanations. Realist and rationalist theories place exogenously given state preferences at the center of analysis. The crucial issues over which the United States and the pro-ICC coalition split in Rome were the independence conveyed to the prosecutor and the reach of the ICC’s jurisdiction, as these features are what distinguishes a “strong court” from a “weak court.” The realist and rationalist prediction would have been that states would choose a softer mandate without an independent prosecutor and jurisdiction over non-member states to keep powerful countries such as the United States on board. Given that both the adoption of an independent prosecutor and universal jurisdiction were strongly opposed by many powerful states at the start of the conference, it is puzzling that either of the two measures was adopted.

From a realist and rationalist perspective, it seems likely that the powerful states must have more strongly opposed universal jurisdiction than the independent prosecutor. This may be because universal jurisdiction engenders a greater jeopardy for state sovereignty by bestowing the court with the capacity to prosecute citizens in the absence of the national state’s consent. Whereas states can normally opt out of international treaties by withholding their consent, the concern is that universal jurisdiction compels states that are not parties to adhere to such treaties. Indeed, interest-based negotiation theories may explain the negotiation outcome as a “best alternative to a negotiated agreement” (BATNA), which has been pursued as a compromise to deal with the negotiation impasse. The BATNA for the majority of states might have been to choose a strong court with an independent prosecutor and to compromise on the reach of jurisdiction as a concession to powerful countries such as the United States.

While these explanations provide strong counter-arguments against genuine NGO influence, they can be challenged on two grounds. At the conceptual level, realist and rationalist approaches portray a truncated conception of law. Analytically, the conceptualization of law as a means of pursuing state interests obscures the fact that law can “equally reflect a framework of legitimacy which actors cannot escape once they are engaged in law-making” and cannot account for why powerful states engage in legal discourse following public international legal jurisprudential rules. Thus, realist and rationalist theories are unable to explain why powerful states seek to gain the jurisprudential high ground.

At the empirical level, there is considerable doubt that the interests of powerful states amounted to greater opposition in the universal jurisdiction debate. The independent prosecutor was initially most resisted by a majority of states. In fact, during the final days of the Rome
Conference, a Korean proposal with provisions that would have amounted to quasi-universal jurisdiction enjoyed 89 percent of support among state delegates, and therefore a higher level of support than the independent prosecutor.\(^7\) Besides, when there are more elements that can trigger jurisdiction, such as an independent prosecutor, the court’s jurisdiction logically becomes more universal.\(^8\) Without an independent prosecutor, the five permanent members of the United Nations (UN) Security Council could have blocked investigations with their veto, rendering the court’s jurisdiction less universal.

While realist and rationalist explanations are able to account for certain reasons why the independent prosecutor was adopted over universal jurisdiction, the fact that both measures were opposed by powerful states demonstrates their inability to account for the divergent outcome. Nonetheless, realist and rationalist explanations do yield explanatory power. Indeed, the very institutional set-up of international negotiations privileges powerful states and their interests: often informal meetings were held in the form of small-group delegate meetings while “delegates of smaller countries, together with many representatives of civil society were left wandering the corridors.”\(^9\) Therefore, NGO influence should be pictured as occurring within windows of opportunity embedded in a wider framework of power politics or, as Nicole Deitelhoff puts it, within “islands of persuasion.”\(^10\)

Inspired by the constructivist view that law is “as much a power resource as guns and money,”\(^11\) a constructivist perspective can shed light on the puzzle that contested provisions, notably the *proprio motu* power of the prosecutor and the jurisdiction over non-members in certain cases, were included against US opposition.\(^12\) Yet, constructivist accounts of NGO influence in international legal negotiations largely focus on *institutional context* variables as a determinant of the success of persuasive activities of norm entrepreneurs. According to the institutional context account, institutional conditions prefigure NGO success in international negotiations. Deitelhoff, for instance, chronicles how NGOs were able to use windows of opportunity by creating institutional conditions conducive to persuasion through coalition building with the Like-Minded Group (LM Group) at Rome.\(^13\) However, this fails to account, *ceteris paribus*, for why the independent prosecutor was adopted but not universal jurisdiction.

Indeed, the institutional context account overlooks one of the greatest power resources NGOs arguably possess: *arguing*. At the Rome Conference, participants could not simply follow established legal norms but had to argue in order to adjudicate between conflicting norms. This process is best captured by Risse’s logic of arguing.\(^14\)
Reinvigorating Habermas’s theory of communicative action,\textsuperscript{15} the rationale underpinning the logic of arguing is neither to pursue fixed interests nor passively to follow well-entrenched norms, but to seek reasoned common understandings by discursively deciding about validity claims.\textsuperscript{16}

At the same time, theories based on the logic of arguing make stringent, ideal-typical assumptions. Specifically, arguing requires an ideal speech situation, where actors are ready to alter their beliefs, power is removed from the equation and the “better argument” ultimately prevails.\textsuperscript{17} While these preconditions might seem unrealistic in the power-driven realm of international politics, they appear even less achievable in the realm of interstate negotiations, where political stakes are especially high.

From the perspective of constructivist legal scholarship, however, legal negotiations provide a fertile environment for arguing for two reasons. First, given the polyecephalic nature of international law, international law making is littered with interpretive disputes, as there is no ultimate adjudicator.\textsuperscript{18} Second, explicitly power-driven argumentation is unlikely to be effective in a legal negotiation because of the constraints established in international law governing the types of legitimate argument. While the language of legal justification is frequently dismissed as a rhetorical “fig leaf,” which merely helps states to veil their interests, the legal framework of negotiation helps shift a terrain of power to a terrain of legitimacy, where NGOs should see their negotiating power increase vis-à-vis state actors by exploiting the legitimacy resource of legal justification. The importance of legal justification in the Rome negotiations is evident from the tendency of delegates to couch even strategic concerns in legalese.\textsuperscript{19}

While constructivist theory identifies law as a tool for shaping the terms of arguing, the value of these insights remains limited for two reasons. First, with the exception of Ulbert \textit{et al.}, scholars frequently blend two interconnected, but analytically separable dimensions of arguing: the \textit{speaker} and the \textit{argument}.\textsuperscript{20} Indeed, previous accounts of the establishment of the ICC, in particular Glasius (2005), Struett (2008) and Deitelhoff (2009)\textsuperscript{21} have focused on either one of the two dimensions. While these categories interact in practice, it is important to keep them analytically separate in order to analyze their impact on negotiation outcomes. Second, and most importantly, previous research largely focuses on the sources from which the speaker draws his or her influence,\textsuperscript{22} while passing over the argument as a source of influence. In particular, studies about the persuasive quality of particular legal arguments are scarce and lack empirical corroboration.

This chapter aims to address important blind spots in previous research about arguing: first, by presenting both speaker and argument
as channels of NGO influence, and second, by appropriating a conceptual toolkit for inquiring into legal argumentation from constructivist legal scholarship.

**Theoretical model**

This section outlines a two-dimensional theoretical model informing the empirical part of this chapter. I will introduce the concept of legal arguing and explain how it is bifurcated into two analytical dimensions, *speaker* and *argument*.

**Speaker: expert authority**

This section explicates Hall and Biersteker’s concept of expert authority on the basis of the literature on private authority. Following Weber’s definition of authority, the foundations of authority are power (capacity to bring others to do things they would not do otherwise) and legitimacy (consent of the governed). The burgeoning influence of private actors such as NGOs has fuelled a paradigm of private authority in the global governance literature, which has expanded the focus of the concept of authority to include private actors.

Drawing on the paradigm of private authority, Hall and Biersteker have introduced the concept of moral authority, which both demonstrates that NGOs can in fact exert authority and specifies the ways in which NGOs can do so. Hall and Biersteker identify three ways in which NGOs can exert moral authority: expertise (authorship), neutrality (referee) or normative progressiveness. The exertion of expertise was particularly relevant at the Rome Conference and occurs when NGOs are perceived as competent providers and analysts of complex information. Expert authority permits the study of NGO influence as a function of the properties of speakers and thereby sheds light on how NGOs can contribute to outcomes in international legal negotiations.

Influencing the process of arguing, however, depends not only on the speaker, but also on the argument. For this reason, combining the properties of argument with the properties of speaker will serve to hone the concept of legal arguing as a conceptual tool.

**Argument: legal validity**

The persuasive quality of legal argumentation is analyzed in the context of intersubjectively shared legal premises that may both enable or constrain the validity of legal argumentation. As Kratochwil argues,
precisely because shared principles reflect our commonsense understandings and are collectively accepted by the participants of a discourse, they provide premises for arguments and render arguments more persuasive. Following this logic, legal reasoning proceeds by analogy, linking the present fact-pattern either to a legal precedent or to a general codified legal norm. According to Kratochwil, arguing in an ideal speech situation offers the possibility of deciding about the validity of legal analogies and thus evaluating legal validity claims discursively. Owing to the fragmentary and evolutionary condition of the international legal order, arguing based on shared legal premises gains comparative salience in the context of international law. The validity of legal argumentation completes the theoretical model of legal arguing illustrated in Figure 12.1.

It is important to note that the properties of speaker and argument cannot be neatly analytically separated. If agents put forward weak legal arguments, this may compromise their perceived authority as speakers. Thus, the speaker may partly have authority via the argument and the argument may partly have authority via the speaker. Despite the fact that these properties are necessarily interconnected, the contributions of speaker and argument are sufficiently different to meaningfully analyze these concepts separately.

A precondition for expert authority and legal argumentation to affect the negotiations is a sufficient overlap of life worlds (or lebenswelt). A shared life world means “that actors share a common frame of reference.” In the international realm “the culture of modern multilateral

![Figure 12.1 Theoretical model](image-url)
diplomacy and international public law constitute a thin veneer of a shared life world.” Besides, NGOs may themselves enrich the life world by establishing agreed principles as a common frame of reference to which actors can allude in assessing arguments. Repeatedly drawing on premises in a legal discourse in order to increase the persuasiveness of arguments may at the same time contribute to making these premises more accepted by the interlocutors. Thus, despite the different legal cultures of the negotiators, there was sufficient overlap of life worlds at the Rome Conference to make an analysis of expert authority and legal argumentation meaningful.

A potential caveat of this model might be related to the fact that NGOs had a comparative disadvantage in terms of legal expertise in comparison to larger state delegations. However, as Bassiouni reports, “approximately two-thirds of the [state] delegates had not participated in the Ad Hoc Committee or the preparatory committee … [and] … most of the delegates did not have the time to study the text or had studied it superficially.” Under these circumstances, NGOs did not necessarily have less expertise and therefore could foster expert authority vis-à-vis state delegates.

Methodology

The empirical analysis draws on the logic of a most-similar system design, which compares two cases that exhibit different outcomes but resemble each other in most outcome-relevant conditions except for the variable of interest. Since the independent prosecutor case and the universal jurisdiction case were embedded in the same institutional setting, they share similar background conditions while having a varied outcome. Using the logic of a most-similar system design enhances the rigor of this research because it helps weaken alternative explanations and thereby enhances the plausibility of the conclusions drawn in this research. Given the complexity of international negotiations, it is unlikely, however, that the cases are de facto similar in every respect. In view of imperfectly matched cases—a flaw symptomatic of most-similar system designs—I neither claim necessity nor sufficiency for legal arguing but rather identify this concept as an aspect of how NGOs can make an important contribution to international legal negotiations.

This study draws upon both primary and secondary data sources during the empirical investigation. The evidential basis of this study consists of UN records of the Rome negotiations as well as position papers produced by NGOs and state delegates from 1994–98, in addition to information obtained from interviews with NGO representatives and
state delegates. By triangulating across different data sources, an additional level for cross-checking the validity of the single sources is provided.

To keep the research practicable, I focus on the papers generated by major human rights organizations such as Amnesty International (AI), Human Rights Watch (HRW) and the Lawyers’ Committee for Human Rights (LCHR), even though this is necessarily a partial representation of NGO opinions.

**Limitations and biases**

Some methodological caveats remain. First, given that this study is based on a single case format, whether or not findings can be generalized depends on further research on other cases. Apart from that, establishing a link between the NGOs’ actions and negotiation outcomes is methodologically difficult given the confluence of factors potentially involved in international negotiations. Therefore, I do not claim to establish the extent to which NGOs influenced negotiation outcomes, but hope to reveal channels of NGO influence in legal negotiations. Second, concerning the sources of data, NGO documents and interview material are automatically informed by subjective accounts. However if different data sources concertedly present certain findings, their validity increases.

**Rome negotiations: setting the stage**

In the empirical section, I will first provide a short outline of the history of the Rome negotiations, and then flesh out the role of legal arguing by investigating the independent prosecutor and universal jurisdiction case.

The Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome Conference) took place from 15 June to 17 July 1998 in Rome. At time of writing, 121 states had ratified the statute. The historical trajectory of establishing the ICC dates back to the aftermath of World War II and was resurrected successfully in the mid-1990s. The International Law Commission (ILC) submitted a draft statute for the ICC, which was finalized by an Ad Hoc Committee in 1995, followed by a preparatory committee (PrepCom) in 1996. During the Ad Hoc and preparatory committees, two negotiating blocks emerged: first, the Like-Minded Group, a coalition of small and middle powers which was supported by the NGO Coalition for the International Criminal Court. This group favored an independent court with an independent prosecutor and an extensive jurisdiction scheme. A second coalition, led by the permanent members
of the Security Council (P5 group), favored a court focused on preserving national sovereignty, in line with the more restrictive ILC draft.\textsuperscript{39}

**Independent prosecutor case**

The independent prosecutor is frequently invoked as the prime example for NGO success at the Rome Conference.\textsuperscript{40} Contrary to predictions based on realist and rationalist theories, the independent prosecutor was established despite early firm opposition by powerful states such as Russia, China, France, and the United States.

**Expert authority**

In general, scholars concur that legal expertise was a crucial factor of NGO influence at the Rome Conference.\textsuperscript{41} According to a participating diplomat, no difference was made between state delegates and NGOs, since “[they] were all there as experts.”\textsuperscript{42} The expertise of individual NGOs was optimized by the NGO umbrella organization, Coalition for the International Criminal Court (CICC).

Regarding the provision of complex information, the CICC assigned NGOs to working groups, the CICC Monitoring Teams, on the basis of their expertise, which shadowed the negotiations.\textsuperscript{43} Moreover, the CICC published three newspapers, the *ICC Monitor*, *Terra Viva*, and *On the Record*, all of which provided up-to-date information on the negotiations.\textsuperscript{44} The reputation that NGOs earned as knowledgeable sources of information contributed to the receptiveness of states to their positions.

Furthermore, NGOs assisted delegations that lacked sufficient human resources, specifically by providing legal experts to their assigned delegations: “this allowed them to be present at more parallel meetings as well as helping to develop their legal arguments.”\textsuperscript{45} This is most evident in the judicial assistance program, set up by the NGO No Peace Without Justice, which provided legal experts, *inter alia*, to delegations of several African nations, such as Senegal and Sierra Leone.\textsuperscript{46} The expertise provided by the NGOs to these state delegations opened a window of opportunity for the NGOs for promoting their own views and positions among state delegates and thereby for influencing delegations from within.\textsuperscript{47}

Moreover, as exemplified in Table 12.1, the CICC kept a virtual voting system, indicating levels of state support for different options of the prosecutor proposal.\textsuperscript{48} The method of virtual vote was important to the extent that it focused attention on absolute numbers of state
support of particular positions. Without the virtual vote, the fact that the independent prosecutor enjoyed more than 80 percent of support among states might have gone unnoticed. The virtual vote thus functioned as a corrective to the spotlight on the preferences of powerful states such as the permanent members of the Security Council.

Regarding the analysis of complex information, the NGOs not only prepared position papers themselves but also analyzed the position papers of state delegates. As Ellis asserts, “the CICC produced impressive position papers providing persuasive arguments for, and dispelling misinformation about, the benefits of an independent prosecutor.” In fact, NGOs created rapid response teams “to counter any false statements that opponents might circulate.”

A case in point is the Lawyers’ Committee for Human Rights (LCHR) position paper titled Response to US Concerns Regarding the Proposal for a Proprio Motu Prosecutor, which responded to the arguments raised in a US paper against an independent prosecutor and pointed to inaccuracies in the arguments of the United States. Therefore, the competent analysis of complex information provided an important avenue for NGO influence.

Of course, establishing the influence of NGOs in the creation of international legal norms is difficult given the range of other factors potentially involved. Nonetheless, the following conclusion can be drawn from the above analysis: the expert authority exercised by NGOs demonstrates an important aspect of how NGOs made a contribution to the negotiations on the independent prosecutor.

**Validity of legal argumentation**

In their legal argumentation for an independent prosecutor, NGOs persistently drew upon the legal premise that “the law should apply equally to all,” and therefore reinforced the widespread acceptance of this principle. As such, the NGOs argued that Security Council and

<table>
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<th>The prosecutor</th>
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<tbody>
<tr>
<td><em>Proprio motu</em> prosecutor, pre-trial chamber (option 1)</td>
<td>63 delegations (83%)</td>
</tr>
<tr>
<td>Further safeguards (option 2)</td>
<td>6 delegations</td>
</tr>
<tr>
<td>No additional safeguards</td>
<td>27 delegations</td>
</tr>
<tr>
<td>No <em>proprio motu</em> prosecutor</td>
<td>13 delegations</td>
</tr>
</tbody>
</table>
state referrals as envisaged by the ILC draft are problematic because they are infiltrated with a political rationale.\textsuperscript{55}

With respect to the problems of state referral, the NGOs pointed to the reluctance of states to file complaints against other states in fear of diplomatic turbulence. Amnesty International argued that “as of 20 January 1996, no states had used the state complaint procedures in Article 41 of the International Covenant on Civil and Political Rights.”\textsuperscript{56}

With respect to the problems of Security Council referral, the NGOs asserted that having the Security Council as the only referral mechanism would inject political bias into the court or, in the words of the World Federalist Movement, would result in “reducing an ICC to sham status of a permanent ad hoc tribunal; one which would dispense international criminal justice only to small and weak countries, never to violators in powerful nations.”\textsuperscript{57} In other words, this selective approach to justice would violate the legal premise that “law should apply equally.”

Furthermore, NGOs helped to reinforce the legal premise that the Rome Statute was supposed to reflect existing international law.\textsuperscript{58} As William Pace observes, “there was a widespread consensus by governments and most NGOs at the Rome Conference that the Rome treaty should not draft new law, but should be primarily based on established general principles.”\textsuperscript{59}

Drawing on the legal premise that the Rome Statute should be anchored in existing international law, the NGOs raised the legal precedent of the ad hoc tribunal’s \textit{proprio motu} prosecutors. Drawing on Article 18 of the Yugoslavia Statute and Article 17(1) of the Rwanda Statute, Amnesty International asserted that the prosecutor of the ICC should be granted the same \textit{proprio motu} powers as the prosecutors of the ad hoc tribunals.\textsuperscript{60} Corroborating the proposition that an independent prosecutor is anchored in international law, Amnesty International cited the UN Guidelines on the Role of Prosecutors, which were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990 and welcomed by General Assembly Resolution 45/121 in 1990.\textsuperscript{61}

Yet, opponents targeted the independent prosecutor as a “lone ranger running wild around the world with excessive powers,” unaccountable to any executive or legislative authority and posing the danger of politically motivated prosecutions.\textsuperscript{62} Thus, they grounded their counter-arguments on the legal principle that a prosecutor should be accountable, a legal premise shared by many delegates at the Rome Conference.\textsuperscript{63} Franklin Berman, head of the UK delegation, exemplifies the tension inherent in the prosecutor issue in the following observation:
A completely independent prosecutor is just an agent of arbitrary behavior; a prosecutor always had to operate within a framework and the really tricky question was … to define the framework in which the prosecutor could exercise the freedom of action but in a responsible way and subject to control.64

Supporters of an independent prosecutor generally recognized the merit to this “accountability argument” and consequently envisaged a system of checks and balances to dismantle the risk of malfeasance.65 What ultimately increased the legal substance to arguments for an independent prosecutor was the legal device of a pre-trial chamber, put forward in March 1998 by a German/Argentine-led proposal. The pre-trial chamber proposal suggested that the prosecutor could only initiate an investigation under the condition of prior approval by a pre-trial chamber composed of judges. The position papers of the NGOs demonstrate that they seized the pre-trial chamber argument to raise it in response to the counter-argument of unaccountability.66 From this, we can see that NGOs and the LM Group were able to neutralize a strong counter-argument by including the pre-trial chamber. Evidently, the pre-trial chamber device was important for commanding wider support for an independent prosecutor.67 France, for instance, shifted to supporting the idea of an independent prosecutor modified by the pre-trial chamber proposal.68

Despite acknowledging that NGOs gave important momentum to the negotiations on the independent prosecutor, realistically speaking, some shifts in state positions can be attributed to domestic political factors. As such, the change in the position of the UK appears to have been related to the election of the Labour Party in 1997.

At the same time, domestic factors such as those in the UK cannot account for the overall turnaround, especially among developing countries. Indeed, Deitelhoff demonstrates that the major state position shifts in favor of an independent prosecutor were neither borne out by existing power balances nor by evidence of side payments, issue linkages, or public pressure.69 Although NGO influence is difficult to establish methodologically, the combined evidence provided above suggests that NGOs’ legal arguing made an important contribution to the provisions on an independent prosecutor in the final draft.

Universal jurisdiction case

Universal jurisdiction rests on the rationale that there are crimes that are so heinous that they warrant criminal prosecution regardless of
“where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any connection to the state exercising such jurisdiction.”70 Yet, the final statute only foresees jurisdiction over war crimes, crimes against humanity, and genocide, as enshrined in Article 12, when a state that has i) nationality jurisdiction, or ii) territorial jurisdiction is party to the Rome Statute.71 Therefore, the ICC cannot exercise universal jurisdiction with the exception of Security Council referrals under Article 13(b).72

During the Rome negotiations, a German proposal emerged in favor of universal jurisdiction at the last session of the PrepComs in 1998; later at the conference, a Korean proposal that would have amounted to quasi-universal jurisdiction was put forward.73 The Korean proposal required that one of the four potentially implicated states—custodial state, territorial state, victim state or nationality state—had to consent in order for an accused to be put on trial. The German proposal was eliminated very early in the process. The Korean proposal enjoyed substantial support among states, but was ultimately excluded from the final package.

The failure to adopt universal jurisdiction emerges as a prima facie case of power politics. Given that universal jurisdiction (German proposal) and quasi-universal jurisdiction (Korean proposal) were opposed by powerful states such as France, China, the United States and Russia, to name but a few, the rejection of these proposals accords with the predictions of realist and rationalist theories. Yet, the ensuing analysis will reconsider this dominant perspective and will demonstrate that there is a more profound logic behind the rejection of these proposals, relating to the types of legal arguments that could have been made legitimately.

In the following analysis, this study will analyze expert authority and legal argumentation by NGOs in order to discern why both the German and the Korean proposals were eliminated.

**Expert authority**

As in the independent prosecutor case, NGOs provided legal expertise to smaller delegations with limited human resources. As William Pace recalls:

Many of our members worked with the many countries with small delegations ... there might be five or six meetings going on at a time, and if you were a country that only had two or three delegates you couldn’t attend everything.74
Providing assistance to smaller delegations was an instrument for NGOs to influence delegations from within and to promote their positions on universal jurisdiction.

Moreover, complex information was provided by the CICC’s virtual counting systems which generated compilations of state positions on jurisdiction proposals as portrayed in Table 12.2. The virtual vote demonstrates that quasi-universal jurisdiction as envisaged by the Korean proposal enjoyed high support of 89 percent among state delegates. By exposing the high level of support for the Korean proposal, NGOs rendered a very progressive and initially unpromising proposal a feasible option for states.

Regarding the analysis of complex information, NGOs played an important role in clarifying the reigning conceptual confusion on legal concepts relating to universal jurisdiction. In particular, confusion was fuelled by the use of the term “inherent jurisdiction.” Inherent jurisdiction refers to the principle that states, upon ratifying the statute, automatically accept the court’s jurisdiction over the core crimes. According to Glasius, the word “inherent” was confusing to the extent that it could refer to jurisdiction “inherent in the nature of the crime,” suggesting that these crimes warrant universal jurisdiction. In an attempt to clarify the conceptual confusion, a LCHR paper states: “it has been rightly noted that the choice of this term has led to unnecessary confusion. It might have been more helpful if the term automatic had been used instead of inherent.” Thus, NGOs appear to have acted as analysts of complex information by disentangling and clarifying legal concepts.

These findings suggest that the expert authority of NGOs shows an important aspect of their contribution to the negotiations on universal jurisdiction.

**Validity of legal argumentation**

Drawing on the legal principle that the “design of the court should be anchored in the existing fabric of international law,” the American Bar

### Table 12.2 State support of preconditions to the exercise of jurisdiction

<table>
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<tr>
<th>Preconditions to jurisdiction</th>
<th>Delegations</th>
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<tbody>
<tr>
<td>Korean proposal</td>
<td>60 (89%)</td>
</tr>
<tr>
<td>Territorial and custodial state</td>
<td>11</td>
</tr>
<tr>
<td>Additionally nationality state</td>
<td>5</td>
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</table>

*Note: All delegations are based on the support gathered during the virtual vote.*
Association suggests that “the core crimes are crimes of universal jurisdiction ... under customary international law.” In a similar line of reasoning, the Amnesty International observer at the conference argued that the ICC must have the same right to exercise universal jurisdiction as state parties have under international law, and that there is therefore “no legal reason why the proposed new Court should not have the same powers.”

Although NGOs appealed to the legal validity claim that “the Rome Statute should reflect antecedent legal principles,” for many state delegates, universal jurisdiction lacked sufficient basis in international law. According to the Samoan delegate, there was significant disagreement among states as to whether universal jurisdiction had a sufficient basis in international customary law. With respect to universal jurisdiction Clark states that, “when I think something is customary law, it does not mean that the Chinese think this is customary law; there was enormous disagreement ultimately about what precisely customary law is.” This made it difficult to draw successfully upon the validity claim that the universal jurisdiction principle reflects international law norms.

Drawing on the legal principle of pacta tertiis, enshrined in the Vienna Convention on the Law of Treaties in 1969, a few delegations strongly attacked the quasi-universal jurisdiction of the Korean proposal for creating obligations for non-party states. Pacta tertiis is the principle that treaties can only bind states that are parties to the treaty. The pacta tertiis argument that treaties cannot create new obligations for non-party states was largely accepted by the interlocutors at Rome and influenced the decision not to grant jurisdiction as envisaged by the Korean proposal. According to Struett, “drafters of the statute were sensitive to the concern that the new court should not create new legal obligations for states, that chose not to join the court.” Even though the Korean proposal enjoyed strong support among many states, the final choice by the Bureau deliberately aimed to increase support for the statute by establishing “preconditions to the exercise of the Court’s jurisdiction corresponding as closely as possible with well-established international criminal law norms, i.e. the acceptance of the state of the territory where the crime was committed and the acceptance of the state of nationality of the accused.” Indeed, ever since the territorial state emerged during the sixteenth and seventeenth centuries and challenged the universal jurisdiction of the Pope and the Holy Roman Emperor within Europe, the concept of jurisdiction has come to be understood as fundamentally territory-based despite current transformations in international law such as the Responsibility to Protect. Thus, although the rejection of the Korean proposal despite
substantial support among states is a *prima facie* indication of how a few powerful states such as the United States and France can assert their interests, the picture is more nuanced than suggested by state power and interest-based explanations.

In conclusion, the difference in the validity of legal argumentation across these two cases is one important factor for understanding why universal jurisdiction remained unsuccessful. As demonstrated in Figure 12.2, in both cases, expert authority functioned as a channel of NGO influence. Legal argumentation, however, appeared less valid in the universal jurisdiction case than in the independent prosecutor case for two reasons. First, there was significant disagreement among states as to whether universal jurisdiction was sufficiently anchored in international customary law. Second, counter-arguments had been supported by the well-established legal principle of *pacta tertiis*. A combination of these factors substantially weakened legal argumentation in support of universal jurisdiction. The validity of legal argumentation for an independent prosecutor was enabled by the perception of an independent prosecutor as sufficiently grounded in international law by the interlocutors at Rome. Moreover, the pre-trial

![Figure 12.2 Synthesized results for the independent prosecutor and universal jurisdiction case](image-url)
chamber helped dispel a compelling argument against the independent prosecutor.

Thus, the cases differed in the extent to which NGOs advanced valid legal arguments and, consequently, in how NGOs could use the law as a legitimacy framework to constrain power politics.

Nevertheless, given the myriad factors that affected negotiation outcomes, most importantly power politics, legal arguing should be considered one influential factor.

**Conclusion**

The foregoing examination of NGO legal arguing has demonstrated that the analysis of expert authority and legal argumentation show important aspects of how NGO arguing was important for the Rome negotiations. This chapter concludes that legal arguing significantly improves our understanding of why the independent prosecutor was adopted but not universal jurisdiction.

At the theoretical level, this chapter has contributed to existing scholarship by combining insights from two largely autonomous constructivist literatures: the study of NGO influence and constructivist legal scholarship. As such, I have placed novel focus on the neglected factor of NGO agency as it materializes in legal arguing. At the practical level, this chapter helps to understand how NGOs can discursively shape legal issues such as combating impunity. Even if the empirical findings cannot be generalized beyond this case, it remains important to understand the outcomes of this milestone negotiation in international criminal law.

Nonetheless, there are limitations to the generalizability of the argument presented here. First of all, we must be aware that even legal negotiations are inherently political. The fact that NGOs do not generally exert more widespread influence in international politics is related to the preponderance of state power in these negotiations. The pull that can be exerted by legal arguing ultimately hinges on windows of opportunity such as coalition building of small and middle powers at the Rome Conference. Second, conditions of NGO agenda success cannot be generalized based on a single case study. In view of the confluence of factors that potentially affect an international negotiation, this study falls short of claiming whether expert authority and legally valid argumentation are sufficient. Further important conditions would be likely to transpire were more cases to be included. Thus, the model of legal arguing should be refined by the process of probing it with additional cases.
Further research should set out to test the merit of this model in other international negotiations. The Kampala Conference of 2010, which was the Review Conference of the Rome Conference, for instance, provides an interesting case for testing the model’s wider applicability. The dynamics at the Kampala Conference were different from the Rome Conference, particularly regarding the division of NGOs over the crime of aggression, which suggests the merits of further investigating the model’s ability to account for negotiation outcomes.

This chapter draws our attention to an important fact: NGOs are actors rising on the horizon of international politics. Their influence can be especially pronounced at the intersection of law and politics. By *casting law over power*, we can understand NGOs as shaping the future landscape of global conflict governance and of international negotiations in particular. To understand further the shifting grounds of political authority, we have to re-conceptualize the relation between state and non-state actors, from a matrix of powerful versus powerless actors to a matrix of different authoritative actors, where “stateness” might no longer be the primary factor.

Notes

1 I would like to thank my supervisor Dr Rodney Bruce Hall for his support throughout the development of this chapter. All remaining errors are solely my responsibility.
8 William Pace, telephone interview with the author, February 2012.
12 Fehl, “Explaining the International Criminal Court,” 381.
17 Risse, “‘Let’s Argue!’” 10.
20 Cornelia Ulbert, Thomas Risse and Harald Müller, “Arguing and Bargaining in Multilateral Negotiations,” paper delivered at the conference Empirical Approaches to Deliberative Politics, European University Institute, Swiss Chair Firenze, 2000.
23 Rodney Bruce Hall and Thomas Biersteker, *The Emergence of Private Authority in Global Governance* (New York: Press Syndicate of the University of Cambridge, 2002).
26 Hall and Biersteker, *The Emergence of Private Authority in Global Governance*, 14.
27 Hall and Biersteker, *The Emergence of Private Authority in Global Governance*, 14.
33 Deitelhoff, “The Discursive Process of Legalization,” 43–44.
37 Broome, “When do NGOs Matter?” 73.
43 Jennifer Schense, telephone interview with author, February 2012.
44 William Pace, telephone interview with the author, February 2012.
45 Glasius, “Expertise in the Cause of Justice,” 151.
47 Glasius, “Expertise in the Cause of Justice,” 151.
50 Glasius, “Does the Involvement of Global Civil Society Make International Decision Making More Democratic?” 49.
51 Ellis, “The Contribution of Non-Governmental Organizations to the Creation of International Criminal Tribunals,” 152.
52 Ellis, “The Contribution of Non-Governmental Organizations to the Creation of International Criminal Tribunals,” 152.
54 Struett, The Politics of Constructing the International Criminal Court, 84.
58 Struett, The Politics of Constructing the International Criminal Court, 84.
59 William Pace, telephone interview with the author, February 2012.
64 Franklin Berman, personal interview with author, February 2012.
67 Franklin Berman, personal interview with author, February 2012; Glasius, The International Criminal Court, 56.
74 William Pace, telephone interview with the author, February 2012.
75 CICC, The Virtual Vote.
76 Glasius, The International Criminal Court, 67.
80 Roger Clark, telephone interview with author, March 2012.
81 Roger Clark, telephone interview with author, March 2012.
83 Struett, The Politics of Constructing the International Criminal Court, 120.

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Part V

Conclusions and directions
13 Conclusion

Prospects and challenges for conflict governance NGOs

Rodney Bruce Hall and Christopher Marc Lilyblad

- Structural constraints
- Agency: prevention, mediation, and mitigation
- Normative vs. sociological legitimacy
- Conflict governance NGOs in future practice and research

The preceding chapters clearly identified important conflict governance roles for nongovernmental organizations (NGOs) in local and global contexts, thus addressing causes and consequences of armed violence. However, the extents and limits of these roles, how they might be executed and whether they are, or conceivably could become, legitimate and authoritative remains subject to contentious debate. Indeed, many contributors emphasized the manifold constraints NGOs encounter due to their intrinsic organizational composition and exogenous social constraints. As such, we conclude by briefly recapitulating these contributions in terms of their structural, agential as well as normative and sociological implications for armed violence prevention, mediation and mitigation by conflict governance NGOs.

Structural constraints

NGOs remain constrained by states and international organizations (IOs) due to entrenched interests, legal norms and social institutions incumbent to the international system. Citing the failure of NGOs to lobby successfully for universal International Criminal Court (ICC) jurisdiction, for example, Ullrich illustrates the limits NGOs encounter in realizing their agendas when states assert their power. Moreover, states deeming their interests threatened often resort to sovereignty claims to establish physical and legal barriers inhibiting NGOs from reaching bounded social groups in local conflict arenas. The territorial-sovereign, state-centric system that French and Haywood criticize, and
the legal and social institutions on domestic and international levels that perpetuate it, continue to underpin the global structure.

From an NGO perspective there are, however, grounds for optimism as the state-systemic structure seems to be undergoing changes to address twenty-first-century challenges. As Aloyo suggests, institutional developments at the global level such as universal human rights and the Responsibility to Protect (R2P) provide states and international organizations with the means to enforce new norms coercively. Ullumrich’s elaborate assessment pertaining to the successful institutionalization of an independent prosecutor at the ICC seems to support this view as well. We also emphasized how states and IOs have begun incorporating NGOs’ moral authority, particularly their epistemic functions and status as neutral arbiters, in global decision-making processes, while states often allow NGOs to operate within their jurisdiction due to the perceived benefits of their services. Nonetheless, the structural constraints that human societies must navigate will continue to pose challenges for NGOs, even as they discover niches where their resources and ideas resonate.

**Agency: prevention, mediation, and mitigation**

Such niches include global and local arenas where significant latitude emerges for conflict governance NGO agency to contribute to armed violence reduction via prevention, mediation, and/or mitigation. Though not identical, issue-specific and moral authority in global domains certainly countenance the possibility that NGOs can accomplish more than merely assist states in implementing self-interested agendas and venture beyond the scope of IOs’ missions, which remain constrained by the states from which their authority is delegated. In this sense, global civil society organizations are not merely a handmaid in further institutionalizing a neoliberal order, as Lipschutz suggests, but rather, as Acharya points out, prospective agents of pluralized and localized norm diffusion on global, regional and domestic levels—a contention supported by Bob’s analysis of the “global right wing” in its transnational battle against gun control. Ostensibly, NGO agency is alive and well in global issue-specific contexts.

Within these global issue domains, the agency of conflict governance NGOs contributes to the prevention and, to a more limited extent, mitigation of armed conflict. Herein, Acharya suggests that NGOs help prevent violence in regional contexts to the extent that they diffuse global social norms that are localized through “framing” and
“grafting.” Aloyo similarly indicates that states and IOs coercively enforce global norms diffused by conflict governance NGOs in global venues, thus establishing deterrent and compelling mechanisms for inducing norm-abiding behavior and conflict prevention pressures. The ICC, as Ullrich demonstrates, was also designed as a deterrent to prevent war crimes; however, NGOs’ failure to achieve universal jurisdiction instead led to its development as a conflict-mitigating mechanism addressing human rights abuses where states fail to do so. Bob further analyzes NGOs’ preventative efforts by curbing small arms transfers and sales that, if successful, could also help mitigate violence by reducing its lethality.

In local conflict arenas, the role of NGO agency pertaining to violence reduction per se appears more equivocal. From a preventative standpoint, Steele’s micropolitical approach identifies how NGOs like Heifer International can assume a prophylactic role in such contexts via “acupuncture formation,” though not necessarily addressing the root causes of conflict. However, as Amos’s and Lilyblad’s analyses on the sub-state level demonstrate, where conflict has already erupted in violence, the use of force by state and non-state actors appears too great an impediment for exogenous NGOs, having no recourse to violence, to penetrate these social environments and induce even rudimentary social order. Hence, NGO “governance” in itself is unlikely to produce the type of legitimate monopoly of violence that has come to be associated with “government.”

Rather, NGO conflict governance in local contexts necessarily takes on more limited mediatory and mitigating roles. As Amos’s contribution details, NGOs can assume dispute settlement functions to mediate between hostile armed groups. Even though the results remain ambivalent at times, these initiatives can result in temporary ceasefire arrangements allowing NGOs to engage local stakeholders further. Alternatively, as Lilyblad concludes, after “pacification” through intervention by state or international security forces NGOs can effectively mitigate the effects of armed conflict and violence on local populations via service provision and norm entrepreneurship, thus encouraging integration between previously dichotomous social entities. Hence, once conflict governance NGOs successfully embed themselves within conflictual social contexts, their ability to provide public goods or influence internal social dynamics to mitigate conflict or engage in mediatory discourses diffusing non-belligerent ideational constructs conducive to perpetuating peaceful interaction between divergent social groups seems to exceed the capacities of many states.
Normative vs. sociological legitimacy

Any discussion of NGO agency in the governance realm invariably leads us back to the discussion of legitimacy and authority—bringing our discussion full circle. From quite differentiated perspectives, Lipschutz and Bartelson adopt highly critical normative conceptions of legitimacy pertaining to NGOs’ prospects of attaining “authority.” Lipschutz, from a Foucauldian perspective, argued that civil society, to the extent that it exists independent of states, is a mere handmaid in the global diffusion of a neoliberal order engaging in “epistemic violence” to enforce liberal paradigms and thus an illegitimate exercise in governmentality. Bartelson, via the development of republican theory in the global realm, quite contrarily asserts that global civil society and NGOs are only legitimate insofar as they are held accountable to a global *demos* and to the extent that this *demos’s* liberty and free representation can be upheld. Since this global *demos* is yet to come into existence, Bartelson similarly rejects the notion of such organizations as legitimate authorities. Notwithstanding the chasm between Lipschutz’s claim that legitimate NGO governance is implausible because NGOs supposedly espouse a liberal agenda while Bartelson argues that it cannot be legitimate as it is not liberal enough, both make valid critical points that should serve as important caveats for NGOs claiming “legitimate authority.” Not least should NGOs recognize that, as per Lipschutz’s assessment, overly liberal norm entrepreneurship in illiberal societies can counterproductively lead to epistemic or even armed hostility and that, as per Bartelson, functional differentiation risks exposure as issue-specific despotism in absence of endorsement by socially bounded communities, despite its benevolent intentions. The normative legitimacy threshold for NGO authoritative governance thus appears very high indeed.

Once NGO governance ceases to be an entirely normative concern, however, and the question moves towards sociological or empirically substantiated legitimacy, prospects for private authoritative governance become significantly more plausible. NGO governance emerges as legitimate and, by extension, authoritative if viewed from a narrowly construed perspective of private authority. As we argued in our chapter, under certain contextually contingent and specific conditions, NGOs emerge as moral authorities, via authorship and expertise, appeals to moral transcendence, or neutral arbitrage in global forums where they are recognized by states and IOs as legitimate actors. Furthermore, NGOs can attain authority via localized service provision and social entrepreneurship in conflict zones where the resultant
endogenous norm and rule-based arrangements enjoy tacit consent resulting in intersubjectively perceived legitimate deontological commitments between NGOs and bounded communities on the sub-state level. Such sociological approaches further reveal the pluralizing and deliberative effect NGOs can have in global and local governance contexts. To the extent that sociological legitimation functions render NGO governance “authoritative” and thereby emancipate NGO agency in conflict arenas, these inherently social processes seem to support the One Earth Future Foundation’s (OEF) vision, as French and Haywood present it, of short-term, issue-specific roles for NGOs in armed violence reduction.

**Conflict governance NGOs in future practice and research**

As far as OEF’s long-term goals are concerned, these are necessarily speculative and would be difficult to substantiate in the absence of foresight. Nonetheless, the volume has shown that despite deeply constrained global social structures, conflict governance NGOs have managed to carve out niches within which their *preventive, mediatory* and *mitigating* agency has led to normatively desirable and morally transcendent outcomes supported by diverse social groups. Surely, “normatively desirable” is entirely subjective, contextually contingent, issue specific and therefore subject to contestation. Nevertheless, pluralizing and deliberative aspects of NGO agency simultaneously entail that many tribulations inherent to our present world are more thoroughly discussed and knowledge about them disseminated, thus fostering awareness and the specter of an ultimately legitimate solution. In the narrow context of “reducing armed violence,” the normative objectives of these endeavors should not be exceedingly controversial and we would be rather encouraging of OEF, and other NGOs, in pursuing these objectives as they propose.

Moreover, as social entrepreneurs engaging in norm diffusion via advocacy, knowledge production and epistemic argumentation, NGOs’ agency may influence sociality so as to produce new conceptions of legitimacy within the social structures they navigate. NGOs have already achieved this to the extent that they have upgraded their recognition in the international system, for example, by attaining observer status at the United Nations. If we accept that social structures are dynamic and subject to change based on developing social realities that are intersubjectively understood by actors within the system, it would not take too great an imagination to suggest that NGOs may further upgrade their social status within this system.
Nonetheless, while the contemporary international system has undergone superficial changes in the post-Cold War era, it remains based on a state-centric Westphalian model. Hence, it would be prudent for NGOs to bear in mind as they seek “peace through governance” that consistent with longstanding agency vs. structure debates in the social sciences, moderate and incremental change over time within a given structure is less violent in the short term and more successful in the long term than a revolutionary agent attempting to overthrow the existing structure and recast it in its own image. From this pragmatic view, NGOs emerge as conduits for fulfilling functional roles that remain contemporaneously vacant in variegated temporally and spatially contingent contexts. Accordingly, NGOs could be seen not as permanent and all-encompassing solutions to armed violence but as temporary measures and conduits to non-violence as part of an answer that reflects the plural nature of actors and ideas in the contemporary system.

As the empirical roles of authoritative NGO governance continue to evolve, so will our need as students of NGOs and global governance to reexamine the implications of these changes and developments in our social world. While this volume certainly sought to provide a multi-perspectival approach to NGO governance, our treatment of the subject was certainly not exhaustive. Neither was our analysis of NGO governance entirely comprehensive as our primary focus consisted of armed violence reduction. All this entails that many more questions pertaining to NGO governance remain than this volume has attempted to answer.
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accountability 5, 9, 47; civil society/CSO 47–48; democracy 47; Heifer International 177; humanitarian intervention 149, 201; ICC, independent prosecutor 220–21; IGO 82; legitimacy 5; norm diffusion and enforcement 9, 124, 126; NSA 9, 45, 47, 48, 82, 84, 124, 125, 126; see also transparency
Acharya, Amitav 3, 7, 8, 28, 88–89, 97–113, 114, 118, 120, 236–37
advocacy 3, 9, 29, 106, 108, 239; arms control 134, 135, 137, 139
Afghanistan 22, 69, 147, 188
agreement, treaty 122; Arms Trade Treaty 136, 140; coercion 114; enforcement 114; Geneva Convention treaties and protocols 26; ICRC 26; lack of state support 11; Landmine Treaty Ban 114; NGO, influence on 9, 81, 122; Rome Statute 122, 124, 162, 217, 220, 222, 224; tacit consented agreement 83–84, 91; Westphalian treaties 18
Albert, Mathias 44
Albin, Cecilia 156
Aloyo, Eamon 3, 7, 8–9, 78, 80, 81, 114–30, 236, 237
Amnesty International 121, 192, 217, 220, 224
Amos, Julia 3, 10–11, 82, 146–64, 237
Amourez, Jack 167
Anderson, Mary B. 152
Ansell, Christopher K. 84
Arias, Enrique Desmond 191
Aristotle 86, 89
armed conflict: armed violence within states 183; civil war 64, 149, 174; control over valuable resources 22, 34; developing country 10, 11, 148–49, 157, 183; food insecurity/armed conflict relationship 11, 165; funding, shift from poverty reduction to armed conflict 147–48; intra-state conflict 22, 58, 183; intractable conflicts in the world 28–29; NSA, issue-specific authority and conflict governance 28–34; state and governance of armed conflict 20–24; UN, the IGO mandated by states to end war 150; see also CRO; NGO and armed conflict; violence
arms control 9–10, 133–45, 236, 237; advocacy 134, 135, 137, 139; aims 133, 136; Arms Trade Treaty 136, 140; Brazil 9, 136–39, 140–42, 143; control network 133, 134–36, 139 (opposition faced by 134, 137–39, 141–42); Germany, Forum Waffenrecht 137; global governance, limitations 133, 134, 142–43; global gun network 133, 134, 137–38, 139–40, 141–42; gun crime 134, 135, 136, 137; human rights 135, 137, 138 (right to self-defense 138, 141, 142); IANSA 135, 136, 140, 141; media 134,
140, 141, 143; NGO, conflicting agendas 9, 10, 139–40, 141–43; NRA 10, 137–38, 139, 141, 142; PoA 136, 139–40; results internationally 139–40; SALW 133, 134; small arms control 9, 79, 104, 133, 140; Small Arms Survey 134, 135, 141; transnational/local actors interaction 9, 136, 138, 139, 142, 143; UN 133, 135–36, 139–40 (DDA 135); UN General Assembly 135; United States 137, 139–40, 142; WFSA 10, 138, 139, 141, 142; see also Brazil, arms control; security issues

ASEAN (Association of Southeast Asian Nations): ACWC 107–8; AICHR 8, 105–7, 112; human rights mechanism 98, 104, 105–8, 112–13; Indonesia 105, 106; Myanmar 106; NGO 106, 107, 112–13

Asian Dialogue Society 109–10

AU (African Union) 202

authority 4–5, 6, 238; “an authority”/“in authority” 27, 77, 117, 201; coercion 18, 23; coercive power and authority 18, 20, 23, 32; compliance 19; delegated authority 24, 25; globalization 5; governance 34; institutionalization of 19; issue-specific governance 24, 26–28, 28–35, 46–47 (capacity and expertise 26–28, 32–33; filling governance gaps 27, 32, 34; legitimate authority 46–47); legitimacy 5, 18–19, 45, 46–48, 84–85 (constitutive features of legitimate authority 50–53, 84); the military, coercive authority 80, 109; modes of 18–20, 24; NSA/state authority shift 17–18, 59; private authority 79–80; socially constructed nature of 77; sociological legitimacy 18–19, 83; sovereignty 17, 18, 22, 34, 43; state 17, 18, 185, 192; tacit consent 83–84, 86, 239; trust 83; types of power and authority 116–17; violence 24; weakness and decentralization 5; see also illicit authority; legitimacy; political authority; private authority

Bachrach, Peter 156
Banfield, Jessica 30
Bano, Masooda 147, 151
Baratz, Morton S. 156
Barnett, Michael 26, 76–77, 78, 116–17
Bartelson, Jens 4, 5, 6, 7, 41–57, 76, 82, 84–87, 89, 90, 199–200, 238
al-Bashir, Omar 22, 179
Bassiouni, Cherif 216
Bernstein, Steven 49
Biersteker, Thomas J. 7, 12, 76, 117, 121, 185, 200, 214
Bob, Clifford 3, 9–10, 89, 133–45, 236, 237
Bosnia 29, 69, 203
Bourdieu, Pierre 62
Brazil see Brazil, arms control; favela

Brazil, arms control 9–10, 136–39, 140–42, 143; Brazilian control network 136–37, 140; Brazilian gun network 138–39, 141–42 (PLD 138); Cardoso, Fernando Henrique 136, 138; Lula da Silva, Luiz Inácio 140; NGO 9, 136; results in Brazil 140–42; Statute of Disarmament 136–37, 140–41, 142; see also arms control

Buchanan, Allen 19, 82, 121

business sector see commercial society

Buzan, Barry 44

capitalism 6, 60, 63, 68

CARE 199, 200

child soldier 78, 104, 109
civil society/CSO (civil society organization) 2, 25, 59, 77, 82, 90; accountability 47–48; advocate and monitor 29; agent of violence 59, 62; civil society and norm diffusion 98–103; democracy 82, 89; enforcement 151; freedom of action 59; mineral governance 29, 34; role 61; short-term roles 28–29; sovereignty 33; United States 89;
see also commercial society; CRO; global civil society; liberal global civil society; local civil society; NGO; NSA; transnational civil society
civil war 64, 149, 174; see also armed conflict
coevocation: agreement, treaty 114; coercive power and authority 18, 20, 23, 32; coercive violence 86, 185–86; commercial society 79–80; enforcement 19, 114; exogenous/endogenous coercion 185–86, 190; favela 189–91, 193, 195 (exogenous/endogenous coercion 190–91, 192); governance 19; human rights 80; hybrid structures 184, 201–3 (NGO/IGO cooperation 202–3; NGO/state partnership 202, 203; PMSC 201–2, 203); ICC 114; IGO 7–8, 9, 116, 126; illicit authority 184, 185–86; importance 120; issue-specific governance 25, 32; legitimacy 20, 33, 86; the military, coercive authority 80, 109; NGO, lack of coercive power 115, 116, 155, 156, 184, 201–2, 203; NSA 28, 41; private authority 79–80; R2P 114, 124; state 7–8, 9, 18, 77, 116, 126, 150, 237; threats to identity 23; violence 86, 185–86; see also violence
Cohen, Roberta 123, 125
Cold War 1, 98, 105, 134, 183
commercial society 25, 30–31; coercive authority 79–80; conflict resolution 30–31; localization 31; see also TNC
compliance: authority 19; governance/government distinction 87; legitimacy 5, 6, 20, 86; NSA 41
conflict resolution see CRO; NGO and armed conflict
Connolly, Bill 168, 170–71
constructivism 5, 12; functional differentiation and legitimacy 49; ICC 12, 210, 212, 214, 226; norm diffusion 8, 98–99
contestation 50, 108, 239; normative contestation 49, 78, 82, 91
Cooley, Alexander 159
Cooper, Justin 169
cosmopolitanism 46, 75; moral cosmopolitan/local acceptance bridge 120, 126; moral cosmopolitanism 88, 99, 105, 118–19
crimes against humanity 20, 115, 123–24, 179, 209, 222
CRO (conflict resolution NGO) 3, 8, 10–11, 146–64, 237; advantages 154, 155–56 (exertion of influence 156); conflict/peace narratives 154–55; criticism 152–53, 154–55, 158 (path dependency 154); CRO, global civil society and legitimation 3, 4–7; delegitimization of violence 151–54, 160; development/security merging agendas 146–48, 149, 152–53, 159, 160; ‘do no harm’ approach 152; donor, downsides of NGO-ization 156–59; effectiveness/effects 10, 146, 153, 154, 155–56, 159; history and context of 146–54 (New Humanitarianism and the coherence agenda 149–51); holistic development-oriented approach 157; humanitarian intervention 149; lessons of CRO work 154–59 (CRO re-narration of violence 154–56); lobbying 10, 152–53; nature 10, 150, 157, 159; northern Ghana 10, 154, 155–57; risks 157–59; Sierra Leone 10, 147, 150, 153, 154, 158; terrorism 153–54; UN 10, 151–52, 162; UN/CRO relationship 151–52, 162; see also NGO
CSR (corporate social responsibility) 61, 66
Dahl, Robert 116
Darfur 22, 167
Debrix, Francois 172
Deitelhoff, Nicole 212, 213, 221
democracy: accountability 47; Aristotle 86, 89; civil society 82,
Index 255

89; democratic global governance 2, 5, 90; democratization 30, 82, 105, 106, 147; global civil society 48, 151; governance 86; legitimacy 5, 6, 42, 85, 86–87, 200; NGO, democratic deficit 82, 200; non-violent authority 20; private authority 82; tacit consented agreement 83–84; transnational democracy 90; transparency 47

demos 6, 42, 83; global demos 5, 47, 85, 90, 91, 238

Deudney, Daniel H. 50
developing country: armed conflict 10, 11, 148–49, 157, 183; effective statehood 183–84

Dillon, Michael 67
diplomacy: logic of economy/logic of diplomacy shift 65, 66; preventive diplomacy 152

Dolan, Chris 157
donor 153; development/security merging agendas 147–48; donor/local community relationship 102–3, 110; donor/local NGO relationship 101–2; Heifer International 177; legitimacy 147; moral dilemmas raised by donor-funded peace building 158; NGO-ization and CRO peace building 156–59; see also funding

DRC (Democratic Republic of the Congo) 22, 29, 30

Duffield, Mark 153

Duvall, Raymond 116–17

East Timor 134, 202–3
economy: economic embargo/economic sanction distinction 65–66; favela, socioeconomic security 191–92, 193, 197–98, 199, 203; illicit authority and socioeconomic security 12, 79, 184, 185, 186; logic of economy/logic of diplomacy shift 65, 66; see also capitalism; liberal global civil society; market

Eide, Asbjørn 173
Eide, Wenche Barth 173
Ellis, Mark 219

enforcement: agreement, treaty 114; civil society 151; coercion 19, 114; diffusion and enforcement without internalization 115, 117–20; enforcement of norms 115, 120–22, 151, 237; governance/government distinction 87; ICC 114; IGO 115; importance 119–20, 151; legitimacy 19; R2P 114, 124; state 115; TOLS 183, 201–3; see also norm diffusion and enforcement; R2P

environment 1; 1972 Stockholm Conference on Environment and Development 1; armed conflict and control over valuable resources 22, 34; FSC 27–28; Heifer International, sustainable practices 165, 174, 176, 181; natural resource sustainability 33; NGO 78, 85

epistemic actor: arms control, conflicting agendas 141–42; epistemic violence 4, 6, 59, 60, 67, 72, 88, 90, 238; local civil society 8, 101–2; NGO 7, 27, 30, 31, 78, 79, 82, 236, 239

European Union: euro 60, 76

256 Index

203; violence deficit 184, 201–2, 203); pacification 194–99, 237; police 189–90, 192, 197, 198; reintegration: public and private governance 194–201; social bandit 187; social legitimacy 192–93, 199–200, 203; socioeconomic security 191–92, 193, 197–98, 199; state 191, 199 (‘a state within the state’ 193; territorial rescue 194, 199, 203, 237); three governance contexts 189–93, 195–99, 203; TOLS 188, 189, 192, 193, 194–95, 199; UPP program 194–99, 201, 202 (UPP/SESI partnership 197–99, 201, 202, 203); violence and social order 190, 191, 237; see also illicit authority; TOLS

Fernandes, Rubem Cesar 191
Ferretti, Maria Paola 82
Finnemore, Martha 26, 76–77, 78, 88, 118–19
Fogel, Cathleen 90, 168–70
Foucault, Charles 53, 238; exertion of influence 156; governmentality 5, 7, 64, 80, 88
Fowler, Alan 148
French, Jeffrey 17–38, 41, 58, 75, 76, 115, 150, 192, 200, 235
Friedrichs, Jörg 202
FSC (Forest Stewardship Council) 27–28

functional differentiation and legitimacy 4, 5, 6, 7, 41–57, 84–85, 238; constructivism 49; criticism 85, 89, 90; from segmentation to functional differentiation 43–45; functional differentiation 42, 44, 46; globalization 44–45; government 45; issue-specific area 46–47, 238; legitimacy 45–48, 49, 53–54, 84, 200 (reconceptualization 45, 48–53); legitimate authority 45, 46–48, 84–85 (constitutive features of 50–53, 84); modernization 44, 49; NSA 41, 42–43, 45, 47; republican theory 50–53, 76, 82, 84, 238; segmentation 42, 44, 53–54; stakeholder 46–47; stratification 44; see also political authority; republican theory

functionalism 163, 167, 168–71, 175, 177, 178; neofunctionalism 168; see also micropolitics

funding: competition among NGOs 158, 159; NSA 61–62, 73, 102–3, 148, 156–59, 161; shift from poverty reduction to armed conflict 147–48; see also donor

Gaventa, John 156
gender issues: Heifer International, gender equity 11, 177
genocide 20, 115, 123, 124, 209, 222; Rwanda 23, 122, 149; sovereignty 21
Ghana 10, 154, 155–57
Glasius, Marlius 213, 223
global civil society 4, 5, 97; accountability 47–48; constitution 4; democratic values 48, 151; existence 4, 5, 6, 48, 60; global public domain 89–90; ICC 209; issue-specific governance 32; limitations 151; NGO as member of 2; reconstructing social order 5; role of 17, 47; state 5–6, 59; see also civil society/CSO; liberal global civil society; local civil society

Global Compact 30, 31
global governance 3, 17; capacity gaps 165–66; democratic global governance 2, 5, 90; global governance, NGOs and security: spectral dilemmas 166–68 (interdependence autonomy 166–67; micro-macro dilemma of global governance 167–68, 178–79); global order 87–88; globalization 17; ‘glocal’ governance 171, 178; IGO-led global governance 3, 17, 166; limitations 133, 134, 142–43; localization 166; long-term global governance solutions 166; multilayered approach to 168; NGO (limitations 142–43, 166–68, 235–36; plugging governance gaps 2, 4, 27, 32, 34, 103, 150, 165–66,
Index 257

200, 240; role in conflict governance and peace building 24–28; NSA/state governance shift 17–18, 59; peace building 17–18; serving particular interests of dominant actors 5; state-led global governance 3–4, 17; see also governance; issue-specific governance; micropolitics global justice 53 global right wing 89, 236 Global Witness 25 globalization 75; authority 5; functional differentiation 44–45; global governance 17; government 45, 52; legitimacy 5; world cultural norms 88 Goodhand, Jonathan 158 Gordenker, Leon 200 governance: authority 34; coercion 19; democracy 86; favela, public and private governance 194–201; governance gaps 2, 4, 27, 32, 34, 103, 150, 165–66, 200, 240; governance/government distinction 87; illicit authority and three governance contexts 184–87, 188, 203 (favela 189–93, 195–99, 203); legitimacy 19–20; private authoritative governance 7, 17; private authority and NGO governance 75, 76–80, 239; state and governance of armed conflict 20–24; state-centric model 17, 18, 20, 21; violence, minimization of 34; see also global governance; issue-specific governance government 52–53; corruption 109–10; functional differentiation 45; globalization 45, 52; governance/government distinction 87; issue-specific governance 25; localization 103–4; territorial segmentation 43; see also state GPN (global policy network) 77 Gramsci, Antonio 19 Gunduz, Canan 30 Haas, Ernst 168–69 Habermas, Jürgen 213 Hall, Rodney Bruce 1–13, 75–93, 117, 121, 185, 200, 214, 235–40 Hammarlund, Per A. 169 Hauffer, Virginia 31 Haywood, Robert 17–38, 41, 58, 75, 76, 115, 117, 150, 192, 200, 235 Hegel, Georg W. F. 151 Heifer International 11, 165, 171–77, 178, 181, 237; accountability and transparency 177; an acupunctural formation 166, 173–77, 237; aims 165, 174; armed conflict and conflict resolution 11, 175–76; capacity gaps 165–66; donor 177; food security 11, 173–77 (food insecurity/armed conflict relationship 11, 165); gender equity 11, 177; household/community approach 173, 176; human security, interdependent nature 175, 176; localized approach 11, 166, 174–76, 178; micropolitics 11, 166, 175, 178; sustainable practices 165, 174, 176, 181; technical expertise and training 11, 166, 174–75, 176, 181; unanswered questions 178; West, Dan 174; see also localization; micropolitics Hinton, Mercedes S. 192 Hobbes, Thomas 6, 20, 58, 59, 83, 86, 192 Hobson, Eric 187 Holzscheiter, Anna 79, 88 human rights 121; arms control 135, 137, 138 (right to self-defense 138, 141, 142); ASEAN 98, 104, 105–8, 112–13 (Inter-Governmental Human Rights Commission 8); coercive authority 80; LCHR 217, 219, 223; local actor/localization 104–8; NGO 78, 104–6, 121, 167; a source of legitimacy 19, 121; sovereignty 149; transnational actor 97, 105; UN Commission on Human Rights 123; Universal Declaration of Human Rights 21; World War II 21
Human Rights Watch 121, 140, 217
Hutchings, Kimberly 170

ICANN (Internet Corporation for Assigned Names and Numbers) 32–33

ICC (International Criminal Court) 12, 81, 104, 109, 209–31; 1998 Rome Conference 209–10, 211–12, 213, 214, 216, 217–26; 2010 Kampala Conference 227; Ad Hoc Committee 216, 217; Amnesty International 217, 220, 224; BATNA 211; CICC 218, 219, 223; coercion 114; constructivism 12, 210, 212, 214, 226; enforcement 114; global civil society 209; ILC draft 217, 218, 220; international law 220, 223–25; LCHR 217, 219, 223; legal arguing 12, 209–10, 212–13, 214–17, 226 (argument/legal validity 213, 214–16; speaker/expert authority 213, 214); Like-Minded Group 212, 217, 221; methodology 216–17; NGO 29, 209; origins 162; rationalism 211, 212, 222; realism 211, 212, 222; Rome Statute 122, 124, 162, 220, 222, 224 (ratification 217); strong/weak court 211; UN Security Council 219–20, 222 (P5 212, 218); United Kingdom 220–21; United States 211, 218, 219; see also entries below for ICC; crimes against humanity; genocide; international law; mass atrocities; war crimes
ICC, independent prosecutor 12, 209–10, 211–12, 216, 218–21, 226, 236; accountability 220–21; expert authority 218–19, 225; legal argumentation 219–21, 225–26; see also ICC
ICC, universal jurisdiction 12, 209–10, 211, 212, 216, 221–26, 235, 237; expert authority 222–23, 225; inherent jurisdiction 223; international law 223–25; legal argumentation 223–26; quasi-universal jurisdiction 212, 222, 223, 224; state sovereignty 211, 218; see also ICC
ICGLR (International Conference on the Great Lakes Region) 31–32
ICISS (International Commission on Intervention and State Sovereignty) 122, 123, 124, 125
ICRC (International Committee of the Red Cross) 26, 27, 158, 202
identity: coercion, threats to identity 23; identity and authority 34; illicit authority 186–87, 193, 198–99; local identity 99; national collective identity 75; transnational identity 76
IGO (international governmental organization) 2, 75; accountability 82; coercive power 7–8, 9, 116, 126, 237; enforcement 115; failed state 183; IGO-led global governance 3, 17, 166; limitations 167, 179; NGO/IGO relationship 81–82, 150, 166–67, 202, 235; responsibility to be myopic 21–22; see also UN
IKI (international knowledge institution) 77
illicit authority 12, 77, 86, 183–208; coercive violence 184, 185–86; from rule breakers to rule makers 184; hybrid structures 184, 201–3 (NGO/IGO cooperation 202–3; NGO/state partnership 202, 203; PMSC 201–2, 203); identity 186–87, 193, 198–99; NGO 79, 184, 197–98, 199–203; organized crime 183, 185, 191, 193; organized violence 185, 189; socioeconomic security 12, 79, 186–87, 184, 185, 186; sociological legitimacy 12, 79, 86, 184, 185, 186–87, 192–93; state 12 (failed state 185, 202; sovereignty 183, 185, 200, 202, 203; weak state 79, 86, 202); three governance contexts 184–87, 188, 203; TOLS 12, 183, 184–87, 188, 203–4; VNSA 183, 185; see also favela; private authority

ILO (International Labour Organization) 161

India 147; 1956 States
Reorganization Act 23; ethnonational violence 23; human security 98, 103, 104, 108–11; Maoist movement in Odisha 102–4 (Naxalites 103, 111); tax system 33

International Alert 25, 150;
Rupesinghe, Kumar 150

international law 20–21, 213, 215; ICC 220, 223–25; ICRC 26; NGO 125, 209, 210–11, 216, 219, 220; see also ICC

international relations 24;
stratification 44; territorial segmentation 43, 44

International Relations 64;
constructivist theories of IR 12; CRO 154; functional differentiation 44

international system 239–40;
cosmopolitanism 75–76; functional differentiation 41; globalization 44; legitimacy 42; state-centric Westphalian model 240; territorial segmentation 42

Internet 32–33

intervention 21–22; criticism 69–70, 147; economic embargo/economic sanction distinction 65–66; humanitarian intervention 9, 115, 120, 124 (accountability 149, 201; PMSC 201); liberal intervention 6, 60, 63, 69–70; Libya 9, 124; mass atrocities 21–22; military intervention 124, 153, 202; responsibility to be myopic 21; Rwanda 6, 23, 149; Somalia 69, 149; UN intervention 21, 124, 149; United States 69, 149; see also R2P

Iraq 22, 65, 129, 177, 188

issue-specific governance 18, 24–26, 34–35, 202, 203, 236; authority 24, 26–28, 28–35 (capacity and expertise 26–28, 32–33; filling governance gaps 27, 32, 34; legitimate authority 46–47); coercion 25, 32; democratization of knowledge 28; functional differentiation 46–47; global civil society 32; government 25; inclusiveness 25, 27, 35; issue-specific network 24, 27; legitimacy 24–25; localization 28; long-term roles 32–34; NSA 18, 24, 25–26, 28–34, 41, 54, 76; private authority 76, 77; short-term roles 28–32, 239; shortcomings 142–43; see also FSC; governance; ICRC; NGO; NSA

Johnson, Cathryn 80–81
Johnson, Lyndon 71

Kaldor, Mary 29, 151, 176–77, 181
Keck, Margaret E. 118
Keohane, Robert O. 19, 82
Kessler, Oliver 44–45
Kratochwil, Friedrich 82–83, 187, 214–15
Kymlicka, Will 23

landmine 29, 79; landmine ban 29, 34, 104, 109; Landmine Treaty
Ban 114

LCHR (Lawyers’ Committee for Human Rights) 217, 219, 223
legitimacy 2, 4–5, 18–19, 83, 238; accountability 5; authority 5, 18–19, 45, 46–48 (constitutive features of legitimate authority 50–53); coercion 20, 33, 86; compliance 5, 6, 20, 86; democracy 5, 6, 42, 85, 86–87, 200; demos 5, 6; donor 147; enforcement 19; globalization 5; governance 19–20; human rights 19, 121; illegitimacy 121; international system 42; liberal global civil society 5, 6; local civil society 82, 98, 152; market-based approach 60, 61, 66, 69; NSA as agent of liberal governmentality 7, 60, 62–63, 66–67, 236, 238; NSA/state authority shift 59; NSA, ‘state building’, and intercommunal violence 60, 66–69, 70–71; NSA/state relationship 5–6, 58–59, 60, 61, 63–65, 88; peacemaking 59, 66–69 (peacemaking mission 6, 60, 88; transnational NGO/NSA 6, 60); peer pressure 6, 60–61, 62; political and economic liberalism 6, 58, 60; social order 5, 62–63; transnational governmentality 59, 60; world state 6, 60, 63, 89; see also global civil society; legitimacy liberalism 68; divisions of labor 66, 68; United States 60, 72; see also liberal global civil society

Libya 9, 124
Lilyblad, Christopher Marc 3, 4, 12, 13, 20, 75–93, 183–208, 235–40
Lipschutz, Ronnie D. 4, 5–6, 58–74, 76, 88, 89, 168–70, 200, 236, 238
Libya 9, 124
Lilyblad, Christopher Marc 3, 4, 12, 13, 20, 75–93, 183–208, 235–40
Lipschutz, Ronnie D. 4, 5–6, 58–74, 76, 88, 89, 168–70, 200, 236, 238
local civil society 82, 98, 152; active agent of norm localization and construction 98, 102, 103, 104, 106, 111; epistemic community 8, 101–2; human rights 104–8; local agency 99, 101, 111, 115; transnational/local actors divide 97; transnational/local actors gap 97, 102; transnational/local actors interaction 97, 98, 101, 102, 104; see also localization; norm diffusion
localization 28, 124; acts of 99–100; banyan tree model of norm diffusion 108; commercial society 31; constitutive localization 8, 28, 99; factors favoring localization 100; global governance 166; ‘glocal’ governance 171, 178; government 103–4; human rights 104–5; human security 103, 104, 108–11 (freedom from fear/ freedom from want divide 104, 108–9, 110–11); issue-specific governance 28; local identity 99;
localization/subsidiary distinction 100–101; localized social work 69–70; L-S framework 98, 101, 108, 111, 112; micropolitics 28, 171, 178; norm diffusion 97, 98, 99–101, 111, 114–15, 120, 236–37; see also Heifer International; local civil society; micropolitics; norm diffusion

Locke, John 4, 5, 84, 85, 89; see also republican theory

Luhmann, Niklas 43–44

Lukes, Steven 156

Lund, Christian 158

Machiavelli, Niccolò 185, 186

Mandelbaum, Michael 69

market: global market 63, 64; global market/global state/global civil society relationship 63, 64, 66; liberal global civil society 60, 61, 66, 69; see also liberal global civil society

mass atrocities 20, 22–23, 119, 121, 122, 123, 126, 209; intervention 21–22

McCann, Bryan 189, 193

media 23, 105, 172, 200; arms control 134, 140, 141, 143

micropolitics 11, 75, 165–82, 237; acupunctural formation 165–66, 169, 171–72, 179, 237 (‘events-as-surprise’ 172); discursive component of 171; functionalism 165, 167, 168–71, 175, 177, 178 (neofunctionalism 168); global governance, NGOs and security: spectral dilemmas 166–68 (interdependence autonomy 166–67; micro-macro dilemma of global governance 167–68, 178–79); ‘glocal’ governance 171, 178; localization 28, 171, 178; micropolitics of security 168–71; NGO, effectiveness 166–67; technical role 171, 178; unanswered questions 178; see also global governance; Heifer International; localization

the military: 3D approach 147; coercive authority 80, 109; favela 190; militant 109; military intervention 124, 153, 202; PMSC 201–2; private sector 64, 65, 80, 201; US military 181; violence 64, 66, 109–10; see also NATO; security issues

militia 155, 189, 194

Mill, John Stuart 89

mineral governance 25, 29; armed conflict and control over valuable resources 22, 34; coercion 34; commercial society 30; CSO 29, 34; see also ICGLR

Mitrany, David 168–71, 175

moral authority: NGO 76, 77, 78, 200, 236, 238; sociological legitimacy 83; sources of 4, 6, 7, 77, 80 (expertise/authority of authorship 7, 77, 78, 117, 214, 238; neutrality/authority of the referee 7, 77, 78, 117, 214, 236, 238; normative/moral transcendence 7, 77, 78, 82, 117, 214, 238); see also private authority

Moyn, Samuel 121

NATO (North Atlantic Treaty Organization) 69, 122, 124, 202

NGO (nongovernmental organization) 1; advantages 10, 148, 150, 152 (flexibility 10, 148, 153, 156); agenda setting 1, 31, 116, 117, 121, 123, 156; agreement, treaty 9, 81, 122; AICHR 106, 107, 112–13; “an authority”/”in authority” 77, 117, 201; conflicting agendas 9, 10, 139–40, 141–43; democratic deficit 82, 200; disadvantages 10, 11, 154–55, 159 (lack of state support 11, 156); effectiveness 166–67; epistemic actor 7, 27, 30, 31, 78, 79, 82, 236, 239; favela 184, 197–98, 199–203, 237; human rights 78, 104–6, 121, 167; IGO/NGO relationship 81–82, 150, 166–67, 202–3, 235; illicit authority 79,
184, 197–98, 199–203; international law 125, 209, 210–11, 216, 219, 220; lack of coercive and other powers 115, 116, 155, 156, 184, 201–2, 203; limitations 142–43, 148, 166–68, 235–36; moral authority 76, 77, 78, 200, 236, 238; origins 146–49; peace-building 24–28, 146, 148, 150, 151, 152, 160; political authority 87, 226; R2P 121, 123–25; role 61, 151, 235; self-appointed nature 2, 200; social entrepreneur 86, 239; structural constraints 235–36; TOLS 184, 202, 203–4; transnational policy decision 79; UN/NGO relationship 151–52, 162, 239; see also entries below for NGO; arms control; civil society/CSO; CRO; donor; favela; global governance; ICC, NGO and legal arguing; NSA; private authority

NGO and armed conflict 2–3, 9; agency 236–37, 239; mediation 2, 3, 10, 82, 236, 237, 239; mitigation 2, 3, 4, 76, 236, 237, 239; prevention 2, 3, 236–37, 239; reducing armed violence 76, 236, 239

NGO, norm entrepreneur 25–26, 27, 29, 78, 79, 81; agenda-setting capacity 7; issue-specific governance 25, 27; mineral governance 29; norm entrepreneurship 25, 27; preventing armed conflict 3; see also norm diffusion

NGO, persuasion capacity: agenda setting 116, 117, 121, 123; ICC 212, 214–15; norm diffusion and enforcement 8–9, 114, 115, 116, 117, 120–22, 123, 125, 126; normative legitimacy 121–22; targeting sympathetic states 121, 122

NGO, practitioner’s perspective 3–4, 17–38, 41, 58, 75, 76


norm diffusion and enforcement 3, 8–9, 114–30, 236, 237; accountability 9, 124, 126; diffusion and enforcement without internalization 115, 117–20; enforcement of norms 115, 120–22, 151, 237; moral cosmopolitan/local acceptance bridge 120, 126; NGO, lack of coercive and other powers 115, 116; persuasion capacity 8–9, 114, 115, 120–22, 125, 126 (agenda setting 116, 117, 121, 123; normative legitimacy 121–22; targeting sympathetic states 121, 122); R2P 8, 9, 121, 122–25; sociological legitimacy 122; state/IGO coercive power 7–8, 9, 116, 126, 237; types of power
and authority 116–17; see also norm diffusion
normative legitimacy 4, 5, 6, 7, 18, 19, 49–50, 83, 90, 200; liberty 89;
 NGO, normative concerns 200, 238; NGO, persuasion capacity 121–22; normative contestation
49, 78, 82, 91; normative legitimacy, government, and
governance 84–88; normative vs.
sociological legitimacy 238–39; R2P 122; sociological/normative legitimacy distinction 76, 86; see also legitimacy
North, Cecil 186
northern Ghana 10, 154, 155–57
NRA (America’s National Rifle
Association) 10, 137–38, 139, 141, 142
NSA (non-state actor) 2, 54;
accountability 9, 45, 47, 48, 82, 84, 124, 125, 126; agent of
violence 59, 62; coercion 28, 41;
compliance 41; dangers of
domination by 45; functional
differentiation 41, 42–43, 45, 47;
funding 61–62, 73, 102–3, 148,
156–59, 161; issue-specific
authority and conflict governance
28–34, 41, 76; issue-specific
governance 18, 24, 25–26, 41, 54;
legitimacy 41, 42–43, 47, 200
(QUANGO 160); NSA as agent of
liberal governmentality 7, 60, 62–63, 66–67, 236, 238; NSA/state
authority shift 17–18, 59; NSA,
‘state building’, and intercommunal
violence 60, 66–69, 70–71; NSA/
state relationship 5–6, 58–59, 60,
61, 63–65, 78, 81–82, 88, 166–67,
202, 203, 227 (Brazil 140; rivalry/
hostility 150, 202, 235); peace
building/making 28–32, 59, 66–69;
political authority 41, 42, 43, 54, 85; private authority 24, 76, 214;
rise of 17; role 17, 61, 151 (long-
term roles 32–34; short-term roles
28–32, 76); security 29–31;
terrorism 62; transparency 47, 48, 84; see also civil society/CSO;
commercial society; CRO; issue-
specific governance; NGO; private
authority
OEF (One Earth Future
Foundation) 2, 4, 77–78, 239
order: global order 87–88; social
order 5, 62–63; violence and social
order 190, 191, 237
organizational sociology/
organizational ecology 5, 6;
sociological legitimacy 4, 6
organized crime 183, 185, 189, 191,
193; criminal network 187–93
passim; social banditry 187;
sociological legitimacy 187; see also favela; illicit authority
Orshaug, Arne 173
Ottaway, Marina 199, 201
Oxfam 199, 200
Pace, William 220, 222
Paris, Roland 66–67, 176
Partnership Africa Canada 25
Pattison, James 201
Patton, Paul 52–53
peace: shortcomings for sustainable
peace and security 18–24 (modes
of authority 18–20; state and
governance of armed conflict
20–24); see also peace building/
making
peace building/making: abiding
requirement of 71; commercial
society 30–31; favela 194–99, 237;
global civil society 17; global
governance 17–18; liberal global
civil society 59, 66–69; a mean of
liberal governmentality 66–67;
mission civilisatrice 66–67;
moral dilemmas raised by
donor-funded peace building 158;
NGO 24–28, 146, 148, 150,
151, 152, 160; NSA 28–32, 59,
66–69; peacemaking mission 6,
60, 88; transnationalized NGO/
NSA 6, 60
Pettit, Philip 50, 51, 52
political authority 7, 41, 42, 50–52,
54; checking the arbitrariness of
power 51–52; domination 50–51; freedom to recognize as rightful 43, 50, 51–52; from segmentation to functional differentiation 43; “in authority” 77; legitimacy 50–52; liberty 6, 52, 53, 84, 89; NGO 87, 226; NSA 41, 42, 43, 54, 85; political authority/legitimacy co-constitution 52; recognized as rightful 43, 49–50, 85, 86, 87; resistance to illegitimate forms of authority 43, 50, 52, 53–54; state 226; territorially unbound 48; see also functional differentiation and legitimacy

power 117; types of power and authority 116–17 (coercion 116; institutional power 116, 117; productive power 116–17; structural power 116, 117); see also norm diffusion and enforcement

PPP (public-private partnership) 77

private authority 7, 75–93, 214, 238–39; 1998 Rome Conference 214; agenda setting 1, 31, 116, 117, 121, 123; coercive authority 79–80; democracy 82; governance 7, 17; ICC, NGO and legal arguing 209–10, 212, 218–21, 223–26; issue-specific authority 76, 77; legitimacy 19; liberalism and civil society 88–90; moral authority 76, 77, 78, 214; normative legitimacy, government, and governance 84–88; NSA 24, 76, 214; private actor 4, 5, 76; private authority and NGO governance 75, 76–80, 239; privatization of authority 65; reducing armed violence 76; sociological legitimacy 19, 76, 80–84, 90–91, 238–39; sociological/normative legitimacy distinction 76, 86; sources of NGO’s private/moral authority 4, 6, 7, 77, 80 (expertise/authority of authorship 7, 77, 78, 117, 214, 238; neutrality/authority of the referee 7, 77, 78, 117, 214, 236, 238; normative/moral transcendence 7, 77, 78, 82, 117, 214, 238); see also authority; illicit authority

QUANGO (quasi nongovernmental organization) 160

R2P (Responsibility to Protect) 21, 81, 104, 122–25, 149, 224, 236; aims 123; coercion 114, 124; enforcement 114, 124; ICISS 122, 123, 124, 125; intervention 122–24; legitimacy 121–22; NGO 123–25 (agenda setting 121, 123); norm diffusion and enforcement 8, 9, 121, 122–25; normative legitimacy 122; official documents 122, 123, 124; origins 123; responsibility to be myopic 21; sovereignty 122, 123, 124, 149 (‘sovereignty as responsibility’ 123); three ‘pillars’ of 122; TOLS 202; UN 9, 21, 122, 202; UN Commission on Human Rights 123; UN Security Council 123, 124; see also norm diffusion and enforcement

rationalism 211, 212, 222

realism 211, 212, 222

Reid, Julian 67

republican theory 50, 53, 76, 80, 82, 85, 238; domination 50–51, 53, 238; legitimacy 50, 84–85, 238; liberty 6, 50, 52, 53, 84, 89, 238; Locke, John 4, 5, 84; see also functional differentiation and legitimacy

Risse, Thomas 118–19, 212–13

Ron, James 105, 159

Ropp, Stephen 118–19

Rosenau, James 25, 75, 87

Rousseau, Jean-Jacques 83

RPG (Refugee Policy Group) 123

Ruggie, John Gerard 30, 89–90

rule of law 51

Rwanda 23, 162; genocide 23, 122, 149; intervention 6, 23, 149

Scholte, Jan Aart 47–48

security issues 1–2, 20; 3D approach 147; commercial society 30; development/security merging agendas 146–48, 149, 152–53, 159, 160, 172; global governance,
NGOs and security: spectral dilemmas 166–68; micropolitics of security 168–71; NSA 29–31; PMSC 201–2; shortcomings for sustainable peace and security 18–24; see also arms control; the military; state
Shklar, Judith 23
Sierra Leone 22, 203; CRO 10, 147, 150, 153, 154, 158
Sikkink, Kathryn 118–19
Sisk, Timothy D. 147
Skinner, Quentin 50
Sneed, Paul 190, 193
Soares, Luiz Eduardo 189
sociological legitimacy 4, 6, 7, 18–19, 49–50, 80–84, 90–91; authority 18–19, 83; criticism 84–85; definition 122; illicit authority 12, 79, 86, 184, 185, 186–87, 192–93; liberalism and civil society 88–90; local conflict area 82; moral authority 83; NGO and favela 192–93, 199–200, 203; NGO/IGO relationship 81–82; NGO/state relationship 81–82; norm diffusion and enforcement 122; normative legitimacy 122; normative vs. sociological legitimacy 238–39; organizational legitimacy 80–81; organized crime 187; private authority 19, 76, 80–84, 90–91, 238–39; sociological/normative legitimacy distinction 76, 86; state 119; subjectivity of the target population 82–83, 186–87, 239; tacit consent 83–84, 86, 91, 239; trust 83; Weber, Max 6, 80, 84, 86
Soviet Lanka 158
state 63–64, 185; authority 17, 18, 185, 192; coercion 7–8, 9, 18, 77, 116, 126, 150, 237; corruption 191; developing country, effective statehood 183–84; enforcement 115; failed state 69, 165, 183, 185, 202; favela 191, 199 (‘a state within the state’ 193; territorial rescue 194, 199, 203, 237); global civil society 5–6, 59; governance of armed conflict 20–24; illicit authority 12, 79, 86, 185, 202; intra-state conflict 22, 58, 183; legitimacy 17, 18, 19, 21–22, 42, 192; NSA/state authority shift 17–18, 59; NSA, ‘state building’, and intercommunal violence 60, 66–69, 70–71; NSA/state relationship 5–6, 58–59, 60, 61, 63–65, 78, 81–82, 88, 166–67, 202, 203, 227 (Brazil 140; rivalry/hostility 150, 202, 235); political authority 226; social legitimacy 199; social order 62; state-centric system 8, 17, 18, 20, 21, 34, 101, 112, 209, 235, 240; state-led global governance 3–4, 17; ‘territorial myopia’ 3–4; violence 3, 17, 20, 22, 34, 58, 109, 237; weak state 69, 79, 85, 86, 147, 202; world state 6, 60, 63, 89; see also government; sovereignty; TOLS; Westphalian system
Steele, Brent J. 3, 11, 28, 165–82, 237
Steffek, Jens 82
Strange, Susan 83
Struett, Michael 213, 224
Syria 22, 59
Tilly, Charles 185
Tito, Josef Broz 70
TNC (transnational corporation) 25, 31, 61, 73, 79
Tocqueville, Alexis de 89
TOLS (territory of limited statehood) 12, 183, 185, 202; enforcement 183, 201–3; failed state 185, 202; favela 188, 189, 192, 193, 194–95, 199; illicit authority 12, 183, 184–87, 188, 203–4; NGO governance 184, 202, 203–4; R2P 202; three governance contexts 184–87, 188; VNSA 183, 185; see also illicit authority; state
TRANSCEND (Transnational Challenges and Emerging National Dialogue) 109–10
transnational civil society 8, 97, 98, 165; human rights 97, 105; human security 97; norm diffusion 8, 98; transnational governmentality 59, 60; transnational/local actors divide 97; transnational/local actors gap 97, 102; transnational/local actors interaction 97, 98, 101, 102, 104 (Brazil, arms control 136, 139, 142, 143); see also norm diffusion; transnationalism
transnationalism 63, 75; capacity gaps 165; moral cosmopolitanism 99; NGO and transnational policy decision 79; transnational democracy 90; transnational identity 76; see also TNC; transnational civil society
transparency: democracy 47; Heifer International 177; legitimacy 5; NSA 47, 48, 84; see also accountability
Tripathi, Salil 30
Uganda 157
Ulbert, Cornelia 213
Ullrich, Vanessa 3, 12, 78, 81, 209–31, 235, 236, 237
UN (United Nations) 10, 17, 65; arms control 133, 135–36, 139–40 (DDA 135); collective legitimation function 77; CRO 10, 151–52, 162; CRO/NGO-UN relationship 151–52, 162, 239; food security 173; funding 22; the IGO mandated by states to end war 150; peacekeeping operations 22; R2P 9, 21, 122, 123, 124, 202; UN Charter 129, 150, 151, 162; UN Commission on Human Rights 123; UN General Assembly 135; UN HABITAT 161; UN intervention 21, 124, 149; UNDP 108, 152; UNESCO 136, 141; Universal Declaration of Human Rights 21; see also entries below for UN
UN Secretary-General: Annan, Kofi 139; Boutros-Ghali, Boutros 123, 135, 152
UN Security Council 88, 122, 129, 162; ICC 212, 218, 219–20, 222; P5 149, 212, 218; R2P 123, 124
United Kingdom: DfID 147; ICC 220–21
United States: 9/11 148, 153; 2001 US Patriot Act Terrorist Exclusion List 153; arms control 137, 139–40, 142; Bush, George W. 137, 139; civil society 89; Clinton Administration 69; 'counterinsurgency' strategy 176–77; ICC 211, 218, 219; intervention 69, 149; NRA 10, 137–38, 139, 141, 142; Obama, Barack 124; US military 181
Varshney, Ashutosh 154
violence: authority 24; civil society/CSO 59, 62; coercion 86, 185–86; commitment to non-violence through governance 84, 184, 237, 240; CRO (delegitimization of violence 151–54, 160; re-narration of violence 154–56); epistemic violence 4, 6, 59, 60, 67, 72, 88, 90, 238; extractive industry 25; governance and minimization of violence 34, 237; illicit authority 12; India, ethno-national violence 23; liberal violence 58; liberalization as trigger of violence
66, 67–68, 71; the military 64, 66, 109–10; NSA, ‘state building’, and intercommunal violence 60, 66–69, 70–71; organized violence 119, 183, 185, 189; political violence 11, 20, 22, 32, 50, 149, 157, 160; state 3, 17, 20, 22, 34, 58, 109, 237; structural violence 160, 178–79; violence and social order 190, 191, 237; VNSA 183, 185; see also coercion

war crimes 115, 120, 123, 124, 209, 222, 237; war crime tribunal 21, 22, 29
Weaver, Catherine 179
Weber, Max 118; authority 32, 80, 86, 185, 186, 214; legitimacy and coercion 6, 20, 86, 184–85; sociological legitimacy 6, 80, 84, 86
Weiss, Thomas G. 200
Wellman, Christopher 121
Westphalian system 18, 22, 33, 34, 63, 240
WFSA (World Forum on the Future of Sport Shooting Activities) 10, 138, 139, 141, 142
Wheeler, Nicholas 115
Williams, Phil 165
Wong, Wendy H. 125
WTO (World Trade Organization) 17, 19
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